

REPRESENTATIVE POLICY BOARD

FINANCE COMMITTEE

JUNE 12, 2023

MEETING TRANSCRIPTION

Tim:

Let's start the RPB Finance Committee Subcommittee meeting of June 12th, 2023. Our safety moment is heat safety. I thought it had something to do with smoke, but that's okay too. You guys had that last week. I didn't have so much. So review this. Being hydrated is of course very important. Sports safety is obviously a topical conversation earlier, so all of this goes into it. So anyway, moving on from safety to governance, FOIA and ethics discussion with attorney Jeff Donofrio. Jeff, welcome, we appreciate you doing this for us.

Jeff:

My pleasure.

Tim:

Timely task. Good to have you. So by way of introduction, you don't have to do any of that. You can just start whenever you feel like it.

Jeff:

Great. So what I'm going to do is I'm going to share my screen.

Can everybody see that?

Tim:

There it is.

Jeff:

So there's a lot of material. I don't intend to spend a lot of time on all of it. What I tried to do was create a document that can be used as reference material by the RPB going forward. And to do that, I went through the Navy legislation, the bylaws, the rules of practice, and essentially embedded some key portions of it into the PDF that you all have a copy of. So what I'm going to do tonight is go through some of the highlights of that and happy to answer any questions you may have. So we start, of course, with the enabling legislation because without the enabling legislation, there wouldn't be a water Authority and there wouldn't be an RPB. And I've hit on some of the key sections of the enabling legislation. And really for purposes of tonight's discussion, I want to just touch on a few of them.

The first one is section 14. I think it's a good idea from time to time for all of us to read section 14 so that we can remind ourselves as to what exactly the role of the RPB is. And when you read section 14, you learn that the RPB has a variety of very significant roles. The first of which is to set rates. And the standard in serving and executing its rate making role for the RPB to be aware of is that the RPB's charge is to set just and equitable rates. And when you read section 14 and you try to understand what's meant by just and equitable rates, what you find out is that just and equitable rates are rates that are sufficient for the Authority to pay the cost of maintaining and repairing its system, pay principle and interest on

Representative Policy Board

Finance Committee

June 12, 2023

outstanding bonds, meet requirements of any resolution authorizing those bonds, make pilot payments, provide for the maintenance, conservation and recreational use of the authorities land and pay all other reasonable and necessary expenses of the Authority and the RPB to the extent that the expenses are applicable to water supply system activities.

So in serving as rate makers, the RPB is required to approve rates unless it finds that the rates will provide funds in excess of the amounts required for the purposes I just described. Unless you find that the rates would be insufficient. So if it's going to be insufficient or it's going to be excessive, you deny the rate application. If you find that the rates or charges that are the subject of the application are just and equitable, you approve the application. So that's a reminder terms of the enabling legislation requirements with regard to the RPB rate making rule. We're going to talk about ethics later on. But a big part of what the RPB does, of course, is adjudicate applications. And if you look at section 19 of the enabling legislation, you'll find that there were parameters established by the legislature for the Authority and the RPB in terms of various types of applications.

And we'll get more into the detail of that when we look at your bylaws and rules of practice next. But it is section 19 of the enabling legislation that identifies the requirements for a public hearing for certain types of applications and provides that other types of applications can be adjudicated without public hearing. The issuance of bonds, as you know from every issuance test rate application gets its parameters from section 22 of the enabling legislation. That's very detailed portion because the Authority, it's not an investor owned utility, so it doesn't have the ability to sell stock and it also doesn't have the ability to mortgage its property. So the only way that the Authority can raise capital is either through the issuance of bonds, which as we know for 30 plus years was almost the exclusive way for the Authority to execute its capital program was through the issuance of debt and of course the revenue that comes from operations.

One thing that I did want to mention because it's something that's never come up in the 15 years that I've been OCA, is that within enabling legislation, there is the creation of a right of appeal. So anyone who claims to be aggrieved by an RPB decision with respect to establishment of rates or sale or change of use of real property or action on an application can file a petition in New Haven's Superior Court within 45 days after publication of the decision being appealed. And that appeal will be handled as an administrative appeal, a record based appeal, which underscores the importance of making a good, complete clear record every time you have a public hearing, every time you have a hearing on a rate application, an application to sell any Authority land, or any other applications that come before the RPB. So those are really the key sections of the enabling legislation I wanted to touch on. I'd like to turn now to the RPB bylaws.

The RPB bylaws and the RPB Rules of practice are critical and really you ought to get reviewed every few years by the individual RPB members, especially when you have matters come before you that you haven't had in a while. We're going to talk about the Freedom of Information Act briefly tonight, but one thing that I was asked to address because it has been coming up with increasing frequency is the executive session. Now for purposes of the Connecticut Freedom of Information Act, the Regional Water Authority is considered to be a public agency. So that means that the Regional Water Authority is subject to the Connecticut Freedom of Information Act, and FOIA essentially governs two things when it comes to public agencies, covers public meetings, and it covers public records. Every meeting is to be an open session unless there's an exception to conducting that meeting, an open session.

