

How Public Authorities Have Complied With the Public Authorities Accountability Act of 2005 (PAAA)

By Janis Fallon

Introduction

Under the Public Authorities Accountability Act of 2005 (“the PAAA”) board members have the ultimate duty to oversee the authority’s management and to review “financial and management controls and operational decisions of the authority.”¹ This paper looks at the various compliance mechanisms required by the PAAA and how authorities are complying.



public accounting firm. The audit must assess the state and local authority’s books and accounts in accordance with generally accepted government auditing standards and prepare a report. The report and management letter and any other external examination of books and accounts must be submitted to the entities listed above that receive the annual reports. Authorities must submit this information within thirty days after receipt by the authority of the report.⁶ To the extent practicable, the annual independent audit must be posted on the authority’s Web site along with other operational and financial information.⁷

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Internal Compliance Review Mechanisms Required by the Act

The PAAA requires local and state authorities to have various internal mechanisms in place to determine how an authority is complying with the PAAA. These mechanisms include (i) required reports, (ii) committees, and (iii) audits.

Required Reports of Internal Reviews

Section 2800 of the PAAA requires submission of annual reports describing the status and the activities of the authority. For state authorities, these reports are submitted “to the governor, the chairman and ranking minority member of the senate finance committee, the chairman and ranking minority member of the assembly ways and means committee and the state comptroller, within ninety days after the end of [the authority’s] fiscal year.”² Reports must include fiscal and operational information and also an assessment by the authority of the effectiveness of its internal control structures and procedures.³ Local authorities reports must include similar information and these reports must be submitted “to the chief executive officer, the chief fiscal officer, the chairperson of the legislative body of the local government or local governments and the entity established pursuant to § 27 of the chapter of the laws of [2005]...within ninety days after the end of [the authority’s] fiscal year.”⁴

The Audit Committee and the Annual Independent Audit

Authorities must establish an “audit committee to be comprised of independent members.”⁵ The committee recommends the board hire an independent accounting firm that will conduct an annual audit and provide direct oversight of the performance of the audit by a certified

The public accounting firm performing this audit must also report to the authority’s audit committee information relating to the policies and practices to be used, alternative treatment of financial information that has been discussed with management officials and the ramifications and the auditing firm’s preferred treatment, and other material written communications between the auditing firm and authority management including the management letter with management’s response or plan of corrective action, material corrections identified or schedule of unadjusted differences.

Many authorities, especially larger state authorities, also have internal auditing functions and/or departments that conduct reviews, including compliance with the PAAA.

The Governance Committee

The board must also establish a governance committee comprised of independent members whose responsibility is “to keep the board informed of current best governance practices; to review corporate governance trends; to update the authority’s corporate governance principles; and advise...on the skills and experiences required of potential board members.”⁸

Procedures

The PAAA has various required policies and procedures that the board must establish including (i) a code

of ethics, (ii) whistleblowing to protect employees from retaliation for disclosing information, (iii) investments, (iv) travel, (v) the acquisition of real property, (vi) the disposition of real and personal property, (vii) the procurement of goods and services and (viii) an indemnification policy.⁹ Some policies such as the real property disposal policy must be reviewed by the board at least annually.¹⁰

Procedures, both required by the PAAA and others developed by an authority, provide an invaluable method to assist in clearly laying out the legal and other requirements, as well as providing a means by which an authority can easily assess its compliance against the procedures with simple checklists, self audits, and reviews.

“The Authority Budget Office (ABO) was established under the PAAA to provide the Governor, Legislature, and public with information, analysis, and opinions on the financial practices and operations of public authorities.”

In developing procedures, many agencies follow standards used in environmental and other management systems. A cross-functional team is beneficial to prepare procedures initially to ensure that the various affected sections and processes of the authority are included in the procedures. Procedures should be short and to the point and clearly lay out the steps in the process, who is responsible for each step, and the time frame. A short, clear procedure is easier to read and more likely to be understood and followed by staff than a long one.

