

MINUTES OF THE MEETING

FINANCE COMMITTEE
BOARD OF PILOT COMMISSIONERS
INTERCONTINENTAL HOTEL
100 CHOPIN PLAZA
MIAMI, FL
APRIL 24, 2003 1:00 P.M.

CALL TO ORDER:

Mr. Buffington, Chairman of the Finance Committee, called the meeting to order at 1:00 p.m.

MEMBERS PRESENT:

J. Michael Buffington, Chair
Eugene Sweeney, Vice-Chair
John Hiers
David Leech
Victoria Robas
James Winegeart

MEMBERS NOT PRESENT:

Cheryl Phipps

OTHERS PRESENT:

Anthony Spivey, Executive Director
Greg Spence, Government Analyst
Rivers Buford, Board Counsel

APPROVAL OF THE MINUTES OF THE MEETING

January 9, 2003

Commissioner Robas stated that on Page 7, 5th paragraph, "was not being financially" should be "was being financially."

MOTION: Commissioner Leech made a motion that the Committee approve the minutes as amended.

SECOND: Commissioner Robas seconded the motion and it passed unanimously.

REVIEW 2ND QUARTER RESULTS (3RD IF AVAILABLE)

Commissioner Buffington stated that he was going to incorporate other items with this agenda item. He informed the Committee that they had been provided with an updated version of the report for fiscal year 2001-2002, he stated that he finally received some of the reports they had been asking for.

Commissioner Buffington stated that they had questioned whether the salaries were still high comparatively to the way they were in the past. He reported that the salaries were up in general however the board administrative office salaries were down.

Commissioner Sweeney stated that there had been an increase in salaries in 2001-2002, which was a 65% increase in salaries against the previous three (3) years.

Commissioner Buffington stated that during the same period the total for the board administrative office was down from \$52,000 to \$15,000.

The Committee discussed the way the salaries had been done versus the current salaries with the reorganization of the Department.

Commissioner Buffington discussed the 2nd quarter results. He stated the revenues were in line with the projections, the disbursements for expenses was less than one third of the projected amount. Commissioner Buffington indicated the reduction was a result of a decrease in the administrative costs associated with administrative support, board administrative office, DOAH and testing. Commissioner Buffington reviewed the results line by line. He stated that he had questioned why Investigations was so high and also questioned the Non-Operating amount charged and he still had not received a response.

Commissioner Sweeney questioned the board administrative office amount.

Commissioner Buffington stated that after he received the 2nd quarter results in early March for the current fiscal year he did a quick analysis of the figures and came up with three questions. He submitted his questions to the Board office. Commissioner Buffington stated that he has never received the Samas Report, but he did get the old format report. This answered his 3rd question, however he has not received a response on the first 2 questions. Commissioner Buffington expressed his frustration and stated he also spoke to Mr. Spivey and he was frustrated also.

Commissioner Buffington read a portion of Chapter 455 with regard to providing information regarding the budget to the boards. Commissioner Buffington stated that he recommended that the Committee demand from the Department a copy of the long-range plan which they have not been receiving. He also suggested that the Committee direct any change to the Board budget be submitted to the Department and that the Department submit any changes that would have an impact on the Boards budget.

Commissioner Buffington read from Chapter 215.37(4) regarding the budget. He suggested that the Committee request, on a routine basis, to see the proposed budget and see it as it is being developed. Commissioner Buffington suggested that the Committee, for the benefit of the Chair of the Board, request the names, telephone numbers and e-mails of all Chairs of each board with the Division of Professions and if they have a Finance Committee the respective chair.

Commissioner Buffington stated that he would prefer this method to request information, however they could invoke Chapter 119, F.S. to request information. He stated that he thought it was up to the Committee and the Board as to what approach to take. He did not see anyway that the Department could ignore their request.

Commissioner Robas questioned how the Finance Committee will get the information they are requesting. Mr. Spivey responded that he prepares a summary of the meeting for presentation to the Secretary which includes any request made by the Board.

Commissioner Robas responded that they had requested information previously and never obtained the information.

Commissioner Buffington asked Board Counsel since they have the statutes that give them the authority to have information, if the Department refused to abide by the request for information what could be done.

Mr. Buford stated that the Committee should recommend to the Board at the meeting tomorrow that the Chair of the Board be authorized to request certain specified information from the Department pursuant to Section 455.

Commissioner Buffington stated that the Statute was 455.219(3)(4), Florida Statute.

Commissioner Sweeney questioned if there was any insight as to how this situation had gotten to this point with the requirements being in the Statutes for information to be provided.

Mr. Spivey responded that he did not have any specific answers, there have been changes in the administration of the Department and they each have their own way of handling information. He stated that with the current Secretary things will certainly be handled differently.