One such exception is the executive session and you have a reference to the executive session with your bylaws. An executive session can be convened only for the purposes and reasons set forth in the Freedom of Information Act, and we'll get into those specific reasons briefly in a little bit. But the way

Representative Policy Board

Finance Committee

June 12, 2023

you go into executive session, of course, is someone makes a motion to convene the RPB or the committee meeting in executive session for one of the purposes set forth in Connecticut general statute section 1-206, which again is a definitional section, but is the section that defines executive session.

A two-thirds vote, and it's a weighted vote of two-thirds of the members, is required to convene an executive session. And anyone who's not a member of the public agency, if it's the RPB as a whole, if it's a committee, anyone who's not a member of that agency that's going into executive session needs to be specifically invited into that executive session. No votes could be taken in executive session because it's essentially the secret part of the meeting. And the whole idea behind FOIA, of course, it's the Sunshine Law, it's for the people's business to be conducted in public. Therefore, if there's discussions in executive session that lead to a vote, that vote has to be in public.

The bylaws identify, as does the enabling legislation, the three standing committees. So when Section 4.1 of the bylaws talks about standing committees provided by law, that law that's being referred to is enabling legislation. And of course, as we know, the three standing committees are land use, finance and consumer affairs. The bylaws also establish an executive committee. And the parameters and terms of the appointments for the standing committees are established in section 4.1. Within the RPB bylaws, section 6.4 specifically, we see really what's a copy and paste almost from the enabling legislation to the bylaws with respect to ethics. And really what we're looking at when we're talking about ethics is we're looking at a few different concerns. Number one, whether a, in this case RPB member, has a financial interest or a personal beneficial interest directly or indirectly in anything that you're voting on.

If you do have such an interest then you're required to disclose that interest and the disclosure should be in the form of a conversation or an email to the chair of the RPB or if it's at a committee level to the chair of the committee. And you're required to recuse yourself from the discussions, the deliberations and the vote. And this ethics provision has a punitive non-compliance term, which is that you can have your board membership terminated if you violate this disclosure and recusal provision. There's also a limitation on gifts. Board members are limited to pretty much what is consistent with the state gift policy, which is maximum of \$50 in any calendar year and nothing individually in excess of \$10. So if you go to lunch with a vendor and the vendor's going to pay, you need to make sure that you don't spend more than \$10 and 50 in the aggregate over the course of a year.

Another item to be aware of because the RPB members although they are compensated, they are not compensated at a very high level in comparison to the responsibilities that they bear. So you should be aware of the limitation of liability and indemnification provisions that you benefit from under section 6.5 of the RPB bylaws. And bottom line is as long as you behave yourselves, you're going to be indemnified if somebody makes a claim against you, arising out of your discharge of your duties as an RPB member. And so essentially what you need to be able to do is act in good faith and discharging your duty without putting your personal interest ahead of the interest of the Authority. And you'll see there's very specific exclusions to the limitation of liability and indemnification privilege that you receive. And those exceptions amount to acting in your personal interest, your self-interest rather than in the interest of the organization as a whole.

And again, the intention behind the limitation of liability and indemnification provisions are as you would expect them to be. To protect you from claims against you arising out of your good faith, proper discharge of your responsibilities as board members. There are non-discrimination provisions as well in the RPB bylaws. So in conducting yourself as an RPB member, you're prohibited from entering into any discriminatory practices.

Representative Policy Board

Finance Committee

June 12, 2023

I think you're all fairly familiar with the revisions of the bylaws that govern, and you've recently had a refresher, those of you on the nominating committee, that govern the appointment of Authority members. But those sections, I've embedded those into the document that you all have so that if you have any questions and you need a refresher, you don't need to go and dig out your bylaws, you can just look at this handy PDF that we put together for this presentation.

Turning now to the Rules of Practice. So again, your three key governance documents, enabling legislation that was adopted by the Connecticut General Assembly in 1977, the bylaws and the rules of practice. The functions of the RPB are more clearly identified in the rules of practice than in the enabling legislation or the RPB bylaws. Essentially what you see in the rules of practice, specifically in section two is a laundry list of what your broad responsibilities are. So you've got the rate making role that you play. You've got the obligation to establish land use standards and disposition policies for the water system. You've got the obligation to adjudicate applications for projects costing more than 2 million or non-core business acquisitions or investments in amounts exceeding 1 million, in the event that the Authority sought to acquire another water system that would come to you.

The location of new plant comes to you. Amendments to land use standards if they're deemed substantial, are within your purview, of course the sale or transfer of an interest in water supply system property, development of property or non-water use, and adjustments to rates to cover payments in lieu of taxes, pilot payments. So that section 2A really covers everything that you do from a macro level. And section 2B, which of course was amended following the amendment of the enabling legislation to deal with the non-core commercial business opportunities, likewise should be consulted as a more complete list of the various responsibilities of the RPB. For example, you've got your selection of an auditor that's contained within 2B.

The protective orders that we all signed to obtain confidential information in conjunction with applications to the RPB are regulated by section six of the RPB Rules of practice. We pretty much know the process by now, but it's rule six that lays it out.

Scheduling and noticing of public hearings is governed by sections 10 and 11 of the rules of practice. Again, what I've done is copy and paste and embed into this document the exact language from the rules of practice. I don't think Chairman Slocum wants me take in two hours of your time tonight, so I'm going to breeze through some of these things. You can read them on your own. If you have any questions, I think you're all familiar at this point with the process that the Authority goes through in noticing public hearings on matters that come before the RPB as well as with the conduct of hearings.

