

**PUBLIC RECORDS EXEMPTIONS ACCOUNTABILITY COMMITTEE
(Sunshine Committee)**

**Meeting Minutes
October 20, 2015**

Members Present: Nicholas Brown, Lynn Kessler, Nancy Krier, Michael Schwab, David Zeeck, Kathy George, Senator Maralyn Chase, Rowland Thompson, Senator Pam Roach, Honorable Pete Holmes

Members Absent: Representative Jeff Holy, Sara Di Vittorio

Staff Present: Assistant Attorney General Dionne Padilla-Huddleston, Committee counsel; Elaine Ganga, interim Committee staff; Melinda Brown, Committee staff

Additional Staff Present: Gary Smith, Seattle City Attorney's Office

1) Call to Order

1.1) Introduction/Roll Call and Establishment of Quorum; Review Membership Appointments

Chair Michael Schwab called the meeting of the Sunshine Committee (Committee) to order at 9:02 a.m., October 20, 2015 at the John A. Cherberg Building, Conference Room ABC, Olympia, Washington. He noted this is the last Committee meeting of the year. He also welcomed Melinda Brown, paralegal in the Attorney General's Office, who will be staffing the Committee.

Ten out of 13 members were present at the beginning of the meeting. Senator Pam Roach arrived at 9:50 a.m.

Chair Schwab updated the Committee on the status of members' terms later in the meeting, after Agenda Item #4.

1.2) Adoption of Agenda for October 20, 2015

Motion: To adopt the October 20, 2015 agenda. Moved by Senator Maralyn Chase; seconded by Honorable Pete Holmes. Approved unanimously.

1.3) Review and Approval of August 18, 2015 Meeting Minutes

Motion: To approve the August 18, 2015 meeting minutes. Moved by Lynn Kessler, seconded by Mr. Holmes. The Chair described that the two proposals approved at the August 18 meeting would be attached to the minutes, per his request. The Committee also discussed clarifying the August 18 motion by Sen. Roach regarding the process for reviewing exemptions. With that

correction (to attach the proposals) and the anticipated motion clarification (discussed at Agenda Item #5 at this meeting), the minutes were approved unanimously.

1.4) Election of Vice Chair

Chair Schwab stated that it was time again for the Committee to elect a Vice Chair under the Committee's bylaws, with a term expiring in September 2016. The current (and holdover) Vice Chair is Lynn Kessler.

Motion: To re-elect Ms. Kessler as the Committee's Vice Chair. Moved by Rowland Thompson, seconded by Mr. Holmes. Approved unanimously.

1.5) Meeting Schedule for 2016 (February 16, 2016; May 17, 2016; August 16, 2016; October 25, 2016)

Chair Schwab explained that the 2016 Committee meeting schedule has been set for February 16, 2016, May 17, 2016, August 16, 2016, and October 25, 2016. The same room, John A. Cherberg Building, Conference Room ABC, Olympia, Washington, has been reserved for the meetings. He asked the members to mark their calendars.

2) Old Business

2.1) Financial and Commercial Information Supplied to Investment Boards – [RCW 42.56.270\(6\)](#) (Proposal)

Chair Schwab described the background of this agenda item, which arose during the Committee's discussion of a proposal to provide an exemption for certain information of local investments boards. This proposal concerns an exemption for certain information of the State Investment Board (SIB). The existing statute at RCW 42.56.270(6) exempts from disclosure, "Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information." The Committee had discussed a proposal at its August 18 meeting to amend this SIB exemption ("Proposal A" at that meeting, dated June 24, 2015). The proposal was offered by Kathy George. The Committee's discussion on the proposal continued at the October meeting.

Ms. George provided more background on the proposal. She described that the proposal is narrower (would exempt less information) than the current SIB exemption. She stated that the proposal was based on an SIB public records policy describing its exemptions, and is designed to bring the statute in line with the SIB policy. She described that she understands the SIB has since amended its policy.

Motion: To adopt Ms. George's June 24, 2015 proposed recommendation to amend RCW 42.56.270(6). Moved by Ms. George, seconded by David Zeeck.