Mr. Buford suggested that the Committee make a motion that the Finance Committee recommend to the full Board that the Chair be authorized and directed to request certain information which will be specified by the Finance Committee Chair and request the Department to furnish the information pursuant to the provisions of Section 455.219(3)(4).

Commissioner Robas suggested after discussion that the Committee request the Department meet with the Board at the next meeting.

Mr. Spivey stated that he was going to offer an invitation to Commissioner Buffington at this meeting to come to the Department and meet with the financial records staff to hopefully get the information the Board and Committee needed.

Commissioner Robas responded that she would like to take this a step further and have a Board Workshop in Tallahassee for the next meeting and bring in all the individuals as well as the Secretary.

Commissioner Hiers stated that they have been nice for several years why not go the public records request route.

Commissioner Sweeney suggested they do a request pursuant to Chapter 119 and they would have the information within 30 days. They could then have a workshop at the next meeting in Tallahassee. That would give the Committee and Board time to review the information.

Commissioner Robas stated that the Secretary needs to understand that the Board is frustrated.

Commissioner Buffington agreed with Commissioner Robas, the financial reports that are provided are not acceptable, he stated that he was not implying they were incorrect, they needed more information.

Commissioner Sweeney suggested that there were questions the Committee could identify that they wanted answers to and could give the Department a heads-up so they could be prepared to respond.

Commissioner Robas questioned if it was appropriate to discuss in the questions the consultant's contract, the way it is split and the issues they have with that. Commissioner Sweeney responded that it could not hurt to include this.

Commissioner Buffington stated that it was a request for information.

Commissioner Robas stated that she wanted to know if there was something that requires the consultants' contract to be split.

Commissioner Buffington provided background information on the consultant's contract. Originally the contract was under the Division of Professions and had been there for many years until around 1995 and the contract was transferred to the Division of Regulation. At that time the majority of the work was in regards to legal issues. In Fiscal year 2000-2001 the contract was split 50/50 between the Division of Regulation and Professions. The purpose of the change was to allow better accountability of the services rendered and to receive direct authorization from the division in which the work was performed. Late in the 3rd quarter, the limit set in the contract for Professions was met and future payments were stopped, also at that time there had been an ongoing problem with receiving authorization to investigate marine incidents. Both problems persisted until the final days of the fiscal year and amendments were drawn up and signed adjusting the contract to pay for the work that was performed. Efforts were made by Commissioner Buffington to make sure this would never happen again and the Department rejected the suggestions and felt an earlier notice by the consultant/investigator would alleviate the delay in acquiring amendments. The next fiscal year the consultant/investigator gave sufficient notice to the Board and the Department that he was approaching limits for the contract with the Division of Professions. The mishandling of the contract amendments again caused payment for the work to be withheld. The Secretary failed to sign the amendment prior to the end of the fiscal year and this caused a provisional settlement agreement to have to be drafted and signed in order to protect the Department because it had authorized work without a signed amendment in force.

Commissioner Buffington stated that the same problem that has been encountered the last two fiscal years again happened this fiscal year, where again an amendment had to be created and the request had been made in a timely fashion and again there was a delay in payment to the consultant/investigator. It appears that the Department has not learned from their mistakes and the Department keeps trying to put the blame on the consultant/investigator why the amendments have not been passed. Not once since the contracts have been split between the two divisions has the consultant/investigator ever exceeded the sum of the two original contracts. The Department has said they wanted to directly trace costs. If you are tracking costs you should know when an amendment is going to be needed.

Commissioner Buffington stated that he thought it was time the Department listened to their suggestions because the Department cannot remedy the problem. He stated that it was ludicrous to blame the consultant/investigator for any of this as they keep trying to imply.

Commissioner Robas stated that she would like to have the investigator/consultant added to the list of items they want answers to.

Commissioner Buffington stated that he could not find any legal requirements to have the contract split.

Mr. Spivey stated that because of the controversy of having to do the amendments to the contract every year he was prepared to discuss the contract at the meeting since Commander Dunton's contract expires June 30th and this is the last meeting of this fiscal year. His purpose was to come to the Board and ask if they still wanted to continue the contract with Commander Dunton, which he knew the answer to that, this was just a formality.

Mr. Spivey stated that based on conversations that he had with Commander Dunton, Chris Workman and other Department individuals, it had been suggested that Commander Dunton go on "OPS" status, Other Personnel Services, instead of doing a contract. Mr. Spivey stated that there was a conversation with Commander Dunton and he was not opposed to the idea at the time, subsequently Commander Dunton had contacted Mr. Spivey and requested more time to think about the issues. Mr. Spivey stated that he presented the OPS position to the Department. Mr. Spivey informed the Committee that the Department wanted him to present to them the option of either doing a six-month contract right now or an annual contract as they have been doing. Mr. Spivey stated that doing a six-month contract would allow more time to think about the OPS category option.