And again, this is all set forth in sections 12 and 13 of your Rules of Practice. The rules of evidence, this is something that we never really spend too much time on in conjunction with public hearings, but section 16 of Rules of Practice does set forth a statement that the presiding member, hearing officer can exclude irrelevant, immaterial, or unduly repetitious evidence. We've not had any objections to the admissibility or offer of evidence in the 15 years that I've been OCA at any of the public hearings, but that power is given to the presiding member that serves as the hearing officer for the public hearing. Cross-examination likewise is a right that is granted. However, the presiding member can decide whether or not it's appropriate and what the extent of the cross-examination is.

Sometimes I get asked questions whether it's at consumer affairs or the Finance Committee meetings regarding my checklist for determining whether an application is complete, because as we know, the Finance Committee, more frequently than consumer affairs and land use, is asked to vote on the completeness of an application so that it can be forwarded to the RPB for purposes of scheduling a public hearing. There's several sections that potentially apply in determining whether or not an

Representative Policy Board

Finance Committee

June 12, 2023

application is complete. The first section is section 24. Section 24 is very basic and provides the format, if you will, for every application that comes to the RPB. And of course, if the application is incomplete, then within 30 days of filing, the application has to be rejected. And I can recall one a few years ago that was incomplete, that got rejected by the Finance Committee and then resubmitted at a later date by the Authority. But if you don't reject it as incomplete within 30 days, it's deemed accepted.

So like I said, section 24 really is the bare bones basics of an application. Then you go deeper into the rules of practice to look at additional requirements for specific types of applications. Section 31 of the rules of practice sets forth the requirements for rate applications. So when I review an issuance test rate application, I've got a copy of Rule 24 and a copy of Rule 31 to my left because I'm left-handed and I'm looking through the application and I'm looking to make sure I have a check mark next to each of the items in rules 24 and 31. Not deciding of course whether the application is necessary and appropriate, just deciding whether it's complete for purposes of RPB rules of practice and therefore appropriate to go to the next step.

And you'll notice that when you look at these rules, they're very familiar because the issuance test rate application mimics, in format for the most part, the rules as presented in section 31. Now, section 33A provides the special components for applications for projects over 2 million and investments in non-core business over 1 million. So now when I'm looking to see if an application is complete for a capital project or an investment in non-core business, I've got rule 24 and rule 33A as my checklist next to my application.

And again, I'm going through it to make sure that the information that's required to be included, whether it be in the body of the application or annexed as appendices or exhibits, I'm making sure that all that information is there so that when the matter comes before the committee that's been required to pass on the completeness that I'm able to give a responsible answer if I'm asked whether the OCA deems it to be complete. And it's pretty basic stuff. Again, the applications thus far for the non-core projects that we've seen mimic, for the most part, the format of 33A. Likewise with respect to the large capital projects that come to you. 33B also has one additional requirement for capital projects that are estimated to cost more than two million dollars.

33C, I can't recall having a 33C scenario. I was trying to remember whether or not 33C was triggered on the project in North Branford, the tank project in North Branford, but I couldn't recall whether or not it was 33C that was invoked.

33D, these are components of an application to acquire or invest in a non-core business over 1 million. Again, the format should look familiar because it is a format that's pretty much mirrored in applications that you've seen in the last three years for non-core business applications. But again, this is a checklist type rule because in order for the application to make it to the public hearing, it needs to be deemed to be complete. In order for it to be deemed to be complete, it has to include all of the items in the rule. And if something isn't included, then within 30 days of when the application is submitted, the application should be rejected at the committee level as incomplete with a specific finding as to what's missing so that the Authority can cure it and resubmit the application.

We've had several applications over the years for disposal of non-watershed lands and the special components of an application to dispose of real property owned by the Authority are set forth in section 37. Again, checklist type rule. The next thing I'd like to cover... Am I still doing okay on time, Mr. Chairman?

Tim:

Representative Policy Board

Finance Committee

June 12, 2023

You're doing great.

Jeff:

Thank you. The next thing I'd like to cover is something else that we really don't talk about very often, which is job descriptions. You all have very specific job descriptions. RPB members have a specific job description, and it's a two-page job description. It very nicely identifies the fact that RPB members are unique because of the multiple roles that they fulfill. As I indicated before, there's essentially four roles that you serve. One the is you sit as administrative judges, like members of PURA adjudicating rate cases, land policies and transactions. The second role is that you serve as stakeholders when you select auditors, when you consider major capital expenditures, and when you appoint the five members of the Authority. Which of course the Authority is the board of directors in the sense that they're responsible for day-to-day oversight of Authority operations versus the RPB, which is of course the policy board.

The third role is all the RPB members are members of the statutory committees, one of the statutory committees. And through the statutory committees, you offer advice and guidance to the Authority and to management. And then lastly, and this is not to be underappreciated, each of the RPB members serve as a link to the municipalities whose chief elected official appointed you. And then of course, we have Representative Marino who's the governor's representative. So that the good communication between the Authority and those communities that the RPB representatives were appointed by is critical to ensuring that the communities are aware of the author's mission, that the communities are aware of opportunities to be heard, that the communities know that they have a voice and a seat at the table.