Following is an example of useful sections to include in a procedure:

1. **Headings:** The heading should include the title, an approval by upper management, and the date and revision number for the procedure. Every time a procedure is updated a new index with a list of procedures and the issue date and revision number and date should be sent out to affected personnel to make it easy to keep track of the latest version of procedures.
2. **Authority:** This section would list the laws, regulations or applicable authority guidance or policy that requires this procedure or sets requirements that are contained in the procedure.
3. **Procedure:** The procedure body should lay out each step in the process—what happens, when it happens and who does that step.
4. **Responsible Person(s):** A summary section by title and their responsibilities in the procedure provides

an easy reference point for affected personnel to see their duties.

5. **Training:** All affected personnel should be trained initially and periodically on the procedure. This section would note who needs training and the frequency of training. Training should be documented.
6. **Review Period:** Procedures should note when they will be reviewed and updated if needed and who will conduct the review. As noted above, the PAAA requires that the board review and approve many of the required procedures annually.
7. **Glossary:** Technical or complex terms should be defined in a glossary.
8. **Forms/Attachments:** If there are required forms related to the procedure, these should be included in the procedure with instructions. Other attachments may include flow diagrams or other useful information.

Outside Agency Reviews

Authority Budget Office (ABO)

The Authority Budget Office (ABO) was established under the PAAA to provide the Governor, Legislature, and public with information, analysis, and opinions on the financial practices and operations of public authorities. The ABO may conduct reviews and analysis of authorities to assess compliance as well as identify who is covered under the act, receive reports, provide guidance to authorities and the Governor, Legislature, and/or State Comptroller and issue annual reports.¹¹

Inspector General

The PAAA establishes an office of the state inspector general in the executive department with an inspector general appointed by the governor.¹² The state inspector general “will review and examine periodically the policies and procedures of covered agencies with regard to the prevention and detection of corruption, fraud, criminal activity, conflicts of interest or abuse” and investigate complaints in these areas.¹³ The inspector general will determine whether disciplinary action, civil or criminal prosecution, or further investigation is warranted. The inspector general also may recommend remedial actions and monitor implementation of any recommendations made.¹⁴

Authorities must also report to the “inspector general any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to these dealings” or face “removal from office or employment or other...penalty.”¹⁵

How Public Authorities Are Complying

ABO Report Submittal

One indication of how public authorities are complying with the PAAA is in the annual reports prepared by July 1 by the ABO.¹⁶ The last report available at the time this section was written was July 1, 2009. In these reports, the ABO discusses compliance by authorities with the PAAA. A summary of compliance findings follows for those authorities determined to date by the ABO to be subject to the PAAA:¹⁷

1. 70% of the public authorities submitted the required annual budget report (91% of State authorities, 43% of local authorities, and 90% of industrial development agencies (“IDA”). Of the 68 outstanding local budget reports, 70% are due from urban renewal agencies and parking authorities;¹⁸
2. 63% filed required annual reports (88% of State authorities, 40% of local authorities—down from 2008, and 77% of IDA). Of the 72 outstanding local budget reports, 68% are due from urban renewal agencies and parking authorities.¹⁹

While compliance is improving from the initial 2007 report, the data indicates that local authorities are having the greatest issues in complying with the PAAA. Implementation of electronic reporting system, called The Public Authorities Reporting Information System (“PARIS”), begun in late 2007, provided for consistent reporting formats and is also intended to increase reporting compliance.²⁰ In the February 11, 2009 ABO report of those filing through PARIS for fiscal year 2009, almost 65% of the public authorities (84% of the state authorities, 38% of the local authorities, and 85% of the IDA) filed the required budget report. Of the 98 authorities that failed to submit a report, the highest rate of non-compliance was with urban renewal/community development agencies.²¹

The ABO required resubmission of 114 reports in 2009 due to lack of compliance with reporting requirements or data errors. These included: (i) the failure to report all contracts including those for professional services, (ii) incomplete reporting of outstanding debt, (iii) inaccurate personal services schedules that do not properly account for all staff working at the authority, (iv) underreporting of bonuses, compensation, or other benefits, and (v) missing industrial development agency projects. The ABO noted that these errors raised concerns about how those in positions of responsibility and the board are reviewing and approving these reports as required by the PAAA and the reports are certified by executive management prior to submissions.²²

To encourage compliance, the ABO lists in its annual report and also on its Web site (www.abo.state.ny.us) those public authorities that have failed to comply with the law within the statutory time frames.²³

Board Member Training

The ABO also tracks required training for all public authority board members. Of the 301 authorities that the ABO has identified as covered by the PAAA to date, over 2,200 board members and staff have been trained.²⁴ In the ABO’s 2009 annual report, it identifies that no board members attended training from two state Authorities (the Empire State Performing Arts Center Corporation and the Westchester Health Care Corporation), as well as 52 local authorities (9 IDAs, 29 urban renewal/community development agencies, and 10 parking authorities).

