



**NEW YORK STATE THRUWAY AUTHORITY
NEW YORK STATE CANAL CORPORATION**



MINUTES

GOVERNANCE COMMITTEE MEETING NO. 10

April 1, 2010

Minutes of a meeting of the New York State Thruway Authority/Canal Corporation Governance Committee, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meeting began at 9:30 a.m.

The following Members of the Governance Committee were present, constituting a quorum:

Present:

Chairman John L. Buono, Governance Committee Member (ex officio)
Erin Crotty, Governance Committee Member
Brandon R. Sall, Chair, Governance Committee

In addition, the following staff were present:

Michael R. Fleischer, Executive Director
Daniel Gilbert, Chief of Staff
Wendy Allen, Deputy Chief of Staff
William Estes, General Counsel
Katherine McCartney, Deputy Counsel
Diane Galuski, Director, Bureau of Management Analysis and Projects
Elizabeth Yanus, Special Assistant
John Bryan, Chief Financial Officer
Jill Warner, Board Administrator
Betsy Graham, Acting Director, Office of Public Affairs
J. Marc Hannibal, Acting Director, Audit and Management Services
Kevin Allen, Assistant Director, Audit and Management Services
Fred Rudin, Director, Bureau of Purchasing

Also in Attendance:

Steve VanWagenen, Television Technician, NYN

PUBLIC SESSION

Mr. Sall, Committee Chair, called the meeting of the Governance Committee to order.

Ms. Warner recorded the minutes as contained herein.

Item 1

Approval of Minutes of Governance Committee Meeting No. 9

After full discussion, on the motion of Ms. Crotty, seconded by Chairman Buono, without any objections, the Governance Committee approved the minutes of Governance Committee Meeting No. 9, held November 18, 2009.

Item 2

Review and Approve for Board Action a Revised Governance Committee Charter

Mr. Estes advised the Committee that in December of 2009 the Governor signed the Public Authorities Reform Act which codified recommendations made by the New York State Commission on Public Authority Reform. The Authority is undertaking a number of steps to comply with the new law.

Public Authorities Law Section 2824 now requires the Governance Committee to undertake additional responsibilities, some of which include examining ethical and conflicts of interests, performing Board self-evaluations, and recommending ByLaws to the Authority Board. In addition, Public Authorities Law Section 2824 also addresses membership of the Governance Committee. It permits the Authority to appoint non-independent members to the Committee as long as independent members are in the majority.

Independence is defined as not having been employed within the past 2 years by the Authority in an executive capacity, not having received remuneration valued at more than \$15,000 for goods or services provided to the Authority, not having a relative in an executive position and not having acted as a registered lobbyist.

Ms. Crotty requested clarification with regard to the lobbyist carve out; asking if it is referring to actual lobbyists who come before the Authority Board or any of its affiliates. Mr. Estes responded affirmatively, adding that the issue regarding the making of a record when a Board member is approached by an outside lobbyist will be addressed in an Item further down on the Committee's Agenda.

After full discussion, on the motion of Chairman Buono, seconded by Ms. Crotty, without any objections, the Governance Committee approved the Charter with revisions as recommended by staff at this time and authorized submission of the revised Charter to the Authority/Corporation Board for consideration.

Item 3

Review and Approve for Board Action Amendments to the Thruway Authority and Canal Corporation ByLaws

Mr. Fleischer reported to the Committee that this Item also derives from the recently signed Public Authorities Reform Act (the "Act") which require that the appointment of a future Executive Director be subject to New York State Senate confirmation. In addition, the Act requires separate Audit and Finance Committees. The proposed amendments to the ByLaws of the Thruway Authority and Canal Corporation would implement the above described requirements of the Act.

After full discussion, on the motion of Ms. Crotty, seconded by Chairman Buono, without any objections, the Governance Committee approved and authorized submission of the

Amendments to the Thruway Authority and Canal Corporation ByLaws to the Authority/Corporation Board for consideration.

Ms. Crotty thanked staff for making her earlier suggested changes and stated that she had one additional concern with regard to the Chairman having the power to remove the Executive Director with the consent of at least three other members of the Board. She suggested that language be added to require that the removal of the Executive Director go through the Governance Committee first as a check and balance. Mr. Bryan responded that this is typically how it works on the corporate level. Chairman Buono and Mr. Sall concurred. Mr. Sall clarified that if the Governance Committee's vote was unanimous for removal of an Executive Director then only one additional vote would be needed from the Board. Mr. Estes suggested that the change be made immediately and the ByLaws be presented, as revised, to the full Board for their approval later that day.

