

---

# Authorities Budget Office



## New Provisions of the Public Authorities Reform Act of 2009

---

---

### Responsibilities of the independent Authorities Budget Office (ABO)

---

#### *Public Authorities Accountability Act (PAAA) of 2005:*

Established and provided the Authority Budget Office with the powers to:

- i) Review authority operations, practices and reports and to assess compliance with applicable laws
- ii) Maintain a comprehensive inventory of authority annual reports
- iii) Assist authorities in improving management practices
- iv) Provide additional information and analysis as requested by the Legislature and OSC
- v) Request and receive information from appropriate bodies as necessary to perform its duties

---

#### *Public Authorities Reform Act (PARA) of 2009:*

Public Authorities Law Article 1 Title 2 Section 4 establishes the independent Authorities Budget Office and provides the ABO with broader powers and responsibilities, in addition to the above stated powers.

The independent Authorities Budget Office is to:

- i) Verify the existence of all public authorities in law
- ii) Develop comprehensive definitions for authorities
- iii) Review potential consolidation options or name changes
- iv) Recommend to the Legislature and other bodies opportunities to improve the performance and oversight of authorities
- v) Promulgate regulations
- vi) Recommend debt limits for authorities without debt caps
- vii) Recommend proposed compensation for board members
- viii) Enter into cooperative agreements
- ix) Require board members to adopt a written acknowledgement of their fiduciary duties
- x) Review and recommended the potential for changing board member term limits
- xi) Receive and act on complaints from the public
- xii) Initiate formal investigations if necessary
- xiii) Issue subpoenas pertaining to investigations
- xiv) Publicly warn and censure authorities
- xv) Recommended dismissal of board members to appointing authorities
- xvi) Report criminal activities to the Attorney General
- xvii) Standardize the format and content of public authority annual reports
- xviii) Assess authorities and set date for implementation of changes

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>xix) Compel a non-complying authority for a detailed explanation of the failure to comply with requirements</li> <li>xx) Seek an order from the Supreme Court to require authorities to provide information for failure to do so</li> </ul> | <ul style="list-style-type: none"> <li>xxi) Post on its web site authorities missions, activities, financial reports, current year budgets and most recent independent audit report</li> </ul> |
|--|--|

---

**Reporting Requirements for Public Authorities**

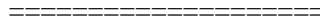
---

Public Authority Annual Reports - Section 2800 of Public Authorities Law provides Annual Report reporting requirements for state and local public authorities

***Annual Report requirements under PAAA of 2005:***

- i) Operations and accomplishments of the authority
- ii) Receipts, disbursements during the fiscal year and assets and liabilities Bond schedule to

- include refinancings, refundings and defeasements and bond issuance costs
- iii) Compensation schedule
- iv) Projects undertaken by the authority during the past year
- v) Listing of real property and price received, name of the purchaser for property sold
- vi) Internal control assessment



***Additional Annual Report requirements under PARA of 2009:***

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>i) Mission statement and performance measurement report</li> <li>ii) Financial reports: Audited financials in accordance with GAAP per section 2 (10) of State Finance Law</li> <li>iii) Grant and subsidy programs</li> <li>iv) Operating and financial risks</li> <li>v) Current ratings for bonds and changes in ratings</li> <li>vi) Long-term liabilities, leases and employee benefit plans</li> <li>vii) Biographical information for all members and specified employees</li> <li>viii) Description of all real property exceeding \$15,000 acquired or disposed</li> <li>ix) The price paid and name of the seller for all property bought by the authority</li> <li>x) Authority's enabling legislation</li> </ul> | <ul style="list-style-type: none"> <li>xi) Description of the authority, major authority units and subsidiaries</li> <li>xii) Number of employees</li> <li>xiii) Authority's charter and by-laws</li> <li>xiv) List of material operations and program changes during the reporting year</li> <li>xv) A 4 year financial plan</li> <li>xvi) Current and projected capital budget</li> <li>xvii) Operating budget report including an actual versus estimated budget</li> <li>xviii) Analysis and measurement of financial and operating performance</li> <li>xix) Description of its board structure, names of committees and committee members</li> <li>xx) List of board meetings and attendance</li> </ul> |
|---|---|

- |       |  |   |
|-------|--|---|
| xxi)  | Board performance evaluations  | justifying the purchase or sale without competitive bidding, certification by CEO and CFO that terms of purchase or sale were reviewed and comply with procurement guidelines |
| xxii) | Description of assets and services bought or sold without competitive bidding, their nature, names of parties involved, contract price compared to fair market value, a detailed explanation | xxiii) Description of material pending litigation   |

The Authorities Budget Office is to establish criteria to grant waivers to authorities if they cannot meet reporting requirements. The criteria should consider the size and budget of the authority and burden such disclosure places on an authority.

***Additional reporting requirements under PARA of 2009:***

Public Authority Budget Reports - Section 2801 of Public Authorities Law provides Budget Reports reporting requirements for state and local public authorities.

