Putting It Together: Creating a Board

This section discusses the creation of a seismic safety advisory board. A board can be constituted to advise a state, a coalition of states, or even a confederation of local governments. It can also be a private-sector entity. This section will emphasize formulation of state-level boards and give a number of options. Because creating an ideal board may be impossible, the strategy should be to get started and then improve the organization as necessary.

Creating a State-Level Board

As the principal governing entity of a major population, state government is responsible for the safety of its residents. Accordingly, state government is obligated to take measures adequate to meet the need. These measures typically include working with the local governments (the entity responsible for building safety and land-use planning, as well as the principal governmental resource at the site of any disaster) to help and encourage their seismic safety efforts and to improve their performance.

> BECAUSE CREATING AN IDEAL BOARD MAY BE IMPOSSIBLE, THE STRATEGY SHOULD BE TO GET STARTED AND THEN IMPROVE THE ORGANIZATION AS NECESSARY.

Therefore, a state-level board can provide a focal point for developing statewide policies and implementing needed improvements. Moreover, a state-level board can recommend seismic safety components for statewide comprehensive plans or policies—for example, industrial development, hazardous material control, or environmental quality. This might include the identification of hazard zones and the development of criteria and standards that should be applied in such zones. Finally, a state-level seismic safety advisory board can provide analysis of a state's seismic safety statutes and regulations and evaluate their application in all cities, counties, and special districts.

A state-level board can become a legally authorized entity of state government through an executive order issued by the governor or by legislative enactment. Each method of creating the board has benefits and drawbacks. It is important to involve someone with knowledge of state government and the legislative process. Even good, well-meaning ideas must "fit in."

An expeditious way to create and empower a state-level board is for the governor to create it by executive order. A board created by executive order can ensure participation by all state agencies in the executive branch. On the other hand, there are several drawbacks to using an executive order. Earthquake risk management is a long-term endeavor. An effective board must be an agency with staying power. Governors change, and a new governor can unilaterally rescind the order. Thus, creation by executive order may not provide the necessary continuity. Moreover, except during emergencies, a governor cannot mandate the participation of local governments or elements of the private sector. If the board is created by an

executive order, the ability to promote earthquake-related programs at the local level and in the private sector may be hampered.

A state-level board can also be created by legislative enactment that defines its powers and gives it a statutory mandate to promote a consistent seismic safety policy and the coordination of earthquake-related programs of agencies at all governmental levels and with the private sector. Inasmuch as such a board's mandate grows out of the legislative process of debate, compromise, and consensus, including ratification by the governor, a legislative enactment probably assures the board of a degree of bipartisan support that may be lacking if established by executive order.

An executive order may be the quickest way to establish a board. Some of the disadvantages of using an executive order may be mitigated if the order directs the board to draft and sponsor legislation creating a state-level board mirroring the one created by the governor. In essence, this course seeks legislative ratification of the governor's action.

A BOARD IS LESS LIKELY TO BE AT THE MERCY OF SHIFTING POLITICAL PRESSURES IF CREATED BY LEGISLATIVE ENACTMENT.

Whichever method is used, the following components should be considered for inclusion in either a gubernatorial or legislative board:

1. A declaration of the seismic safety advisory board's purpose and scope of responsibility.

   Typically a board is created when there is interest in doing something about earthquake risk. Because progress will involve activities of many different agencies at various levels of government and the private sector and expertise from diverse disciplines, the purpose statement must be broad. The board should be directed to develop a consistent policy and promote earthquake-related programs at all governmental levels and in the private sector. Any legislative declaration must recognize the comprehensiveness of the task. It should not be just a matter of retrofitting buildings, improving emergency response, or recovering from an earthquake. The board should be responsible for keeping the earthquake issue on the public agenda and advocate an acceptable rate of progress.