But if you look at the job description for RPB members, you'll see that there's 14 plus duties that are described in that job description. The RPB Chair and the RPB Vice Chair, treasurer and secretary, likewise have job descriptions. And those job descriptions are very specific in terms of the Authority that each of the officers of the RPB has. And it's important to know that since the RPB and each of the committees of the RPB are public agencies, the only power that the RPB has, the only power that the committees of the RPB possess are through a quorum of the public agency. Individually, you have no power to do anything other than what's been delegated to you through a proper vote at a duly noticed and held meeting of a quorum of the public agency.

So we also have a job description for the chair of the statutory committees, and that job description is pretty basic. You preside over the meetings, you prepare agendas for the meetings, you make sure that the minutes are accurate and available within seven days of the meeting to which they refer. And the interesting thing about the job descriptions for the RPB members and the officers of the RPB and the statutory committee chair is there's a statement that you're each responsible to project a positive professional image of the RPB, which I find to be interesting because you're in certain respects, even though you don't have any individual power, you are representatives of the Authority. And obviously when these job descriptions were created years ago, there was a desire that every member of the RPB project a professional and positive image of the RPB.

I did want to mention that in several places within the job descriptions and the rules of practice, there are references to Robert's Rules of Order. And as we know from our Municipal Lives, Robert's rules of order are parliamentary procedures that were originally established to help control and manage meetings so that they were orderly and civil and not chaotic. Although sometimes I think that despite our best efforts, not at the water Authority, but on the municipal front, Robert's rules aren't always the way that we get there. But in any event. I haven't really seen any instances of a failure to follow Robert's rules, but one of the general rules of decorum under Robert's rules is that everything goes through the chair. So whether it's the RPB, whether it's an individual committee, members aren't supposed to be

Representative Policy Board

Finance Committee

June 12, 2023

going at it one-on-one, questions go through the chair, you don't speak until you're recognized. You keep your comments limited to the subject that's on the table.

Don't be disrespectful, don't question anybody's motive. That's that's the basic rules of the quorum under Robert's rules. And I think for the most part, RPB and committee meetings don't really need a lot of refreshers when it comes to rules of decorum. But just be aware of the fact that the chairs are responsible for implementing and enforcing those parliamentary procedures. And the most important thing, of course, is to make sure that motions are made properly and seconded, and then the discussion occurs. And depending upon the nature of the motion, there may be more than a bare majority needed. For example, executive session requires two thirds. Amending an agenda at a regular meeting requires a two-thirds vote.

You can't amend an agenda at a special meeting. The Authority really doesn't have a lot of special meetings. Most of your meetings are held to the original schedules and therefore are regular meetings. So again, I embedded all this information in here for you in case you're saying, "What's he reading from? We don't have copies of those things that we were given in a binder when we joined the RPB many years ago." They're all here. We scanned them all in. So all these job descriptions are verbatim what's in your manuals. So you can read them at your leisure.

I did want to spend a couple more minutes on ethics and conflicts of interest because that was something that Mario Ricoszi as chair of the RPB had asked me to spend a few minutes on. Not because we have any issues, just because it's something that comes up from time to time. We have a large group and we have a lot of new members as well. We talked about the ethics provisions and the enabling legislation and the RPB bylaws. And essentially what's required is be aware if you have a direct or indirect personal interest, are you going to benefit if someone in your family or the organization that you're employed by going to benefit from an item that you are discussing and voting upon? If so, you need to disclose to the chair that you have a conflict. You need to recuse yourself from the discussion and deliberations and abstain from the vote.

As long as you're acting in good faith and acting within the scope of your Authority and respecting the conflict of interest rules, you're fine. Another obligation that you have as RPB members is a fiduciary duty. And what that means is in addition to act in good faith and observing the ethical requirements that are in the enabling legislation and the RPB bylaws, you need to be aware that you are privy to a considerable amount of confidential material. Whether it's obtained in executive sessions, whether it's obtained in conjunction with an application pursuant to a protective order, whether it's in conjunction with something that you overhear when you're sitting in the conference room eating a sandwich before a meeting. This information is information that you're privy to, not as a member of the general public, but as a fiduciary of the organization as an RPB member.

So you have a duty to protect the confidentiality of that material to not use your position or the information that you obtain for personal gain. And I also talked about the gift policy. No more than \$10 in one gift transaction. Up to \$50 per year from a vendor. There's nothing wrong with having a conflict of interest, we all wear many hats, and in our travels, there may be a variety of relationships that we have. We may not even be aware up until something comes across our desk that the Regional Water Authority has a proposed transaction or a business relationship with someone that we know. The trick with conflicts of interest isn't necessarily doing everything possible to avoid them. It's what you do when you have one. And of course, knowing the rules is the first step. And those rules require, again, disclosure. So you disclose to the chair. You can make your disclosure before the meeting.

Representative Policy Board

Finance Committee

June 12, 2023

You can make your disclosure at the meeting, but your disclosure should happen before a discussion of the item that you're conflicted on begins. You should abstain not only from the vote, but should recuse yourself from the discussion. Arguably, if you participate in the discussion, your comments could be viewed as influencing the outcome. You could be viewed as using your position on the board knowing you have a conflict to make comments that cause those who are voting to vote a certain way. So it's not enough just to abstain from the vote. You shouldn't participate in the discussion.