Commissioner Buffington questioned if there was anything in statute as to the way this position was handled, budgetary or contractually. Mr. Spivey responded that initially when this was put in place it was as an expert witness, however Commander Dunton does work as a consultant.

Commissioner Robas questioned how you find an OPS employee as opposed to an expert witness. Mr. Spivey stated that with an OPS employee you would advertise the position, Commander Dunton would have to complete an application and be put in the position as an OPS employee. Mr. Spivey stated that one of the things that could be eliminated with the OPS category is the amendment issue, Commander Dunton would be paid as he works.

Commissioner Robas commented that Commander Dunton would not be paid for travel time and he travels all over the state. Mr. Spivey stated that with the other consultants he was told that they are not paid travel time, however they are paid for the expense of travel.

Commissioner Buffington stated that when the budget is submitted to the Legislature, expert witnesses are a specific line item and they carry a little more weight than OPS. If

there is a belt tightening, they are going to look at OPS first. Mr. Spivey commented that they still have the statutory backup, that is a required position.

The Committee discussed the procedures for paying OPS and the allocation of the monies with Mr. Spivey.

Commissioner Leech stated that anyone could apply for the position and they may lose Commander Dunton. Mr. Spivey stated that it would not be an advertised position, since Commander Dunton is already with the Board he would continue and just be switched from contract to OPS.

Captain Steven Nadeau stated that the State Association had a problem with replacing Commander Dunton. They have a problem with him being an OPS employee, who would be his supervisor? Mr. Spivey responded that it would probably be him approving his time.

Captain Nadeau stated that he did not think the OPS position would be any better than the contract. The Department should be held to task. He felt the Board should go forward and demand what they want, if they have to go through the Attorney General's Office.

Commissioner Leech suggested that they move forward with a strong letter to the Department.

Commissioner Buffington stated that he wanted to clarify that the problems they are facing with not being able to obtain financial information have not always existed. He stated that they had problems in the past but they did get answers.

Commissioner Leech suggested they send a letter requesting the information within 60 days, which gives them 30 days to review and establish a workshop. Sit down with the Department staff and get everything resolved and if that is not satisfactory, request information with regard to Chapter 119.

Commissioner Buffington stated he would like a motion to move forward and then amend the motion to add other items that need to be included.

Commissioner Leech stated they needed information on administrative expenses.

Mr. Buford questioned if it would serve their purpose if a motion was passed to establish a special meeting of the Finance Committee to be held in Tallahassee and the Chair invite the Secretary to attend and outline the issues they want discussed.

Commissioner Robas questioned if it would be a workshop? She also stated that she thought the full Board should be present and they would meet on Thursday morning before the regular committee meetings.

MOTION: Commissioner Robas made a motion that the Finance Committee ask the Board to approve a workshop for the discussion of outstanding issues between the Board and the Department. The agenda will be set by the Chair of the Finance Committee. The Secretary of the Department and

her representative's as well as financial representatives be invited to meet with the Board.

SECOND: Commissioner Sweeney seconded the motion.

Commissioner Sweeney suggested that they incorporate Section 119 & 455 into the resolution to give it some teeth.

MOTION: Commissioner Sweeney made a motion to amend the motion as follows that being aware of the Legislative rights as provided under 455.219 and 215.37, Florida Statutes, the Board of Pilot Commissioners respectively request a workshop with the Secretary of the Department and her representatives to discuss outstanding budgetary issues in Tallahassee at a date to be announced. The agenda will be formulated of items to be discussed will be submitted by the Finance Chair in advance of the workshop.

SECOND: Commissioner Leech seconded the amendment.

Commissioner Robas accepted the motion as amended and it passed unanimously.

Commissioner Buffington asked Mr. Spivey to restate his request regarding Commander Dunton.

Mr. Spivey commented that based on the request by Commander Dunton that he be given additional time to consider the OPS status, he was presenting the six-month contract process and needed to know how the Board wanted to proceed.

Mr. Buford questioned the advantage of the 6-month contract as opposed to a year. Commissioner Buffington and Commissioner Robas stated that they preferred a year contract. Commissioner Robas commented that the OPS issue bothered her.

Commissioner Buffington asked Commander Dunton for comments.

Commander Dunton responded that he really did not know enough about it yet to know where he stood. He questioned Mr. Spivey if it was the intent of the Department to rewrite his contract to exclude travel time?

Mr. Spivey responded that it was probably the case, all of the other consultants in the Department do not have that provision and he is not an expert witness.

Mr. David de la Parte questioned if it was the intent of the Department to drive the consultant away? He stated that to say that all of the other contracts do not have the travel provision included does not sound right to him. Mr. de la Parte questioned if the Committee was going to suggest that the Department have more rational split between the two divisions.