   The executive order or enabling legislation creating a board should acknowledge that:

   - Earthquakes can cause extensive property damage and endanger the lives of people.
   - Earthquakes can overwhelm local and state emergency response resources.
   - The knowledge and technology exists to make significant improvements in seismic safety; for example, retrofitting potentially hazardous buildings.
   - Earthquake-related problems require the knowledge and expertise of the earth sciences, earthquake engineering, the social and the behavioral sciences, emergency management, finance, insurance, business, public policy, and public administration.
   - Many different agencies at various levels of government as well as elements of the private sector have substantial responsibilities in seismic safety, and these need to be discharged in a consistent and mutually supportive manner.
   - Earthquake risk management can bring about improvements in buildings, dams, transportation facilities, communications, fire safety, toxic materials handling, emergency response preparations, and the general level of response planning for earthquakes and other natural disasters.
   - Long-term progress in seismic safety requires broadly based and comprehensive efforts, planned for,

coordinated, and promoted by the board.

2. Specific language creating the board as an autonomous entity.

The legislation or executive order creating the advisory board should determine where the board will be placed within the organizational hierarchy of state government. There are advantages to creating it as an autonomous entity rather than as part of an existing agency. If its functions are incorporated into an existing agency, rather than as a stand-alone organization, it will probably have to respect the host agency's agenda and the political agenda of the current governor. Moreover, the fiscal and political limitations imposed on the host agency will limit the board too. Incorporating an advisory board into an existing agency may also limit its ability to develop independent perspectives and could discourage the participation of the private sector and local governments. The result may be institutionalized biases and bureaucratic processes that can insulate even the best organization.

To ensure accountability as well as autonomy, the board can be required to report periodically to the governor and to the legislature, presenting findings, reviewing progress, and making recommendations on seismic safety and earthquake risk management. Such a requirement will signify legislative or gubernatorial recognition of the need for a continuing policy-making progress for seismic safety. It will also ensure that the board's agenda is reported regularly to the legislature or governor. Through this kind of merchandising, the executive and legislative branches may rely on the board for guidance in formulating state seismic safety policy.

3. Procedures for appointing the board's members and for selecting its chair and vice-chair.

Procedures should be established for selecting the board's chair and vice-chair, as well as for replacing them in the event of vacancies. Selection of the chair and vice-chair could follow either of two options: appointment by the governor or election by the members.

Procedures for the nomination and appointment of board members should be specified. The most advisable option is to solicit the names of prospective members from professional organizations and agencies in appropriate fields of expertise. The appointing authority should retain the power to make the final selection. This would allow the flexibility needed to hand-pick board members after conducting interviews and evaluating the nominees' expertise and other qualifications, including commitment to active participation in the advisory board's activities. Such a procedure makes it less likely that a board will include members who fail to attend and participate consistently.

Another option is for the appointing authority to shop around, making inquiries regarding individuals who are recognized for their expertise in their fields and professions. Good candidates could then be "drafted," allowing professional organizations to choose members to represent their area of expertise. This has the advantage of creating strong relationships with the organizations making such selections, but has the disadvantage of giving the final say to those groups.

It may be advisable to have members appointed by the chief elected executive and confirmed by the legislative branch of government. For a state-level board, it will be helpful to include a member from each house of the legislature.

4. Definition of the board's general powers and duties.

The executive order or legislative enactment creating the board should clearly define its powers and duties. Powers that may be conferred on the advisory board may include the following:

- Authority to appoint committees from its own membership which may also include nonmembers at the board's discretion. Power to appoint advisory committees from interested public and private groups and appoint ex officio members who shall not be entitled to vote but are allowed to participate in discussions and provide advice.

- Authority to contract for professional services and research required by the board or required for the performance of necessary work and services which, in the board's opinion, cannot satisfactorily be performed by its own officers and employees or by other federal, state, or local governmental agencies.
- Authority to accept grants, contributions, and appropriations from public agencies, private foundations, or individuals to ensure its continued function in times of budgetary ebbs.
- Authority to enter into agreements to act cooperatively with private nonprofit scientific, educational, or professional associations or foundations engaged in promoting seismic safety, including activities under the National Earthquake Hazard Reduction Program.
- Authority to administer oaths and issue subpoenas for the attendance of witnesses, the production of documents, and testimony in the conduct of any hearing, investigation, or study.