If you're uncertain... I get calls all the time in my municipal realm from folks that aren't certain whether they have a conflict. It never hurts to pick up the phone and get an advisory opinion. Better safe than sorry, because in addition to the personal ramifications of breaching your fiduciary duty or acting unethically, you also arguably could taint the process. Remember I mentioned the appeal process 45 days from publication of a decision. Well, if somebody should have recused themselves but voted on an item, then that opens up a door for a potential appeal. So it could affect the business of the Authority, not just you personally.

So I reiterated here, section 17 from enabling legislation and section 6.4 from the RPB bylaws, because really there's not a separate code of ethics. What you have are these provisions on transactions with people who have an interest, whether it's in a contract, whether it's in a project, somebody who stands to gain financially by having access to you as a board member. Those are the transactions we want to avoid. Again, in terms of discharging your fiduciary duty, as long as you do these five things, you're good to go. Act in good faith, act within the scope of your Authority, protect the confidentiality of material that you obtain. Don't use your position for personal gain and comply with the requirements for gifts when you're dealing with vendors.

There is an RPB policy, a written policy concerning the management of confidential information coming to the RPB. It was adopted in 2005. It sets forth a process for determining if information is confidential, it sets forth a process for the submission of information claim to be confidential, which is pursuant to a protective order. Sets forth the process, as we've discussed, for executive session, and it sets forth some practical suggestions for handling confidential information.

So there is a written policy and everything that we're all doing in terms of signing up protective order before receiving any of the information and receiving it in the manner that we receive it, password protected, et cetera. When information is passed out or distributed during an executive session, we turn that information back into, "Jennifer, we don't leave the room with it." The things that we're doing, returning confidential materials to the applicant after we're done talking about them, all those things are consistent with the RPB's procedures adopted in 2005 for dealing with confidential information. And again, it's not just something that's nice to have. Violation of protective order or the duty of confidentiality is a breach of fiduciary duty.

Last, and should I say not least as much as I want to say last and least, the Connecticut Freedom Information Act. Again, when it comes to FOIA, FOIA deals with two things, public meetings and public records. So every RPB meeting with a quorum is a public meeting. Every meeting of a committee of the RPB, regardless of whether it's a standing committee or whether it's an ad hoc committee, is a meeting of a public agency. So with respect to public meetings, there has to be a notice, which we call an agenda that's published no later than 24 hours prior to the meeting. If it's a regular meeting and you want to amend the agenda, you can amend the agenda upon two thirds vote at the meeting. If it's a special meeting, the agenda cannot be amended at a special meeting. You can't have any meetings by email, by chat, by any means that the members of the public don't have access to. So when something gets circulated by email, there can't be a discussion between members about the substance of that. Scheduling is fine.

Representative Policy Board

Finance Committee

June 12, 2023

Sending a copy of something or talking about availability for a meeting, that's all fine. But when it comes to the substance of the matter, it should not be discussed via email or via other group chat, listserv, anything where the public doesn't have the opportunity to view the deliberative process. With respect to executive sessions, we talked about how an executive session is convened, but executive sessions can only be held for the specific reasons allowed in the section of the act. The first is discussions concerning appointment, employment performance, evaluation, health or dismissal of a public officer or employee. Now, we don't really have many.

There's been a few personnel type discussions at the RPB level, but not really about individual employees. If you were going to have an individual employee be the topic of discussion, that employee has a right to require you to have that discussion in public, in the open meeting. So the first type of executive session is a discussion about the employment performance dismissal evaluation or health of an officer or employee. The second is strategy and negotiations with respect to pending claims or pending litigation to which the Authority is a party until that litigation is finally adjudicated or settled.

Pending claim means that the Authority has received a notice that sets forth a demand for legal relief or asserts a legal right and says, "We're going to sue you." Pending litigation is that means there's been a lawsuit for an administrative proceeding filed against the public agency, in this case, the water Authority. So a lot of times folks think that somebody sends them a letter and they want to talk about an executive session. If it's a notice that sets forth a demand for legal relief, whether it's money or otherwise, then sure that can be treated as a pending claim and talked about an executive session. Third is matters concerning security.

We've had several instances where we've had proper executive sessions to talk about security strategy, which includes deployment of security personnel on Authority property. Fourth is discussion of the selection of the site or the lease sale or purchase of real estate by the Authority when a public discussion about that site selection, that lease, that sale or purchase would adversely impact the price, executive session is appropriate. And then there's a catchall, and the catchall is discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection B of section 1-210.

Now, section 1-210 is a section of the general statutes within the Connecticut Freedom of Information Act. That sets forth a long list of items that are exempt. And the exemptions range from preliminary drafts to personnel files only if disclosure would constitute an invasion of privacy to records regarding strategy and negotiations pertaining to pending claims or litigation to trade secrets to real estate appraisals to records pertaining to an ongoing criminal investigation. There's a long list of items that are within 1-210B. So whenever there's a concern about whether something is a proper topic for an executive session, there should be an opinion sought either from me or from Murtha about whether an executive session is appropriate. Don't assume it is, don't assume it isn't. Let's just confirm. And for purposes of the agenda, the agenda should identify what the purpose of the executive session is. So it shouldn't just say executive session. If we're going to be talking about pending claim, it should say executive session pursuant to 1 206 pending claim or pending litigation or discussion of purchase of real estate.