Mr. Spivey stated that they could write it into the contract that travel time will be paid, but based on the conversations they may not do it. Commissioner Robas responded that if he is not going to be paid travel time, then his hourly rate should be increased.

Commissioner Buffington stated that they should push for a continuation of the existing contract, however the amount be amended to reflect more appropriately the division of work between the two divisions.

Commander Dunton discussed the work for the two divisions with the Committee. He stated there was a chance he could also run over on the Regulation side. Commander Dunton stated that whichever way they go he thought he should be under one set of rules.

Commissioner Buffington remarked that he had a problem with Commander Dunton being handled differently for the two divisions.

Commissioner Robas stated that a contract needs to be developed and the Board needs to review it before it is approved.

Mr. Buford informed the Board that the contract was between the Department and the consultant only, the Board has no input. The Board could make a recommendation.

MOTION: Commissioner Robas made a motion to retain the services of Galen Dunton as consultant/investigator and the Finance Committee recommends that his current contractual arrangements be maintained for a one year period.

SECOND: Commissioner Hiers seconded the motion and it passed unanimously.

ADJUSTMENT OF GROSS PILOTAGE ASSESSMENT

Commissioner Buffington reported that it was indicated at the last meeting that the Committee might desire to reduce the gross pilotage assessment. He stated that the Committee recommended a reduction to 0.6% and the figures had been projected with the changes to the assessment.

Commissioner Leech stated that with the threat of money being taken from the trust fund, did the pilotage assessment have to be a certain percentage or could they have a floating assessment, just to protect the money that is deposited, so it does not disappear.

Commissioner Buffington replied that it could be adjusted at anytime up to a maximum of 2%. There is a delay in the process because you have to go through the rule making process. Commissioner Buffington informed the Committee that a change now would not have any bearing on the amount that would be taken from the trust fund for this fiscal year.

Commissioner Leech stated that perhaps they should take a different format in order to protect the money.

Mr. Spivey cautioned the Committee they could get the money too low.

Commissioner Buffington stated they needed to consider that they are going to have more cases and for one case they are projecting spending \$12,000 for an expert witness and the cost for DOAH could be higher, depending on the number of cases within the

Division of Professions. He also stated that they could have a meeting at anytime to adjust the assessment if the need arose.

Commissioner Buffington explained the process for assessing trust funds last year. He stated that the Pilots had a cash balance and it hurt them. Commissioner Buffington stated that they will know in December where the Legislature will go in the area of budgets.

The Committee discussed the assessment and the possibility of changing the amount that should be assessed.

MOTION: Commissioner Sweeney made a motion that the Committee recommend to the Rules Committee that the gross pilotage assessment be changes to 0.6% commencing July 1, 2003.

SECOND: Commissioner Hiers seconded the motion and it passed unanimously.

Commissioner Buffington stated that he will assemble the quarterly financial reports and send them out to the Board.

Commissioner Sweeney stated that Mr. Spivey had provided them with staff percentages and he had questions on it. In September 2001, the pilots percentage was 13% and now a year later it is 26%, it has doubled and he questioned why. He also requested this information on a quarterly basis.

Commissioner Buffington stated that the allocation may have doubled, but the actual cost has not.

Commissioner Robas stated that she understood what everyone did except Renese Jones and had a hard time equating that she and Elise did the same amount of work for the Pilots. Commissioner Sweeney stated that the last statement they had, Renese was doing 25% for Pilots and now it is 40%. Commissioner Sweeney asked Mr. Spivey why the allocation had doubled in a fifteen-month period.

Mr. Spivey stated that with the contract issues and the finances going on with the Board right now, there is more time being spent on this Board.

Captain Nadeau stated that this was for only three months, what happened for the rest of the year, what about the year before. There is an individual that spent 40% of their time on the Board and they never heard the name before.

Commissioner Buffington stated that this was all that was asked for and they got what they asked for.

Commissioner Robas responded that they need to ask every quarter that there be a report on the percentage for shared board offices and staff percentages by profession and it be included in the agenda packet. She asked Mr. Spivey what Renese Jones did for the same amount of time that is allocated for Elise.

Mr. Spivey responded that Renese is his assistance for the different boards. She takes care of the correspondence, answers the telephones when they come in from the Call

Center. Mr. Spivey stated that there was a lot of the behind scene work that Renese does.

Commissioner Sweeney questioned if Mr. Spivey could go back to fiscal year 2000-2001 and 2001-2002. Mr. Spivey responded that he would provide the information.

Mr. Spivey informed the Committee that the Department said they could put the Secretary on for the July meeting, however her schedule is subject to change at any time.

There being no further business to come before the Committee, the meeting was adjourned at 3:50 p.m.