At the request of Mr. Estes, Ms. Crotty read the revised language into the official record. She stated that the ByLaws would now read: the Chair shall have the power to remove the Executive Director after the approval of the Governance Committee and after the approval of the majority of the members of the Board at a duly called meeting of the Board.

After full discussion, on the motion of Chairman Buono, seconded by Mr. Sall, without any objections, the Governance Committee approved the Revised Amendments to the Thruway Authority and Canal Corporation ByLaws as recommended by Ms. Crotty at this time and authorized submission of the Revised Amendments to the Thruway Authority and Canal Corporation ByLaws to the Authority/Corporation Board for consideration.

Item 4

Review and Approve for Board Action the Thruway Authority and Canal Corporation Lobbying Contacts Policies

Mr. Estes stated that the Authority has undertaken a number of steps to comply with the new Public Authorities Reform Act. Public Authorities Law Section 2987 now requires that

every member, officer, or employee of the Authority who is contacted by a lobbyist make a contemporaneous record of the contact.

The record would state the day and time of the contact, identify the lobbyist, as well as the substance of the contact. A lobbyist, according to the Legislative Law, is defined as a person who is retained, employed or designated by any client to engage in lobbying. Under the new section of the Public Authorities Law, lobbying applies to a very limited situation and that is if the lobbyist is attempting to try to influence a rate making or a rule making. For the purposes of the Authority, that would be a toll adjustment or the adoption of a rule or regulation. The following are the only modifications to the rules and regulations currently in process:

1. Modifying regulations as they relate to advertising permit fees so they are consistent with the Department of Transportation's advertising permit fees.
2. Creating permits for snowmobile clubs so that they can use canal lands.
3. Removing references in the regulations pertaining to I-84. The Authority no longer owns I-84, therefore those references are obsolete.
4. Updating the Authority's Freedom of Information Law ("FOIL") regulations.
5. Allowing triple saddle mount vehicles to travel on the Thruway.

Those are currently the only topics that would require Board Members to make a record if contacted by a lobbyist.

Staff also recommends that the Director of Audit and Management Services be the designated officer required under this statute to retain all the records of contacts.

Ms. Crotty recommended that staff create a standard form for Board Members to use when making a record of contact. She also stated that it is hard for a Board Member to know what regulatory changes are being proposed and asked that staff update the Board with regard to any regulations being proposed prior to each Board Meeting.

Mr. Estes responded that he would wanted to give this more thought as to the best means of keeping the Board apprised of proposed Resolutions because regulations can take a long time to promulgate. They go through the Governor's Office of Regulatory Reform ("GORR"); there is a public notice and comment period; and a regulation can actually take up to a year to complete and occasionally may take longer. He agreed that it would be a good idea to remind the Board about regulatory activity, whether in writing or other means, before the Board Meetings.

Mr. Sall inquired as to how a Board Member would know they are being spoken to by a lobbyist. Mr. Estes responded that if a Board Member is approached by an individual on any of the rate making topics, or rules or regulations, the Member may want to ask if they are registered as a lobbyist or if they have been retained by someone to lobby on their behalf.

After full discussion, on the motion of Chairman Buono, seconded by Ms. Crotty, without any objections, the Governance Committee approved and authorized submission of the Thruway Authority and Canal Corporation Lobbying Contacts Policies to the Authority/Corporation Board for consideration.

Item 5

Review and Approve the Following for Board Action

- a.) Thruway Real Property Management Policy (25-6-02)**
- b.) Thruway Real Property Management Standard Operating Procedures**
- c.) Thruway Personal Property Disposal Policy (25-6-01)**
- d.) Canal Real Property Management Policy (25-6-01C)**
- e.) Canal Real Property Management Standard Operating Procedures**
- f.) Canal Personal Property Disposal Policy (25-6-02C)**

Mr. Bryan reported that the 2005 Public Authority Accountability Act ("PAAA") requires that the comprehensive guidelines that detail operative policy and instructions regarding the use, awarding, monitoring, and reporting of contracts for the disposal of real and personal property be reviewed annually and approved by the Board.