So that way the public at least knows that the purpose of the executive session is a legitimate purpose. The second area that's covered by FOIA is public records. And the public records language in the act is very broad, so you should assume that it covers everything. And 1 210B that I just referenced as relevant to executive sessions is likewise relevant when it comes to public records, because if the information in the public record is exempt for purposes of executive session, then it's exempt for purposes of disclosure. But whether it's a hard copy, whether it's an email, whether it's a text message, whether it's

Representative Policy Board

Finance Committee

June 12, 2023

on a water Authority account, a personal account, a unrelated work account. If you're conducting a agency business using a personal computer, a tablet, a laptop, a phone, all those communications are arguably subject to the Freedom of Information Act. Likewise, personal voicemail used to conduct agency business, whether it's on your cell phone, whether it's on your landline, it's all fair game.

So I flew through this stuff. I'm happy to answer any questions.

Brian:

Jeff, this is Brian [inaudible 00:55:43]. I have questions about record retention and those things. Every year and a half we get a rate application and I get this big folder, we get the emails from Jennifer with this stuff and a second email with a password to come in. How long am I supposed to keep these things and do I have to dispose of them properly? And how do I dispose of them properly? Do I have to take them to a shredder somewhere? And what is the timeline for me holding onto of things and getting rid of things?

Jeff:

Well, keep in mind that when you're receiving an application, when you're receiving correspondence from Jennifer with attachments, you're receiving duplicate documents. The Authority has, as the public agency, the record retention obligation. In terms of you as an individual member and what records you would have record retention responsibilities for, if you are the author of an email, and again, keep in mind what I'm saying is that you cannot have public meetings by email. It's an illegal meeting, so you really shouldn't be having substantive email communications. So really, I'm hoping the answer is no, we don't have any substantive emails that we're the author of, just what we receive.

And so those emails that Jennifer originates to you, the Authority has retention obligations with respect to those emails. You don't really have retention obligations. When you receive confidential materials, those confidential materials should be destroyed after the RPB has voted on the application. So whether you bring those to the Authority and say, "Here, I'm giving you these, please dispose of them," or we have a receptacle that shred comes every Monday and takes our stuff and I never understood who would do this, but we can watch it on videotape watching them destroy our document, but...

So that's where mine go. But what I do is the confidential materials go and the shredding receptacles, we scan the applications and keep them here because I have notes on them, and sometimes I go back in similar applications and want to look at my notes. But in terms of your record retention obligations, all you really need to be worried about is if your authoring documents, which really you shouldn't be doing, if you submit interrogatories, it's a good idea for you to retain those interrogatories for three years. But in terms of stuff you get from other people, you don't have to worry about that.

Brian:

Thanks.

Jeff:

Sure.

Tim:

That was a good question, Brian.

Representative Policy Board

Finance Committee

June 12, 2023

Brian:

I can clean out my file cabinet a little bit.

Tim:

That's right. And that'll be excellent. So anyway, Jeff, that was an excellent presentation. It's very appreciated. I believe we also certainly save it. It's good reference for any of us. And if there's no other questions, I'll move on with the agenda. Any other questions? Last call? Terrific. Again, thanks Jeff. We move now to three, which is the approval of the minutes for May 28th 2023 meeting. We have a motion.

Tom:

So moved.

Tim:

Second?

Jay:

Second.

Tim:

Thank you. Any discussion? Hearing none, I will move for a motion to approve all those in favor. Aye.

Committee:

Aye.

Tim:

Were there any abstentions, and or oppositional voting on the minutes? With that it's approved unanimously. Four is consider an act on recommendation to the representative policy board regarding the completeness mode and date of public hearing for the authorities application for the purchase assets of Target 2, the confidential plumbing company. We've been provided a draft resolution. Everyone's had a chance presumably to review that, and presumably also without further discussion, to take a look at confidential materials that we've received. And shall I have a motion to accept this be advanced to the full RPB?

Charles:

I'll move. That's Charles.

Tim:

Thank you, Charles. May I have a second? Did I hear you, Tom?

Tom:

I'll second it. Tom Clifford.

Representative Policy Board

Finance Committee

June 12, 2023

Tim:

Thank you. Thank you much, Tom Clifford. Any further discussion? We can't really talk about a whole lot here, but with that said, I'll call for a vote. All those in favor? Aye.

Committee:

Aye.

Tim:

Opposed? Abstaining? Vote carries unanimously and that'll be forwarded. We now move to five, which is the review of the audit proposal. And Rochelle, you're going to deliver this second large thing with an executive summary, I presume.

Rochelle:

Yes. I'm not going to go through the whole thing. I just want to highlight a couple points. So-

Tim:

Please do and take your time.

Rochelle:

So you can see this was quite a comprehensive proposal. I will mention a couple key things. From a fee perspective, the fees were pretty much aligned with what Bloom had previously proposed for the period ending for the audit that will be going through in fiscal 2023. They also provided within their proposal some commentary. I know it was of interest to the committee about manager and partner rotation. I would say that I think from my recommendation, we've been working now with CLA since the acquisition, since they acquired Bloom for now a few years. There definitely has been some changes. CLA is actually a much larger company. They have a National Review and some other aspects.

