



**Public Authority
Accountability Act of 2005
Training Program**

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Background

- Per the NYS Comptroller's Office there are over 700 public authorities in NYS of which 474 have local jurisdiction. Public authority debt reached over \$124 billion in 2005.
- Increasing scrutiny in New York due to critical articles, audits and scandals.
- Corporate scandals sparking renewed interest in corporate governance.
- Numerous reform proposals.



Public Authority Governance Advisory Committee

- Chaired by corporate governance expert Ira Millstein.
- Focus was on Statewide Authorities.
- Developed Model Governance Principles for Public Authorities.

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Model Governance Principles

- Board Member Training
- Separating Oversight and Executive Functions
- Establishment of Audit and Governance Committees
- Transparency and Disclosure



Model Governance Principles (cont.)

- Renewed focus on Governance and Ethics
- Renewed focus on Audits and Accountability
- Strengthening Internal Controls via Internal and External Auditors



Executive Order No. 135

Executive Order No. 135 Established the New York State Commission on Public Authority Reform.

- Consists of 13 members appointed by the Governor.
- Chaired by Ira Millstein.
- Broader mission; however, focus was on Statewide Authorities.
- Issued report in May of 2005, including the Model Governance Principles adopted by the Committee. The report also included reforming practices relating to lobbying and procurement.

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Public Authority Accountability Act of 2005

- Signed into law on January 13, 2006 as Chapter 766 of the Laws of 2005.
- Initially was a Governor's Program Bill to codify the Commission's Model Governance Principles.
- Bill was expanded during legislative negotiations and applies to local authorities as well as State Authorities.

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What is a Local Authority?

"Local Authority" is defined as:

- a local IDA or authority or other local public benefit corporation.
- a not-for-profit corporation affiliated with, sponsored by, or created by a county, city, town or village government.



What is a Local Authority?

"Local Authority" is defined as:

- a public authority or public benefit corporation created by or existing under the Public Authorities Law ("PAL") or any other law of the State of New York whose members do not hold a civil office of the State, are not appointed by the governor or are appointed by the governor specifically upon the recommendation of the local government or governments

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What is a Local Authority?

"Local Authority" is defined as:

- an affiliate of such local authority. Note: "affiliate" or "affiliated with" is defined as a corporate body having substantially the same ownership or control as another body.



Overview of the Public Authorities Accountability Act

New York State Authority Budget Office ("ABO")

- Established within the Division of the Budget. Mission – to study, review and report on the operations, practices and finances of State and local public authorities, promote adoption of effective principles of model governance and provide the legislature with conclusions and opinions regarding the performance of those public authorities.





Overview of the Public Authorities Accountability Act

Annual Report

- Within 90 days after the end of its fiscal year that ends on or after December 31, 2006, the authority must submit to the CEO, CFO, chairperson of the legislative body of the local government or local governments and the Authority Budget Office, an Annual Report. For calendar year fiscal year Jan 1, 2006 to Dec. 31, 2006 – Due date is March 31, 2007.





Overview of the Public Authorities Accountability Act

Certification of Financial Reports

- Every financial report submitted within the Annual Report must be approved by the board and must be certified in writing by the CEO and the CFO of such authority.



Overview of the Public Authorities Accountability Act

Budget Report

- At least 60 days prior to the commencement of its fiscal year, the authority must submit to the CEO, CFO, chairperson of the legislative body of the local government or local governments, and the Authority Budget Office, a budget report. This requirement applies to fiscal years that end on or after December 31, 2007. For calendar year fiscal year Jan. 1, 2007 to Dec. 31, 2007 – due date is November 1, 2006.





Overview of the Public Authorities Accountability Act

Audit Report

- Within 30 days after receipt, the authority must submit a copy of the annual independent audit report (performed by a certified public accounting firm in accordance with generally-accepted government auditing standards), a management letter, and any other external examination of the books and accounts of the authority, other than examinations made by the State Comptroller, to the CEO, CFO, chairperson of the legislative body of the local government or local governments, and the Authority Budget Office starting in fiscal years ending on or after December 31, 2007. For calendar year fiscal year Jan. 1, 2007 to Dec. 31, 2007 – Due Date would be 30 days after receipt in 2008.

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Overview of the Public Authorities Accountability Act

Auditor Qualifications

- A CPA firm is prohibited from performing any non-audit function contemporaneously with the audit, unless prior approval by audit committee; CPA firm is prohibited from performing the audit if the CEO, Comptroller, CFO, Chief Accounting Officer, or any other person serving in an equivalent position for such Authority was employed by the CPA firm within one year prior to the commencement of the audit; the lead audit partner or the audit partner responsible for reviewing the audit cannot have performed audit services for the authority in each of the five previous fiscal years.