5. Establishment of and statement of objectives for the state's earthquake risk management program.

   The executive order or legislative enactment creating a board should clearly state its principal purpose: developing and promoting a comprehensive and consistent earthquake risk management program. The program should set priorities and schedules, recommend funding sources and amounts, as well as other resources needed to reduce earthquake vulnerabilities statewide significantly by one or more long-term target dates. The board should be authorized to explore and report what needs to be done, who needs to do it, what the probable costs will be, and what degree of priority should be accorded the principal remedial measures. (See Section 8 for a discussion of strategic planning.)

6. Definition of the board's risk-management responsibilities.

   The executive order or legislation creating a board should define the board's responsibility for any or all of the following:

- Setting goals and priorities for the public and private sectors.
- Requesting appropriate state agencies to devise criteria to promote earthquake safety.
- Analyzing post-earthquake recovery issues in cooperation with the state agency providing recovery services.
- Recommending program changes for state and local agencies and the private sector to improve earthquake risk management.
- Reviewing recovery and reconstruction after damaging earthquakes and making appropriate recommendations.
- Gathering, analyzing, and disseminating information.
- Recommending and sponsoring training to improve the competence of personnel.
- Helping coordinate earthquake safety activities of government at all levels.
- Establishing and maintaining working relationships with other federal, state, or local boards, departments, and agencies, as well as private, nonprofit, and volunteer organizations.
- Providing information to other agencies from the National Earthquake Hazard Reduction Program and principal state agencies involved in earthquake risk management.
- Encouraging research that will contribute to improved seismic safety and risk management.
- Encouraging the translation, dissemination, and use of research findings and other knowledge.

7. Promotion of an earthquake risk management program.

   The executive order or legislation creating a board should empower it to promote an earthquake risk management program prepared in consultation with the appropriate state and local agencies, the private sector, and the legislature. This will require authorization for the board to:

- Review proposed legislation related to earthquake safety, advise the governor and legislature concerning

the proposals, and recommend needed legislation.

- Recommend the addition, deletion, or modification of state agency standards to help reduce risk and promote mitigation.
- Conduct hearings, investigations, inquiries, or studies to investigate seismic safety problems and issues as well as the effects of seismic events.
- Review the state's budget and review grant proposals for earthquake-related activities and advise the governor and legislature on them.

8. Authorization to consult with other agencies and organizations.

   The executive order or legislation creating the advisory board should authorize it to consult with appropriate federal, state, and local agencies, the private sector, volunteer groups, and the legislature. It may be advisable to authorize the board to hold joint hearings with other groups and conduct other activities as necessary for the development and maintenance of such a program.

9. Authorization to employ an executive director and employees.

   The board will need the authority to appoint an executive director or program manager, who will be responsible for managing day-to-day affairs, subject to the direction of the board and in compliance with its policies. Depending on the scope of the board's activities and financial resources, it may also be advisable to empower the executive director to recruit and employ other staff members to carry out the board's functions.

   Experience with existing statewide and local boards has demonstrated that the most effective boards are typically established and operating before they select an executive director or hire staff. In those instances where an executive director was named and a staff was established before the board is formed, it was not uncommon for staff to set the policy and goals. Not only does this compromise the concept underlying creation of the board, in some instances it also leads to a lack of involvement with staff, a failure of staff to use the expertise available from board members, and a staff agenda that is inconsistent with that of the board.