And so what I would actually recommend is maybe we don't commit yet to the whole five years, maybe just to three years. And that would actually be sort of coincident with David Flint, who was the manager last year. You heard Ron mention that David is becoming a principal. He actually is a principal. So this year he is playing both roles. And then if we go another three years, that'd be the end of the five years for the partner. And maybe at that time we see if we continue with CLA, with a different partner or take another path.

Tim:

That seems like a reasonable recommendation.

Charles:

You've been alerted to this three year option?

Rochelle:

I would need to confer with him. I don't think it would be an issue.

Charles:

Representative Policy Board
Finance Committee
June 12, 2023

Makes sense. As long as they're all, the price and that type of thing.

Rochelle:

Great.

Charles:

Do you need a motion, Tim, or is that?

Tim:

Well, Rochelle, I was going to ask you, I don't know if there's a motion necessary, if this gets presented to the full RPB or if it's just out of here we do this, I've forgotten.

Rochelle:

I think we will need a resolution that will go to the full RPB for them to vote, but I want to have this conversation, make sure we're aware, aligned on the path forward, and then we could draft a resolution.

Mario:

Question Tim.

Tim:

Yes, go ahead.

Mario:

Rochelle, did you indicate that the executive is also going to be the... David Flint is going to cover two roles?

Rochelle:

Yes. So last year David was the manager on the engagement. This year he's actually playing the manager and the principal. Because Ron Nasic whom you've met, he still with CLA, but to actually have mandatory retirement. So pretty much David now is playing both the principal and the manager. And there's a pretty strong senior who's working with us already on the engagement this year.

Mario:

So that's why they left the manager open? I think it said to be determined, the engagement manager?

Rochelle:

Yes.

Mario:

So it's been determined. It's just going to be David covering two roles?

Representative Policy Board

Finance Committee

June 12, 2023

Rochelle:

Only for this year, and then there will be a manager I would think. This is a transition year for David, because Ron is technically still with a firm.

Mario:

Thank you.

Tim:

Does that put them in any kind of a conflict? They're looking at us, but who's looking at them looking at them?

Rochelle:

No. Because it's in some of the back and forth on even the rotation situation. It really is. We're not required to change out the partner or the firm. We are not falling under Sarbanes Oxley. So there really are taking the lead from us. They can have a recommendation, but they're actually looking for the governing bodies to make those decisions.

Tim:

Well, that being said, is everyone here satisfied? Obviously it's not ours to decide fully upon, it's an RPB decision, but as long as we're clear on it, I'm going to have to probably advance the whole thing anyway. Speak to it at some level before it as part of a report. I'm not sure, Rochelle, you you'll just prepare a resolution for... Would it be our next meeting, the June meeting of RPB?

Rochelle:

Jennifer, is it going to be June or will it be July? I don't know if it's on the agenda for June.

Jennifer:

I can add to the agenda. There's still time, so whenever you want it on the agenda, I can always put it on there. If you want more time to think about it or discuss it, that's fine too.

Rochelle:

I think July would be fine. I will follow up with them to make sure that they'll hold their prices, which I don't think will be an issue. If that'll give us time, we can drop a resolution that could be presented at the July meeting.

Mario:

Tim?

Tim:

Yes, Mario?

Mario:

Representative Policy Board

Finance Committee

June 12, 2023

It's Mario again, if I may, Rochelle, it would be helpful, I think for the full RPB to have just a table of what the proposed fees are for each year. I didn't actually spot it within the proposal you sent if it was in there, but it would just be helpful just so that people realize they're holding their pricing or what have you.

Rochelle:

Yes, it's in there, but it's pretty far back in there, so we can just pull that out so they know.

Mario:

Thank you. So Tim has it available so he could report on it.

Tim:

They should always put the important stuff first and then you can read about them last, but they never do that, but that's understandable.

So we're all set with that, I think, if everyone's satisfied, thank you for that, Mario. That'll certainly be a help. We'll now move along to the quarterly report of the RPB approved projects. Rochelle, you're back in the seat again.

Rochelle:

And I'm not going to read what's written down. I just want to provide some additional comments more from a bit of a financial perspective. So the Sonia Derby, really the Derby Tank project is moving along, and you may recall it's a DWSRF project. The financing for this was actually within the 18-month period that our rate application covers. That would be going into effect shortly. So the project is moving along. Also, good news from the litigation perspective. So...

There has been a withdrawal from the plaintiff. I know Murphy is still monitoring the situation to see if there's any continuation, not necessarily with our WA, but with other parties. So we are still watching that closely. But the project is moving along nicely. The West River water Treatment plant improvement projects. This project is moving forward. This is also a DWSRF project. We're actually hoping to close on the financing really shortly after our new rates go into effect. And we are expecting that the anticipated completion would be September 2023. So it is actually nearing the end of that project. For the Lake O large water treatment plant clarifiers, recycled pump station, and concrete restoration. A couple things I want to note. The anticipated completion date is not November 2023. That was the original date. We are currently now expecting this project to be completed at the very end of 2024 or early part of 2025.

This project is also a DWSRF project. We have a application pending with them, and the project is moving along with construction anticipated to be started probably around October of 2023. For the lake water treatment plant, HVAC and electrical improvement projects. This is actually a congressional directed spending project, and we are working with EPA relative to the timing, as well as also the filing of Baba waiver. So right now, for the fiscal 2023 Congressional directed spending projects, we haven't even yet gotten the go ahead to actually complete the rest of the application. But the good news is we're getting a little bit over 2.6 million through Congressional directed spending.