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Overview of the Public Authorities Accountability Act

Property Disposal Report

- Publish not less frequently than annually, a report listing all real property of the public authority. The report must fully describe all real and personal property disposed of during the reporting period. The report must contain the price received by the authority and the name of the purchaser for all property sold by the authority during the reporting period. The report must be delivered to the comptroller, the director of the budget, the commissioner of general services, and the legislature. The information required for the report is similar to information requested on the Annual Report. Thus, this report may be prepared along with the Annual Report for the same reporting period.

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Overview of the Public Authorities Accountability Act

Property Disposition Guidelines

- Must be approved by the Authority and submitted to the NYS Comptroller on or before March 31st of each year, including the name of the designated contracting officer. First required filing was March 31, 2006.



Overview of the Public Authorities Accountability Act

Financial Disclosure

- Board members, officers and employees must file annual financial disclosure statements with the county board of ethics for the county in which the local public authority has its primary office pursuant to Article 18 pursuant to the Act.





Overview of the Public Authorities Accountability Act

Website

- To the extent practicable, the authority must post its mission, current activities, most recent annual financial report, current year budget and its most recent independent audit report on its website unless such information is exempt from disclosure under FOIL. Property disposition guidelines must be posted on the authority's internet website at the time of filing with the NYS Comptroller. Such guidelines must be maintained on the website until the following year's are posted.





Overview of the Public Authorities Accountability Act

Property Disposition

- Must appoint a contracting officer; dispose of property for at least FMV after publicly advertising with exceptions; must provide 90 days' prior notice to the comptroller, the director of the budget, the commissioner of general services and the legislature for negotiated disposals.





Overview of the Public Authorities Accountability Act

Separating Oversight and Executive Functions

- No Board member, including the Chairperson, can serve as the Agency's Chief Executive Officer, Executive Director, Chief Financial Officer, Comptroller, or hold any other equivalent position while also serving as a member of the Board.



Overview of the Public Authorities Accountability Act

Board Member Independence

- The majority of the members appointed on or after January 13, 2006, excluding ex-officio members, must be independent.



Overview of the Public Authorities Accountability Act

Board Committees

- Must establish an audit and governance committee comprised of independent members.



Overview of the Public Authorities Accountability Act

Board Member Training

- All new board Member's must participate in State approved training within 1 year of the appointment to the board. In addition, all board members must participate in continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of management and financial activities of authorities.





Overview of the Public Authorities Accountability Act

Codes, Policies and Guidelines

The board must:

Adopt a Compensation, Reimbursement and Attendance Policy

- Establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for, the time and attendance of the CEO and senior management.

Adopt a Code of Ethics

- Adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in § 74 of the Public Officers Law.





Overview of the Public Authorities Accountability Act

Codes, Policies and Guidelines (cont.)

The board must:

Adopt a Whistleblower Policy

- Establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance or other inappropriate behavior by an employee or board member of the authority.





Overview of the Public Authorities Accountability Act

Codes, Policies and Guidelines (cont.)

The board must:

Adopt a defense and Indemnification Policy

- Adopt a defense and indemnification policy and disclose such plan to any and all prospective board members.

Adopt Property Disposal Guidelines

- Adopt by resolution, guidelines which must (a) detail the authority's policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property and (b) designate a contracting officer who shall be responsible for the authority's compliance with, and enforcement of, such guidelines.





Overview of the Public Authorities Accountability Act

Codes, Policies and Guidelines (cont.)

The board must:

Investment Guidelines

- Annually adopt and review comprehensive investment guidelines which detail the authority's operative policy and instructions to officers and staff regarding the investing, monitoring and reporting of funds of the authority.
- Adopt a Travel Policy
- Adopt a Procurement Policy





NYS Authorities

- Public authorities vary in their mission, functions and size.
- Boards vary in the number of members.
- Members may be appointed by an officer or numerous officers.
- Members may serve ex-officio.
- IDA's created pursuant to GML Article 18-A – set forth purpose, organization and powers. 3 to 7 members appointed by the governing body of each municipality.

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Responsibilities of Board Members

- Responsibility to fulfill the statutory mission to provide a public service/benefit.
- Fiduciary duty of loyalty and care to the authority.
- Duty of care – Directors should exercise reasonable care in the discharge of their responsibilities.
- Duty of loyalty – Directors should always act in good faith in the best interest of the public authority.

