

WASHINGTON STATE INVESTMENT BOARD
Administrative Committee Meeting Minutes
September 20, 2007

The Administrative Committee met in open session at 8:30 a.m. in the boardroom at 2100 Evergreen Park Drive SW, Olympia, Washington.

Committee Members Present: Patrick McElligott, Chair
Glenn Gorton, Vice Chair
George Masten
Sandy Matheson
Dave Scott

Other Members Present: Mason Petit
Judy Schurke

Also Present: Joe Dear, Executive Director
Gary Bruebaker, Chief Investment Officer
Liz Mendizabal, Public Affairs Director
Theresa Whitmarsh, Chief Operating Officer
Celina Verme, Finance and Administrative Services Director
Kristi Haines, Executive Assistant

Paul Silver, Assistant Attorney General
Brian Buchholz, Assistant Attorney General

[Names of other individuals attending the meeting are not included in the minutes, but are listed in the permanent record.]

Chair McElligott called the meeting to order.

ADOPTION OF THE JUNE 21, 2007, MINUTES

Vice Chair Gorton moved to adopt the June 21, 2007, Administrative Committee meeting minutes. Mr. Masten seconded and the motion carried unanimously.

[Ms. Matheson arrived at 8:33 a.m.]

SUPPLEMENTAL BUDGET REQUEST

Mr. Dear said that some funding issues emerged just after the start of the biennium. The cause is based mostly on how the budget process is built, which is not parallel with the investment officer salary setting schedule. Staff recommends submittal of a supplemental budget request to the Office of Financial Management (OFM) and to the Legislature in the 2008 session to address the shortfall.

Ms. Verme described that the WSIB had received an appropriation of \$19.2 million for administrative expenses for the current biennium. Funding issues have since emerged, which are

previously approved investment officer salary increases, a retirement buy-out for a senior investment officer, the lack of capacity for future investment officer salary increases beyond what is granted to classified employees, and an inability to pay the Department of Information Services for the management of the data warehouse firewall.

Ms. Verme explained that reasons for the shortfall include OFM interpretation requiring additional appropriations to fund the retention pool, the misalignment of the biennial investment officer salary survey and budget process, and an average annual raise to investment officers of five percent. Staff proposes submitting a supplemental budget request of \$1,527,000 to restore investment officer salary increases of approximately \$1 million; \$457,000 for future salary increases; \$32,000 for the retirement buy-out; and, \$36,000 for the data warehouse management. If the supplemental budget is not approved, Mr. Dear advised it will result in an inability to fill positions and grant salary increases. In response to questions from Mr. Masten and Mr. Scott, Mr. Dear said the additional appropriation would fund all of the shortfalls, but one cannot predict the outcome of the OFM and legislative decision-making process.

Mr. Scott moved that the Administrative Committee recommend that the Board approve the proposed 2007-2009 supplemental budget request. Vice Chair Gorton seconded and the motion carried unanimously.

AGENCY REQUEST LEGISLATION

Mr. Dear relayed that the Committee and Board had considered submitting agency request legislation to amend the WSIB indemnification statute as it relates to liability protection, which appears to provide protection to nonvoting Board members but not voting members nor staff. Two years ago the Board had approved moving forward with agency request legislation, but staff elected not to based on tactical reasons. The issue was brought forward again in June and approved by the Administrative Committee, but not by the Board. Since then, further legal review has been done and the WSIB assistant attorney general Mr. Buchholz has provided advice upon which staff concluded that legislation change may not be required. His review concluded that voting Board members and staff should be covered by general state statute that covers all state employees with regard to indemnification and legal representation.

Mr. Silver said that Mr. Buchholz's memorandum lays out the immunity statute that provides the strongest amount of liability protection to the nonvoting Board members. While the statute lacks the immunity language for voting Board members and staff, it is felt that voting members and staff would be covered by the general state statute with regard to legal defense. Mr. Silver said that, while legal counsel believes it is unnecessary, he suggested that the Board consider whether or not to seek an amendment to the WSIB liability statute. Mr. Masten inquired whether Board members and staff have the same indemnification protections available to all state employees. In response to Mr. Masten's question, Mr. Buchholz clarified that members of the Board and staff have the same indemnification and AG representation protections as all other state employees provided they act within the scope of their duties. The WSIB statute provides immunity only to nonvoting Board members for exercising reasonable diligence within the scope of their duties. Ms. Matheson questioned if the Board has a higher level of liability based on its standard of care and duty to make decisions of a reasonable investor. Mr. Buchholz explained there is a difference between the applicable standard of care and the issue of personal liability that could result. Mr. Bruebaker clarified that staff is not asking for any more protection for itself or voting members of the Board than is provided to any other state employee in performance of their duties. There has been a cloud of misunderstanding relative to interpretation of the WSIB's

liability statute and staff suggests that the Board may want to seek a formal Attorney General (AG) opinion on the issue because an assistant attorney general's memorandum is not binding. Mr. Buchholz said the memorandum lays out the contextual framework of statutes providing indemnification and AG representation protection to all state employees, including Board members and staff, and is intended as background for consideration of policy issues by the Board in determining whether the Board believes it needs more protection than other state employees. It does not serve as a recommendation regarding whether the Board should seek more protection. Mr. Silver said that, setting aside whether the state or the WSIB would pay any judgment resulting from a lawsuit, this gets to the issue of who is represented in court. A different test exists between the regular statutory language covering all state employees and the WSIB statute on legal defense.

Mr. Masten moved that the Administrative Committee recommend to the Board that staff request a formal opinion from state's Attorney General on the indemnification protection issue. Vice Chair Gorton seconded and motion was approved unanimously.

ASSISTANT ATTORNEY GENERAL'S REPORT

Chair McElligott announced that the Committee would go into executive session 8:49 a.m. to discuss litigation or potential litigation with legal counsel since public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the WSIB. He said the executive session is expected to last until about 9:00 a.m. at which time the Committee will reconvene in open session.

[Ms. Schurke arrived at 8:57 a.m.]

[The executive session concluded at 9:07 a.m. and the Committee reconvened in open session.]

OTHER ITEMS

There was no further business to come before the Committee and the meeting adjourned at 9:07 a.m.