The next project, the water treatment plant valve replacement program, the filter and fluent valve replacement at Lake Lar. This is actually a project that actually we were able to accelerate. So the original schedule completion was May of 2024 and the actual substantial completion was actually March of 2023. So we're really pleased with that. Moving to the next page, so the lake Whitney Dam, this is the

Representative Policy Board

Finance Committee

June 12, 2023

phase one that was approved. So this is really the design aspect. From a financing perspective for the Whitney dam, we're looking at DWSRF. We have a pending application in, we are expecting to get that. We also are working with WIFIA, and so that WIFIA is a loan, but it's a very low cost loan.

The other thing that we're looking at, because there is still some discussion about the upstream and downstream options, we're actually pursuing state bonding money. So little bit more to come. We think we will probably get a small amount, possibly through deep with Deep Bonding Money. So a little bit more to come on how that progresses. And then the CIS project, that project is now in full swing. The kickoff was in the middle of February and for the last quarter, the project is basically consisting of analysis workshops, and there is also some integration activity that's also happening at this time there. Any questions?

Tim:

Thank you, Rochelle.

Next on our list is just a notification of upcoming committee chair election in July at a yet to be determined date. We'll fill that in after we discuss eight. But again, I can no longer serve as chairman, so we'll be looking for a willing partner or two who are interested. Typically, is that just a normal, we sit around a table at the beginning of the meeting and make that decision? I've forgotten.

Rochelle:

That's been my experience.

Tim:

So hopefully we'll have a quorum that night. And with that, the next discussion is eight, which is a meeting change from our regularly scheduled meeting Monday, July 10 because of a conflict with the golf tournament to another date in July. I know our regular meeting is actually the 28th, the of the RPB. Is that accurate?

Jennifer:

27th-

Tim:

Of the RPB?

Jennifer:

Yes, the 27th.

Tim:

The 27th, excuse me. I'm sorry. I looked at Friday instead of Thursday. That being said, if we met the following week on the Monday the 17th, that's not an issue for anything, any business, correct? That would be okay?

Jennifer:

Representative Policy Board
Finance Committee
June 12, 2023

That is Consumer Affairs Committee at 5:30. If you want to do Finance first and we'll have to make sure it's done by 5:30.

Jay:

What's wrong with the 11th?

Tim:

Well, I think I would have a conflict with the 11th. I have a town council meeting chair.

Charles:

All right. I will be away, but hopefully I'll be able to zoom in. I'm not sure, but will try.

Tim:

Well, if there's another date that might work, can all open up our calendars.

Jay:

I'll be gone those last two full weeks of July, but I should be able to zoom in or at least call in.

Tim:

How is everybody else with the 17th?

Mario:

Move it to the 13th, Tim?

Tim:

Let me look at the 13th. It's not an issue for me. That's not a problem for me. Anyone have a problem on the 13th or Thursday?

Michelle:

I'll be away.

Jay:

17th of July, Monday?

Tim:

Well, the 13th had been advanced as a possibility. I think I heard someone say they might not be-

Michelle:

It's Michelle, I'll be away.

Tim:

... Was that you, Michelle?

Representative Policy Board
Finance Committee
June 12, 2023

Michelle:

Yes, I'll be away.

Tim:

Obviously you'll be away.

Michelle:

I'm away the week of the 17th also. I might be able to call in.

Tim:

But the 13th was okay?

Michelle:

We leave that Wednesday.

Jennifer:

What about the 13th? The week before?

Tim:

Yes. She leaves that-

Michelle:

No, I leave. [inaudible 01:19:55] right now. I leave the 12th.

Tim:

So you might be able to call in on the 17th, Michelle?

Michelle:

I could try. I'm in Aruba. I'll see what I can do.

Tim:

Shall we land back on the 17th then? What do you want to do?

Jay:

17th is all right for me.

Mario:

You got two people unavailable on the 17th because they-

Tim:

Well, but they could call in potentially.

Representative Policy Board
Finance Committee
June 12, 2023

Mario:
Maybe.

Tim:
Maybe. So if we go to the 13th, only Michelle can't probably make it. Is that right?

Jennifer:
Yes.

Tim:
So what do you want to do, guys? I'm happy to do it the 13th if Michelle doesn't care.

Jay:
That's Thursday.

Michelle:
Go ahead and do it. If I can call in, I'll call in.

Tim:
On the 13th or the 17th?

Michelle:
Either one. I'll try to call in.

Tim:
So we can do it the 13th.

Jennifer:
Thank you. I'll send a reminder to everybody tomorrow.

Tim:
Of course. Thank you. That being done, is there any new business?
I guess the only new business I would consider is letting Consumer Affairs know to plan an extra 54 minutes for Attorney Donofrio who did a great job.

Mario:
Thank you, Jeff.

Tim:
Thank you very much.

Representative Policy Board
Finance Committee
June 12, 2023

Tim:

I will entertain a motion to adjourn.

Charles:

So moved.

Jay:

Second.

Tim:

I never hear a second. Thank you. I heard the second. Thank you so much. All those in favor?

Committee:

Aye.

Tim:

We're adjourned. Thank you so much all.