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Responsibilities of Board Members cont'd

The Exercise of Care and Loyalty:

- Directors should have a basic understanding of the primary business function and mission of the authority.
- Directors should make the necessary time commitment to prepare for and attend board meetings.
- Directors should inform themselves prior to making business decisions utilizing material information reasonably available to them.
- Directors should be disinterested so they do not appear on both sides of a transaction, nor expect to personally benefit from it.





Responsibilities of Board Members cont'd

The Exercise of Care and Loyalty:

- Directors should make decisions based upon what will be best in the interests of the public and the authority's mission.
- Additional Responsibilities as set forth in the Act:
- Directors must participate in training.
- Certain directors must be independent.
- Directors must not serve in certain officer positions.



Role of the Board

- Provide policy direction in light of mission and legislative directive.
- Guide, support and oversee management.
- Approve and keep current by-laws and policies.
- Allocate Resources.
- Ensure appropriate disclosure and transparency.

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Role of the Board cont'd

Role of board members are defined by the Act to include:

- Executing direct oversight of the authority's chief executive and other senior management in the effective and ethical management of the authority;
- Understanding, reviewing and monitoring the implementation of fundamental financial and management controls and operational decisions of the authority;



Role of the Board cont'd

Role of board members are defined by the Act to include:

- Establishing policies regarding the payment of salary, compensation and reimbursements to, and establishing rules for the time and attendance of, the chief executive and senior management;
- Adopting a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in Section 74 of the Public Officers Law;



Role of the Board cont'd

Role of board members are defined by the Act to include:

- Establishing written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and



Role of the Board cont'd

Role of board members are defined by the Act to include:

- Adopting a defense and indemnification policy and disclosing such plan to any and all prospective board members.



Role of the Board cont'd

Much of the work of the board is to make decisions:

- Set a tone from the top.
- Keep the authority focused on its mission.
- Set goals and prioritize.
- Be clear.
- Be decisive.
- Follow-up to know whether results are achieved



Role of the Board cont'd

Board versus Management:

- Executive management should carry out policies. Make day to day operating decisions and keep the board informed with sufficient information of its actions, issues of concern, potential risks, and liabilities, so the board can make intelligent decisions.



Procurement Lobbying Law

- Chapter 1 of the Laws of 2005 as amended by Chapter 596 of the Laws 596
- The PLL affects (i) activities by the lobbying community seeking procurement contracts by amending the Legislative Law and (ii) the activities of governmental entities seeking to enter into procurement contracts by amending the State Finance Law (“SFL”)

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Procurement Lobbying Law cont'd

Procurement Lobbying Law

- The PLL restricts contacts by an offerer, which are intended to influence the governmental procurement, at the point in time when the governmental entity issues its first written document soliciting a response from offerers that is intended to result in a procurement contract. Such contacts must only be made to specifically designated persons at the governmental entity.





Procurement Lobbying Law cont'd

What is a Governmental Entity?

Procurement Lobbying Law

- The Following “governmental entities” are required to comply with the new State Finance Law provisions when conducting procurements:
 - State Agencies (includes boards, commissions, divisions, offices, councils, and committees)
 - NYS Legislature
 - Unified Court System
 - **IDA’s in jurisdictions with a population of 50,000 or more**
 - **Local public benefit corporations**
 - Public authorities and public benefit corporations and any subsidiary or affiliate thereof.





Procurement Lobbying Law cont'd

Procurement Lobbying Law

- **Restriction:** An Offerer must only Contact the person or persons designated as the contact person(s) by the Governmental Entity during the Restrictive Period of a Governmental Procurement.



Procurement Lobbying Law cont'd

Procurement Lobbying Law Definitions

- Offerer – the individual or entity, or any employee, agent or consultant or person acting on the behalf of such individual or entity, that contracts a governmental entity about a governmental procurement during the restricted period of such governmental procurement.
- Contacts – any oral, written, or electronic communication with a governmental entity under circumstances where a reasonable person would infer that communication was intended to influence a governmental procurement.

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Procurement Lobbying Law cont'd

Procurement Lobbying Law Definitions

- Restricted Period – the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a governmental entity with the final contract award and approval by the governmental entity and, where applicable, the state comptroller.





Procurement Lobbying Law cont'd

Procurement Lobbying Law Definitions

- Governmental procurement – (i) the preparation or terms of the specifications, bids, rfp's, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of the procurement contract, (iv) award or denial of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that were authorized under the terms of the procurement contract approved by the comptroller), renewal or extension of a procurement contract or any other material change that results in a financial benefit to the offerer.