10. Authorization for per diem and compensation for expenses.

    Fiscal stress may very well make it necessary for the members of the advisory board to serve without compensation. On the other hand, members will typically devote large amounts of otherwise uncompensated time to the advisory board's pursuit of seismic safety and hazard mitigation. Equity may thus dictate that, at the very least, they be paid the state's standard per diem for each day's attendance at a meeting of the board, plus necessary travel expenses as determined by the state's fiscal control agency. Paying a small stipend for attending meetings is a useful gesture that recognizes a member's contribution to the board.

11. Authorization to establish a program for responding to earthquake predictions and other forecasts.

    The advisory board also may wish to initiate a comprehensive program to prepare the state for responding to earthquake predictions or forecasts. The program could be implemented with the assistance and participation of other state, federal, and local agencies.

The foregoing components suggested for an executive order or legislative enactment creating a board may not necessarily be appropriate for all states and can be tailored to meet a state's needs. A model executive order and a model legislative act for creation of a state-level board are contained in appendixes A and B, respectively.

Creating a Single-State Board

1. Evaluate the state's earthquake risk and risk management needs.
2. Identify representatives of appropriate state and local government and professions to plan the creation of a seismic safety advisory board.
3. Identify funding sources.
4. Decide the following:
   a. Executive order vs. legislation to create a board.
   b. Which professions and areas of expertise should be represented on the board.
   c. How should members be nominated and selected?
   d. How many members should the board have?
   e. Which members, if any, should be authorized to designate alternates.
   f. Which of the suggested components should be incorporated into the vehicle creating the board.
5. Draft the executive order or legislation creating the board.
6. Issue executive order/enact legislation creating the board.
7. Select board members.
8. Convene first meeting and commence formulation of the state's earthquake risk management agenda.

Multi-State Board

Areas of the United States encompassing millions of square miles and several states may be subject to earthquake damage from a single major seismic event. The historic record demonstrates this vulnerability. A single seismic safety advisory board set up as a coalition or partnership of the states in such an area can offer more resources than several single-state boards. A coalition may also provide a coordinating body for a group of single-state boards. A multi-state entity would be able to develop plans and advise on risk reduction programs, emergency response measures (including facilitating mutual aid among states), and earthquake recovery plans of its member states. It can be a central repository of information and equipment in the multi-state area.

A board set up as a coalition of states may be preferable to a number of state-level boards, particularly in multi-state areas subject to widespread damage from a single earthquake or where individual states lack the resources to establish an advisory board. A multi-state coalition can also work with existing state or local advisory boards to integrate earthquake risk management programs at the regional level. A multi-state board can provide a credible voice on earthquake-related issues, improve communication among member states, and promote consistent polices and programs. The board could formulate earthquake risk management programs and emergency response measures, review earthquake recovery plans of the member states, and facilitate mutual aid between member states. A multi-state board should not become embroiled in state-level politics or issues.

State Legislation and Congressional Authorization

Creating a seismic safety advisory board as a multi-state coalition is more

complicated than establishing a single-state advisory board. Each participating state must pass legislation authorizing its government to join the coalition and participate in its activities. The legislation must be reasonably consistent state-to-state, and each state should be able to participate in the endeavor as an equal partner.

Moreover, if the coalition is viewed as an agreement or "compact" between the participating states, each state must petition the United States Congress for permission to create the coalition, as required by Article I, §10, clause 3, of the Constitution. Once Congress approves the interstate compact that creates the board, the legislatures in the participating states must ratify it. (See Appendix C for an example of an interstate compact.)

Articles of Incorporation

A multi-state board can be a loosely structured association or partnership or can be organized as a corporation. Examples of corporations are the Central United States Earthquake Consortium and the New England States Earthquake Consortium. A corporation is a distinct legal entity that limits the participating states' liability for the board's debts and actions. Another important factor favoring incorporation is the continuity of corporate status. Risk management is a long-term endeavor, and the need for emergency planning and public information never ends. An incorporated board provides such continuity because it exists perpetually, until dissolved in conformance with the statutes under which it is incorporated.

