

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

BOARD MEMBER DEFENSE AND INDEMNIFICATION POLICY

(April 2006)

NYSERDA Board Members are employees for purposes of Public Officers Law Section 17. Pursuant to Section 17, upon delivery of a summons or complaint to the State Attorney General and full cooperation in the matter by such Board Member, the State provides for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his or her public employment or duties. (This duty to provide for a defense does not arise where such civil action or proceeding is brought by or on behalf of the state.)

Under Section 17, the Members are entitled to be represented by the State Attorney General, provided, however, that the Member will be entitled to representation by private counsel of his or her choice in any civil judicial proceeding whenever the State Attorney General determines that because of the facts and circumstances of the case that representation by the attorney general would be inappropriate, or whenever a court of competent jurisdiction determines that a conflict of interest exists and that the Board Member is entitled to be represented by private counsel of his or her choice. The State Attorney General is to notify the Board Member in writing if the Board Member is entitled to be represented by private counsel. The State Attorney General may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups to be represented by the same counsel. Reasonable attorneys' fees and litigation expenses are to be paid by the State to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the Board member is entitled to representation under the terms and conditions of this section by the head of NYSERDA and upon the audit and warrant of the State Comptroller. Any dispute with respect to representation of multiple persons by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees will be resolved by the court upon motion or by way of a special proceeding

Section 17 also provides that the State will indemnify and save harmless the Board Member in the amount of any judgment obtained against such person in any state or federal court, or in the amount of any settlement of a claim, or will pay such judgment or settlement; provided, that the act or omission from which such judgment or settlement arose occurred while the person was acting within the scope of his or her public employment or duties; the duty to indemnify and save harmless or pay would not arise when the injury or damage resulted from intentional wrongdoing.