ABO Compliance Reviews

The ABO, in 2008, began governance and operational reviews of public authorities. Reviews analyze the operations, practices, and reports of public authorities to assess compliance with provisions of the PAAA and other applicable state laws. In its reports, the ABO identified both compliance issues and provided recommendations for good governance practices. Reviews focus on compliance with the PAAA as well as the authority’s operating practices and adherence to its mission.²⁵

Full reports are available at the ABO’s Web site and a summary follows for the facilities completed to date²⁶:

1. The Environmental Facilities Corporation was found to have overall done an effective job of complying, was making progress with revising and adopting additional policies, and had a model-type process for assessing its internal controls. Areas that needed improvement included accountability and transparency of operations by refining bylaws and the board committee charters, formalizing additional practices in policies, and disclosing more information on its Web site.²⁷
2. The Albany County Airport Authority also had done an effective job and was making progress on revising and adopting policies. Improvements related to annually reviewing and making necessary revisions to its policies and procedures.²⁸
3. The Seneca County Industrial Development Agency review identified other areas needing improvements including the need to adopt and revise additional policies, compliance with the Open Meetings Law, adherence to its bylaws and resolutions, reliance on incomplete or inaccurate documents, not making all relevant materials available to the public, and not documenting the basis for actions.²⁹
4. The Colonie Industrial Development Agency review noted the following areas for improvement: more board involvement in the operational and fiscal oversight of the authority, limited compliance with the PAAA especially reporting requirements,

development of policies and guidelines, records management, and retention practices.³⁰

5. The Olympic Regional Development Authority's review indicated the need for greater board oversight and review of supporting financial operations including additional long-term capital and financial planning; transparency of the audit and governance committees, including better oversight of the independent auditor; improvements in financial management reporting, especially in inventory controls for personal property and in-kind contributions, and improved reporting of contracts and control processes.³¹

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6. The Westchester County Industrial Development Agency overall had complied with the PAAA. Suggested improvements were to improve accountability and transparency by formally recording committee meetings; obtaining required training for board members, conducting an internal control assessment; documentation of procurement quotes, qualifications and requests for proposals were needed for several professional services contracts as required by the authority's policy; revision of the investment guideline, and annually reviewing policies and procedures.³² Other recommendations included adopting objective criteria to evaluate requests for financial assistance, developing procedures to monitor projects and recapture benefits, providing better documentation for executive sessions under the Open Meetings Law, and revising specific policies and documentation.
7. The Nassau County Bridge Authority's compliance review identified issues with inconsistent contractual agreements that do not assure that competitive prices and best value for professional services are being obtained.³³ Policies and procedures were needed. Weaknesses with the internal control structure were addressed, including the need to use automated systems to monitor toll collections, inadequate separation of the board and management and lack of a formal staff training program, and lack of internal assessments.

Conclusion

Based on ABO annual reports and audits, compliance is improving by public authorities. The smaller urban development and parking authorities appear to be having the most difficult time in complying with the PAAA. Common areas of non-compliance include lack of procedures, training, and oversight by the board. As local development corporations are identified, it is likely that non-compliance will remain high in the smaller authorities until board members are trained, required reports begin to be submitted, and further ABO audits are completed which identify gaps in compliance.