Another significant factor favoring incorporation of an interstate board is the degree of autonomy incorporation affords. Control of an incorporated board is centralized in its board of directors. The directors' autonomy in managing the board can provide a uniform policy structure and a means for developing and promoting the earthquake-related programs of all participating states. There would be, of course, statutory procedures for selecting and removing directors. (See Appendix D for an example of articles of incorporation; *note, however, that laws controlling incorporation vary greatly from state to state.*)

If a coalition of states sets up a board, the articles of incorporation will set forth the purposes for which it is formed and the powers granted. In most instances the articles of incorporation will also specify the number of directors authorized to serve on the corporation's board. Some states, however, allow the articles to establish a flexible board, the number of directors being set by the corporation's bylaws. Bylaws set forth the ground rules for the day-to-day management of the entity, typically including the duties and authority of corporate officers, formalities for directors' meetings, and the mechanics of voting. Although a coalition is free to tailor its board to meet its own needs, the following components—along with those mentioned already for state-level board—should be considered for inclusion into the bylaws of multi-state advisory boards. (See Appendix E for an example of bylaws.)

Creating a Multi-State Board

1. Draft a preamble with a declaration of the coalition's purpose and scope of responsibility.
2. Decide on the qualifications for membership on the board.
3. Decide on the place of business and, where appropriate, state of incorporation.
4. Decide on voting eligibility and procedures.
5. Decide on the composition of, powers of, and selection procedures for the board's directors and executive leadership.
6. Decide the powers to confer on the advisory board, such as the following:
   a. Authority to contract for or employ professional services and research.
   b. Authority to enter into agreements with private nonprofit scientific, educational, or professional associations or foundations.
   c. Authority to accept grants, contributions, and appropriations from public agencies, private foundations, or individuals.
   d. Authority to appoint committees from its membership and from outside.
   e. Authority to appoint ex officio members.
   f. Procedures for convening and conducting meetings.

Creating an Interstate Board

1. Evaluate the regional earthquake risk as well as the risk management, recovery, and emergency planning needs.
2. Identify representatives of appropriate state and local government and professions to plan the creation of the board.
3. Identify funding sources.
4. Decide the following:
   a. Whether to incorporate the coalition of member states or to set it up as a loosely structured association or partnership.
   b. Which professions and areas of expertise should be on the board?
   c. Which components will be incorporated into the vehicle creating a board.
5. Each state must pass legislation authorizing its government to join the coalition and participate in its activities.
6. Each state must submit a petition to the United States Congress asking permission to create the coalition by interstate compact.
7. Each state's legislature must ratify the compact.
8. Select board members.
9. Convene first meeting and formulate an earthquake risk management agenda.

Confederation of Local Governments

A seismic safety advisory board can be set up as a confederation of local governments. As previously noted, local governments have significant earthquake responsibilities. Moreover, the earthquake-related issues for local government may require a more hands-on approach differing from those of other levels of government. Local agencies must be heavily involved in preventive actions related to buildings and land-use planning as well as immediate on-the-scene response to earthquakes. This fact, coupled with America's strong local home-rule tradition, suggests that multi-jurisdictional, intrastate advisory boards can provide important direction in the planning of local governments and local business organizations.

Single- or limited-purpose regional organizations are increasingly important in many metropolitan areas. Such multi-jurisdictional, intrastate boards can provide important direction for the planning and development for local and regional organizations and help advance the cause of seismic safety. A board may be well suited for outreach to local private-sector organizations, schools, and local governments, including special purpose districts. Moreover, such a board can be a useful adjunct to either a state or multi-state coalition board.