The Real Property Policy ("Policy") and Standard Operating Procedures (SOPs) contain changes that were drafted by staff, most of which are intended to clarify current practices, enhance the transparency and efficiency of the Authority's disposal process and ensure that these

documents conform with new standards that were established in the 2009 Public Authorities Reform Act (“PARA”). Examples are listed below:

- With regard to the Policy and SOPs, there is some re-wording of language regarding the less-than-fair-market-value disposals to conform with PARA, which essentially says that no asset can be disposed of below its fair-market-value unless certain circumstances arise:
 - a) if the disposal is to a government agency and the asset stays with that agency;
 - b) if the disposal is within the purpose or mission of the Authority;
 - c) if the disposal is to a private entity or person and the disposal has been approved by the Governor and Legislature within a specified time period;
 - d) or if the disposal is accompanied by a document, signed by the Board, where the Board Members agree that no reasonable alternative exists that would accomplish the same purpose.

- Requires that an independent appraisal be conducted for all real property disposals regardless of value. The prior law allowed public authorities to conduct internal appraisals for real property disposals valued less than \$15,000.

- Requires any lease valued over \$15,000 to have an explanatory statement. The prior law required such statements be sent if the lease was valued over \$100,000. The explanatory statements go to a variety of public officials.

- Enhances the amount of information made available to the Authority Board for all disposals including an economic impact study and the names of those parties that not only received or were awarded the disposal but those that bid on it.

- Allows applicants, at their own expense, to have a field survey and/or an appraisal prepared to Authority specifications, for any land they are interested in purchasing. This is modeled after an Office of General Services (“OGS”)

approach and will allow our process to be more efficient and will result in reduced overall transaction costs for applicants, especially those that desire to purchase small portions of land. Authority staff will still retain the authority to order and perform surveys and appraisals where appropriate and will review any outside surveys or appraisals that are done.

- Requires the Executive Director to provide periodic updates on expiration dates of transactions that the Board has authorized and clarifies that Board authorizations for Real Property disposals will expire after one year if the disposal has not been finalized. It also allows the Executive Director to stop the progression of a transaction within that one-year period if it is determined to be in the best interest of the Authority to do so.

Changes related to the Personal Property Policy under PARA require that less-than-fair-market-value personal property disposals be governed by the same rules listed above for real property. This is a significant change.

Staff added a new requirement that no employee, employee's spouse or unemancipated child be allowed to participate in a surplus auction at the Authority or Corporation, which directly references existing Public Officer's Law standards. The existing policy allows the Executive Director to determine who can and cannot participate in a surplus auction based on specific employee titles. The new requirement will now be applied Corporation and Authority wide.

There is also new language that specifically states that no employee may disclose information to anyone regarding any personal property that the Authority/Corporation may dispose of, to ensure that the process is transparent.

After full discussion, on the motion of Ms. Crotty, seconded by Chairman Buono, without any objections, the Governance Committee approved and authorized submission of the Thruway Real Property Management Policy (25-6-02); Thruway Real Property Management

Standard Operating Procedures; Thruway Personal Property Disposal Policy (25-6-01); Canal Real Property Management Policy (25-6-01C); Canal Real Property Management Standard Operating Procedures; and Canal Personal Property Disposal Policy (25-6-02C) to the Authority/Corporation Board for consideration.

Item 6

Review and Accept the Thruway Authority and Canal Corporation Procurement Contracts Policies

Mr. Bryan advised the Committee that these policies cover procurements for both goods and services that have a value of \$15,000 or more and no changes to the policies are being recommended.

After full discussion, on the motion of Chairman Buono, seconded by Ms. Crotty, without any objections, the Governance Committee authorized submission of the Procurement Contracts Policies to the Authority/Corporation Board for consideration.

Item 7

Annual Evaluation of the Governance Committee's Performance

Ms. Galuski reported that the Governance Committee Charter requires the Committee to annually evaluate its functions and performance. The Governance Committee held three meetings in 2009; January 21, September 16 and November 18.

At the January 21, 2009 meeting, as required by the Charter, the Authority/Corporation Procurement Contracts Policies were presented for annual review. Staff reported that the policies required no revisions at the time and the policies were accepted by the Committee for submission to the Board. The annual review of the Governance Committee's functions and performance for the 2008 calendar year was also completed at the January meeting.

At the September 16, 2009 meeting, the annual review of the Governance Committee Charter was completed and no revisions were required at that time. The Governance Committee also reviewed and approved for Board action a Code of Ethics Policy for Board Members. The Policy was updated to incorporate a number of provisions from the Authority Budget Office

("ABO") model, to mirror some of the changes made in relevant statutory provisions and was restructured to make it easier to use as a reference. This Policy was approved by the full Board at the November 2009 meeting.