Endnotes

1. N.Y. PUB. AUTH LAW § 2824 (2009).
2. *Id.* § 2800(1)(a).
3. *Id.* (establishing that reports must contain a detailed report on the authority's "(1) operations and accomplishments; (2) its receipts and disbursements, or revenues and expenses...; (3) its assets and liabilities...; (4) a schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year as part of a schedule of debt issuance" and debt incurred; (5) compensation schedule for officers, directors, and decision-making or managerial employees with a "salary in excess of one hundred thousand dollars"; "(6) projects undertaken..."; (7) real property information including property held and disposed of; "(8) such authority's code of ethics"; and (9) an assessment of its effectiveness of its internal control structure and procedures. Annual budget reports must also be submitted to the same entities under § 2801. State authorities must submit the information not less than ninety days before commencement of its fiscal year and local authorities not less than sixty days before the commencement of its fiscal year.).
4. *Id.* § 2800(2)(a) (Reports must include "(1) operations and accomplishments; (2) its receipts and disbursements or revenues and expenses...; (3) assets and liabilities...; (4) a schedule of bonds and notes outstanding..." and debt information; (5) a compensation schedule for officers, directors, and decision-making or managerial employees with a "salary in excess of one hundred thousand dollars"; (6) "the projects undertaken..."; (7) real property information including property held and disposed of, "(8) such authority's code of ethics; and (9) an assessment of its effectiveness of its internal control structure and procedures.").
5. *Id.* § 2824(4); *see generally id.* § 2825(2) ("[A]n independent member is one who (a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity; (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than [\$15,000] for goods and services provided to the public authority or received any other form of financial assistance valued at more than [\$15,000] from the public authority; (c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.").
6. *Id.* § 2802.
7. *Id.* § 2800(1)(b) & § 2800(2)(b) (Other information that must be posted includes information "pertaining to [the authority's] mission, current activities, the most recent annual financial reports, current year budget and the most recent independent audit report.").

8. *Id.* § 2824(7).
9. *Id.* § 2824(1).
10. *Id.* § 2896(1).
11. AUTH. BUDGET OFFICE, ANNUAL REPORT ON PUBLIC AUTHORITIES IN NEW YORK STATE 1 (2008), available at <http://www.abo.state.ny.us/reports/annualreports/ABO2008AnnualReport.pdf>.
12. N.Y. EXEC. LAW § 52 (2009) (Covered agencies include all executive branch agencies, departments, divisions, officers, boards and commissions, public authorities [other than multi-state or multi-national authorities], and public benefit corporations, the heads of which are appointed by the governor and which do not have their own inspector general by statute.).
13. *Id.* § 53(5); *id.* § 53(1).
14. *Id.* § 53.
15. *Id.* § 55(1).
16. See, e.g., ABO ANNUAL REPORT 2008, *supra* note 11.
17. The ABO is in the process of identifying local development corporations which fall under the PAAA.
18. AUTH. BUDGET OFFICE, ANNUAL REPORT ON PUBLIC AUTHORITIES IN NEW YORK STATE 6 (2009), available at <http://www.abo.state.ny.us/reports/annualreports/ABO2009AnnualReport.pdf>.
19. *Id.* at 7.
20. *Id.* at 4–5.
21. AUTH. BUDGET OFFICE, BUDGET REPORT SUBMISSION IN THE PUBLIC AUTHORITIES REPORTING INFORMATION SYSTEM (PARIS) 2 (2009), available at http://www.abo.state.ny.us/reports/BudgetComplianceReportFYE_2009.pdf.
22. ABO ANNUAL REPORT 2009, *supra* note 18, at 8.
23. *Id.* at 6.
24. *Id.* at 5.
25. *Id.* at 3.
26. The Dormitory Authority was also reviewed; however, a report was not yet issued at the time this section was written.
27. ABO ANNUAL REPORT 2008, *supra* note 11, at 7.
28. *Id.*
29. *Id.* In its annual report, the ABO notes that the IDA does not believe the PAAA applies to them, though the ABO disagrees.
30. *Id.* at 8.
31. *Id.*
32. AUTH. BUDGET OFFICE, GOVERNANCE REVIEW; WESTCHESTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY 17 (2008), available at <http://www.abo.state.ny.us/reports/compliancereviews/WCIDAGovernanceReviewReport.pdf>.
33. AUTH. BUDGET OFFICE, OPERATIONAL REVIEW; NASSAU COUNTY BRIDGE AUTHORITY at *3 (2008), available at <http://www.abo.state.ny.us/reports/compliancereviews/NCBAOperationalReviewReport.pdf>.

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