Typically, an advisory board set up as a confederation of local governments will become a legally authorized entity by state legislation. Like a state board, enabling legislation provides it with a legislative mandate that defines its powers and duties. Although an ad hoc committee or association of local governmental officials is the quickest way to establish a board that represents a confederation of local governments or functions as an advisory board to a state-level agency, creation by legislation may have the same overriding advantages noted earlier

with regard to state boards. In meeting common seismic safety needs, local governments may find it advisable to include at least some of the following components in the legislation or the bylaws:

- Prepare model plans, draft legislation, and model policies on land use, zoning, building codes, redevelopment, and new community development.
- Develop local outreach programs for private-sector organizations, schools, other local governments, and special purpose districts, including public information and cooperative programs with the print and broadcast news media.
- Establish an information resource center with appropriate earthquake-related educational materials.
- Establish of an overview body to assess the impact of damaging earthquakes, recommend appropriate actions, and monitor progress.
- Develop local mutual assistance agreements.
- Develop plans and procedures to reestablish governmental services and business services after earthquakes.
- Coordinate activities with risk management, emergency service providers, and local governments.

Creating a Local Government Board

1. Evaluate local earthquake risk and risk management needs.
2. Identify representatives of local government, the professions, higher education, the business and legal communities, and volunteer organizations to formulate a plan for initiating the board.
3. Identify funding sources.
4. Decide the following:
   a. Should the board be incorporated?
   b. Which professions and areas of expertise should be on the board?
   c. What scope and powers should the board be given?
5. Each participating local government must draft and enact an ordinance authorizing membership in the consortium.
6. If appropriate, draft and enact state-level legislation authorizing the local governments to join and participate in the board's activities.
7. Provide for the selection of board members.
8. Provide for the board's first meeting and initiate work on a earthquake risk management agenda.

Creating a Private-Sector Board

Private-sector organizations can also create a broad-based board to address common concerns. The private sector has many of the resources needed for a viable board: in-house property and asset managers, risk managers and safety departments, structural and civil engineers, geologists, and individuals familiar with land-use and environmental regulation.

Telecommunications, transportation, financial, and insurance businesses typically have state-of-the-art expertise in communications and data transmission that are relevant to mitigating earthquake-related damage to lifeline services. A private-sector advisory board can use the pool of multi-disciplinary expertise to address common concerns or risks just as easily as a public-sector board. In areas where the private sector lacks expertise, a private-sector board can invite

academicians, earth scientists, or civil servants to volunteer their services.

Even if governments do not establish a board, there are valid reasons for private-sector institutions to take the initiative in creating one. In a technologically complex and regionally interdependent economy like that of the United States, a damaging earthquake can cause a widespread disruption of commerce and crucial business support systems, including public utilities and transportation. Businesses in an earthquake-damaged area may be unable to manufacture vital components for goods assembled and sold in other regions of the country. Trading relationships may be severed and the financial markets affected. The insurance industry may need to liquidate assets to pay claims.

A private-sector board would be able to recommend seismic safety goals, practices, and policies—not only within the business community, but for governmental consideration as well. Moreover, a properly constituted private-sector board would be able to monitor program implementation and evaluate effectiveness, while avoiding anti-trust-related allegations of collusion, price fixing, or anti-competitiveness.

Creating a private-sector board need not be complicated. Although the board could be a loosely structured association or ad hoc committee of concerned business people, it is usually preferable to organize it as a nonprofit corporation. (See the discussion of the incorporation of interstate coalitions for details.) Earthquake risk management is a long-term endeavor; the need for emergency planning and public information never ends. An incorporated board may provide the requisite continuity. Incorporation also confers a degree of autonomy, helping the board prepare a credible earthquake-related program for all or most participating businesses.

Creating a Private-Sector Board

1. Evaluate the private sector's regional earthquake risk and risk management needs.
2. Identify representatives of businesses to formulate a plan for creation of a board.
3. Decide the following:
   a. Should the board be incorporated?
   b. Which business and professions should be on the board?
   c. What should be the scope and powers of the board?
4. Provide for selecting board members.
5. Find a sponsor willing to provide physical facilities for the board.
6. Provide for the board's first meeting and initiate work on an earthquake risk management agenda.