- State authorities are required to submit budget reports not more than 120 days and no less than 90 days before the commencement of their fiscal year.
- Local authorities are required to submit budget reports not more than 90 days and no less than 60 days before the commencement of their fiscal year.

Public Authority Audit Reports - Section 2802 of Public Authorities Law provides Audit Report reporting requirements for state and local public authorities.

- State and local authorities are required to submit audit reports as defined in Section 2 (11) of State Finance Law.

Public Authority Personnel Reports - Section 2806 of Public Authorities Law provides Personnel reporting requirements for both state and local public authorities.

- Authorities are able to satisfy this requirement through its annual report under Section 2800 of Public Authorities Law.

---

**Mission Statement and Measurement Report**

---

***New Requirements of PARA of 2009:***

- |      |  |   |
|------|--|---|
| i)   | Authorities are to submit a mission statement to the ABO expressing the purpose and goals of the authority, stakeholders and their expectations and list of performance measures | annually and self-evaluation is to be published.  |
| ii)  | The ABO is to post these on its website.   | iv) Annual reexamination of mission statements may be waived by the determination of the ABO Director |
| iii) | Mission statements and measurements are to be evaluated  | v) State authorities are to prepare and submit mission statements by March 31, 2010                   |

vi) Local authorities are to are to prepare and submit mission statements by March 31, 2011

vii) Authorities are to post mission statement and maintain on their public web site permanently

---

### Board Governance and Committees

---

***According to PAAA of 2005:***

Section 2824 of Public Authorities law states an authority's Board is required to:

- i) Execute oversight over the authority's CEO and senior management
- ii) Review and monitor the implementation of financial and management controls

- iii) Establish policies for defense and indemnification, salary and compensation, travel, time and attendance, whistleblower protection, investments, property guidelines and procurement guidelines
- iv) Adopt a code of ethics

=====  
***Additional governance requirements established by PARA of 2009:***

Public authority Board members are required to:

- i) Perform duties in good faith with due diligence and care
- ii) Apply judgment in the best interest of the authority, its mission and the public
- iii) Execute an acknowledgement prescribed by the ABO after taking oath of office where members acknowledge their role and fiduciary responsibilities

An authority's Audit Committee should consist of not less than 3 independent members. Non-independent members may be appointed provided that independent members constitute a majority.

An authority's Governance Committee should consist of not less than 3 independent members. Non-independent members may be appointed provided that independent members constitute a majority.

- o Governance Committee is to examine ethical and conflict of interest issues, perform board self-evaluations and recommend by-laws.

Board members of authorities that issue debt are to establish a Finance Committee to be comprised of no less than 3 independent members.

- o The Finance Committee is to review proposals for the issuance of debt by the authority and its subsidiaries and make recommendations.

Section 2827 of Public Authorities Law now provides that board members of state and local authorities can now be removed for breach of fiduciary duty.

PARA of 2009 adds Section 2852 in Public Authorities Law now requiring Senate confirmation of the CEO/Executive Director of specified public authorities.

These are:

- Executive Director - Dormitory Authority
- Executive Director - Thruway Authority
- CEO - Power Authority

- CEO - Long Island Power Authority

PARA of 2009 also provides that a board chair also serving as a CEO cannot determine the compensation, reimbursement of time and attendance for the CEO.

---

## Contracts

---

**PAAA of 2005:** No contract approval requirements.

=====

***PARA of 2009 provides for Comptroller approval of contracts:***

The Comptroller is to promulgate regulations and determine standards for determining contracts subject to review and approving contracts.

The Comptroller is to conduct prior review and approval of contracts in excess of one million dollars that include:

- i) Single source, sole source or non-competitive contracts awarded by state authorities
- ii) Contracts that are paid in whole or part by State appropriations
- iii) The Comptroller notifies the authority of the determination and the authority notifies the Comptroller for approval. The contract is not valid or enforceable unless prior approval by the Comptroller.
- iv) The Comptroller is to approve or disprove any contract within 90 days of submission or else it is valid and enforceable.

This *does not* apply to:

- i) Contracts for issuance of commercial paper or bonded debt other than contracts with the state for providing the payment of debt service subject to an appropriation Services, affiliations or joint ventures for the provision or administration of health care services or scientific research; participation in group purchasing arrangements; contracts for emergency procurements; contracts for purchase or sale of energy, electricity or ancillary services in specified markets or with a term of less than 5 years
- ii) Contracts for the sale of energy for economic development purposes
- iii) Contracts for specific projects of the Westchester County and Nassau County Health Care Corporation, Roswell Park Cancer Institute, Clifton-Fine Health Care Corporation and Erie County Medical Center approved by various entities such as Department of Health, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, Office of Alcoholism and Substance Abuse

---

## Property Disposition

---

### *PAAA of 2005:*

Authorities are required to:

- |   |   |
|---|---|
| i) Adopt property disposition guidelines, post them on the web site and the board to annually review and approve the guidelines | iv) Annually report any real property or personal property with an estimated fair market value in excess of \$15,000 that the authority acquired or disposed of during the reporting year |
| ii) Designate a contracting officer to be responsible for compliance and enforcement of guidelines                              | v) Appraise by an independent appraiser disposition of property valued over \$15,000. However, loophole existed that allowed certain property to be sold below fair-market value.         |
| iii) Report all real property owned   |   |

=====

### *Additional requirements established by PARA 2009:*

- |   |   |
|---|---|
| i) Any authority controlled property must be disposed of at fair market value except if: <ul style="list-style-type: none"><li>o The disposal is to a government or public entity and the terms are that the property <i>remains</i> with the entity</li><li>o The disposal is within the mission of the authority, as defined by their enabling statute.</li></ul> | sufficient to permit the transfer if such approval is provided for in the authority's enabling statute and the transfer is for property originally possessed by the authority.  |
| ii) Any other below fair market value transactions are subject to denial by the governor (by certification) and either house of the legislature (by resolution) within 60 days of receiving notification.   | iv) Complete disclosure of all below fair market value transactions. Including full description of the asset; an appraisal of the fair market value; explanatory statement of public purpose and benefit; statement of value to be received; names of parties involved; statement of value to the private party; and written determination by the board as to no other reasonable alternative to the proposed below market transfer that would achieve the same transfer. |
| iii) For local authorities, if not one of the above exceptions, approval by the local government for below fair market value transactions would be  | v) Explanatory statements now required for real property disposed of by lease if the estimated rent over the term of the lease is more than \$15,000.   |

---

## Debt Reform

---

*PAAA of 2005*: No provisions.

=====

*PARA of 2009 creates stronger debt oversight measures:*

statement of intent to guide issuance and overall amount of debt issued.

- i) Authorities not subject to a statutory debt limit must submit to the ABO a

---

## Limitation on creation of Subsidiaries

---

*PAAA of 2005*: No limitations on the creation of subsidiaries by public authorities.

=====

*New provisions under PARA of 2009:*

- i. State authorities that have the ability to create subsidiaries cannot establish such subsidiaries without legislative approval, unless:
  - o The purpose of creation is for a specific project that the state authority has the power to pursue;
  - o The primary purpose is to limit the potential liability impact of the project on the authority or the creation of a subsidiary for the project is required by state or federal law;
- ii. It may not issue debt in excess of \$1 million
- iii. Subsidiaries must be reported 60 days prior to the formation and must report annually to the ABO.
- iv. Roswell Park, Erie, Westchester, Clinton-Fine, and Nassau public benefit corporation hospitals are *exempt* from limitation on debt limits and not subject to the qualifying criteria for the creation of a subsidiary without legislative approval that requires subsidiary for the purpose of limiting liability.

---

## Labor Agreement

---

*PAAA of 2005:* No provisions.

=====

*PARA of 2009 adds the following provisions:*

- State authorities are prohibited from entering into any contract for the development of a hotel or a convention center in which the authority has a substantial proprietary interest unless such contract includes a labor peace agreement with a labor organization that represents hotel employees in the state for at least five years.
- Contracts may be entered into without a labor peace agreement upon a written determination by the authority that a labor peace agreement would prevent the project from going forward, or would substantially increase the cost of the project. Basis for the determination would include prior experience, earlier RFPs for the same project, or detailed evaluation of potential bidders.
- Provisions expire June 30, 2012

---

## Whistleblower Provisions

---

*PAAA of 2005:*

Board is to establish written policies and procedures to protect employees from

retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior.

*PARA of 2009 strengthens whistleblower provisions:*

Requires the ABO to:

- i) Provide for a Whistleblower Access and Assistance Program in consultation with the Attorney General that establishes toll-free phone lines available to public authority employees and offers advice and consultation on

employee rights under applicable state and federal laws

- ii) Evaluate and comment on state and local authorities' whistleblower policies and procedures

An authority may not fire, discharge, demote, suspend, threaten, harass, or discriminate against an employee for their whistleblower actions.



---

**Lobbying Contacts**

---

*PAAA of 2005:* No provisions.

=====

*PARA of 2009 establishes additional provisions:*

- |  |   |
|--|---|
| i) Requires every member, officer, or employee to make a record of any lobbyist contract and the adoption of policies for implementing these requirements. | ii) State authorities required to maintain a record of lobbying contacts made in an attempt to influence any rule, regulation or ratemaking procedures of such authority. |
|--|---|

---

**Minority and Women Owned Business Enterprise (MWBE)**

---

*PAAA of 2005:*

- i) MWBE law applied to only 35 authorities.
- ii) MWBE law applies to state contract for "labor, service, supplies, equipment, materials..."

*PARA of 2009:*

- i) Requires all state authorities to comply with MWBE standards.
- ii) Clarifies that MWBE law applies to state contracts for service to include "legal, financial and other professional services."

\*\*\*\*\*