Procurement Lobbying Law Overview

Governmental Entity Requirements

- Designate, with regard to each governmental procurement, a person or persons who may be contacted by offerers. *State Finance Law (“SFL”) § 139-j(2)(a)*



Procurement Lobbying Law Overview

Governmental Entity Requirements

- Upon any contact in the restricted period, the governmental entity must obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and inquire and record whether the person or organization making such contact was the offerer or was retained, employed or designated by or on behalf of the offerer to appear before or contact the governmental entity about the governmental procurement. All recorded contacts shall be included in the procurement record for the procurement contract. SFL§ 139-k(4).

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Procurement Lobbying Law Overview

Governmental Entity Requirements

- Incorporate a summary of the Governmental Entity's policy and prohibitions regarding permissible contacts during a governmental procurement in its solicitation materials. *SFL §139-j(6)*.
- Must seek written affirmation from all offerers as to the offerer's understanding of and agreement to comply with the authority's procedures relating to permissible contacts. *SFL § 139-j(6)(b)*.





Procurement Lobbying Law Overview

Governmental Entity Requirements

- Must require offerers to disclose findings of non-responsibility due to violations of the permissible contacts provisions or the intentional provision of false or inaccurate information to a governmental entity within the previous 4 years in the entity's solicitations for proposals. *SFL§139-k(2)*.

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Procurement Lobbying Law Overview

Governmental Entity Requirements

- A procurement contract award must contain a certification by the offerer that all information provided to the governmental entity is complete, true and accurate and such procurement contract must contain a provision authorizing the governmental entity to terminate the contract in the event such certification is found to be intentionally false or intentionally incomplete. The governmental entity shall include in the procurement record a statement describing the basis for any action taken pursuant to such termination provision. SFL§139-k(5).

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Procurement Lobbying Law Overview

Governmental Entity Requirements

- Any member of the procuring governmental entity that becomes aware that an offerer violated the permissible contacts provision must immediately notify the ethics officer, the IG, if any, or other official of the governmental entity responsible for reviewing and investigating such matters. *SFL§ 139-j(8)*.
- Must establish a process for review by ethics officer, the IG, if any, or other official of the governmental entity responsible for reviewing and investigating any allegations of violations of the permissible contacts provisions. *SFL§ 139-j(9)*.





Procurement Lobbying Law Overview

Governmental Entity Requirements

- Upon notification of an alleged violation, the governmental entity's ethics officer, the IG, if any, or other official of the governmental entity responsible for reviewing and investigating such matters must immediately investigate such allegation and if sufficient cause exists to believe that the allegation is true, must give the offerer reasonable notice that an investigation is ongoing and an opportunity to be heard in response to the allegation. SFL§ 139-j(10)(a).





Procurement Lobbying Law Overview

Governmental Entity Requirements

- A finding that an offerer has knowingly and willfully violated the permissible contact provisions or the disclosure provisions must result in a determination of non-responsibility for such offerer and such offerer must not be awarded the procurement contract unless the governmental entity finds that the award is necessary to protect public property or public health or safety, and that the offerer is the only source capable of supplying the required article of procurement within the necessary timeframe. The governmental entity must include in the procurement record a statement describing the basis of the finding. Any subsequent finding of non-responsibility due to a violation of the permissible contacts or disclosure provisions within 4 years of a determination must result in the offerer being rendered ineligible to submit a proposal on or be awarded any procurement contract for a period of 4 years from the date of the second final determination for any procurement contract (debarment). *SFL 139-j (10)(b) & 139-k(3)*.





Procurement Lobbying Law Overview

Governmental Entity Requirements

- Upon a finding of non-responsibility or debarment, the governmental entity must notify OGS, which shall keep a list and make it publicly available. *SFL 139-j (10)(b)*.
- If an employee of the governmental entity is found to have knowingly and willfully violated the governmental entity's requirements in relation to the permissible contacts provisions, then the ethics officer, the IG, if any, or other official of the governmental entity responsible for reviewing and investigating such matters must report such instances to the governmental entity's head. *SFL§ 139-j(10)(c)*.

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Procurement Lobbying Law Overview

The PLL established an Advisory Council on Procurement Lobbying (“Advisory Council”). Among other things, the Advisory Council is charged with developing model guidelines and forms for use by governmental entities regarding the restrictions on contacts during the procurement process. A web site link to the Advisory Council information can be found on the NYS Office of General Services web site at www.OGS.state.ny.us.

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