In accordance with the Charter, the Governance Committee is responsible for advising those who appoint members to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board Members. At the September 2009 meeting, the Governance Committee reviewed and approved the Board Member qualifications document which outlined the list of relevant skills and experience required for potential Board Members. The document was subsequently sent to the Governor's Appointments Office.

In November 2009, the Governance Committee approved a new approach to the Occupancy and Work Permit Accommodation Guidelines known as TAP 401. Initially approved by the Board in October 1995, TAP 401 was inconsistent with the Authority's Thruway Real Property Management Policy and SOPs. The Committee approved rescinding the Thruway Occupancy and Work Permit Policy and approved its transformation into a customer friendly manual of guidelines that identifies and explains the basic important permitting elements and procedures. The full Board subsequently approved this item at its January 2010 meeting.

At each meeting, the Governance Committee received report outs from the Executive Director on the issuance of ethics related publications that were distributed to staff as well as any ethics violations that may have occurred. Also, in response to several memoranda received from the Governor's Office of Taxpayer Accountability during the year, the Authority was required to respond and implement actions to comply with various initiatives. The Executive Director provided briefings to the Governance Committee on responses to memoranda related to reducing printing costs, reducing travel costs, and managing the vehicle fleet.

Items on the 2010 Work Plan include the Employee Code of Ethics Policy, the WhistleBlower Policy (which may be revised should staff determine that updates are needed based on new statutory language added by the Public Authorities Reform Act ("PARA")), and Board self-evaluations. In accordance with PARA, the Governance Committee is now

responsible for performing self-evaluations of the Board. A lateral review of the charters for the Governance, Audit and Finance Committees will be conducted by staff to ensure that content and format are aligned. Should revisions be required, the Charters will be presented to the appropriate Committees later this year.

Ms. Crotty stated that her experiences serving on other Boards have demonstrated that the self-evaluation process can be very time consuming and labor intensive on the Board itself. She inquired if staff will be making recommendations on what the Board self-evaluation process would look like and how it would be undertaken. Mr. Estes responded that this process is required under PARA so staff will be looking to the ABO to provide guidance as to what they would like to see from the Boards.

Ms. Crotty stated that typically in a Board evaluation process there is a subcommittee that gets put together and develops a questionnaire, then the members submit their responses and the subcommittee does an analysis, and has conversations with the members about the results. It can be a very labor intensive process. She inquired if staff has any sense of when the ABO might provide some guidance. Mr. Estes responded that staff believes that the ABO is going to want uniformity across all State and local authorities, so there can be comparisons.

After full discussion, the Governance Committee accepted the presentation on the Annual Evaluation of the Governance Committee's Performance.

Item 8

Report on the Following Items

- a.) Ethics violations, if applicable**
- b.) Ethics-related publications, if applicable**
- c.) Responses to Governor's Office memoranda**

Mr. Fleischer reported to the Committee on the following Items:

a). Report Out on Ethics-Related Violations

For the calendar year 2010 to date, the Authority/Corporation has not referred any cases to the New York State Commission on Public Integrity.

b). Report Out on Ethics-Related Publications

Two Executive Instructions were revised since the Governance Committee last met in November:

Acceptance of Gifts is issued annually as a reminder to all Authority/Corporation employees of their obligation regarding soliciting and/or receiving gifts. The Instruction was revised to clarify that since there is no definition of what is considered a “nominal” gift and to avoid the appearance of impropriety, employees are advised to accept no gifts of any kind or any value.

Ethics Law “Revolving Door” Restrictions is issued annually to remind all Authority/Corporation employees of the restrictions placed upon former Authority/Corporation employees when dealing with current employees.

c). Report Out on Responses to Recent Memoranda from the Governor’s Office

The November 6, 2009 memo regarding *Email Notification under State Agency and Public Authority Contracts* directed all state agencies and public authorities to incorporate a provision in their contracts that permits required notices to be sent via email. In response, the Authority incorporated language provided by the Governor’s Office into its contracts.

The Governance Committee accepted the reports as presented by Mr. Fleischer.

Adjournment

There being no further business to come before the Governance Committee, on the motion of Chairman Buono, seconded by Ms. Crotty, without any objections, the meeting was adjourned at 9:59 a.m.