Committee Discussion and Public Comment

SIB Executive Director Theresa Whitmarsh, SIB Vice Chair Kelly Fox, and SIB Public Records Officer John Lynch provided a handout and commented on the proposal. Ms. Whitmarsh reviewed the handout, which provided an overview of the SIB, including its governance structure, transparency efforts and what information it considers proprietary and why.

Ms. Whitmarsh had also provided the Committee a memorandum with the SIB's revised public records policy (Policy 2.00.250). Ms. Whitmarsh described that at its September meeting the SIB voted unanimously to revise the policy to address the Committee's comments on the prior policy at the August 18 Committee meeting. She thanked the Committee for bringing those issues to the SIB's attention. Ms. George had a number of questions about the revised policy and Ms. Whitmarsh and Mr. Lynch provided information in response.

Ms. Whitmarsh described the board and its oversight role of investments, and what quarterly aggregate information concerning investments is posted on the SIB's website. Ms. Whitmarsh responded to Committee questions concerning fees. Ms. Whitmarsh described the SIB has a good reputation and is well respected, and a high level of satisfaction from recipients. Mr. Lynch described the requests for records that the SIB receives, and how many requests are from media or commercial organizations looking to collect and re-publish data.

Ms. George inquired about the difference in the UW's exemption (RCW 42.56.270(20)) as compared to the SIB's exemption (RCW 42.56.270(6)), and the scope of the respective exemptions. Ms. Whitmarsh confirmed the SIB was aware of the UW's statutory exemption, but described the SIB does not seek a similar exemption. Ms. Whitmarsh said she could not comment on the UW's disclosures, and could comment only on what the SIB believes is appropriate for its agency and given the size of its investments.

Representative Larry Springer stated that he is trying to determine if greater disclosure would result in losses to the investments funds. He said he is still considering that issue. Ms. George asked whether there are risks of harms of disclosure of information only for private funds, as opposed to public funds. She recommended the Legislature make the SIB's exemption consistent with the UW's and the proposal the Committee approved August 18 concerning local government investment disclosures. Rep. Springer said he has not made a decision on whether private funds are different than public funds, and he has heard that others may be comfortable with different levels of disclosure.

Rep. Springer left the meeting at 9:55 a.m.

Sen. Chase said she also has not yet made up her mind on this issue, and she hoped the Committee would not vote on the motion today. Mr. Thompson provided legislative history of the exemption concerning the UW's investments, and why it is limited to private funds.

Ms. George described that it would be helpful to hear from some public funds managers. Ms. Whitmarsh said she hesitates to bring in the asset managers the SIB hires into the Committee's discussion. Mr. Fox described why the SIB's partnerships on investments are valuable, and that

he did not believe the local governments intended to add the SIB exemption in to the Committee's discussion. He described that a balance has been struck with the SIB's exemption. Ms. George stated the discussion is not about whether the SIB is doing a good job in investing. Ms. Whitmarsh stated the SIB has applied its exemption for years and have had no complaints or concerns raised by requesters, and asked why take what is working and change it.

Mr. Thompson described that the SIB is different than the other public agencies that invest because it has broad representation on its board and those board members stand in the shoes of the public, and disbursements are overseen by the Legislature. He had one follow-up question on the SIB's revised policy, and Mr. Lynch said the agency can review it again.

Mr. Zeeck followed up on comments from the August meeting that the SIB has obligations to the investment recipients. He stated that the SIB also has obligations to the Committee, the Legislature and the public. Ms. Whitmarsh agreed. He also asked for an explanation on why disclosure of public investments would result in public loss, a question he stated Ms. George had asked but had not been responded to. Ms. Whitmarsh provided an example of active managers (who design their own investment benchmarks) as compared to passive managers (who may use publicly available information such as the Dow, as an investing benchmark). She stated that active managers consider their holdings proprietary until a quarter has passed. Mr. Zeeck suggested that the SIB could consider adding such detail into its policy. Ms. Whitmarsh agreed the agency could look at its policy again.

Chair Schwab summarized the discussion, stating that the Committee's discussion reflected a real issue that the Committee could in good faith examine in its purview and he thanked Ms. George for her work. Mr. Brown said he appreciated the work as well, but he did not need to examine the SIB exemption further.

Ms. George withdrew her motion. Sen. Chase stated she would like to discuss matter further, and would confer with Chair Schwab. Chair Schwab said he had also met with UW representatives, and will meet with them again next year. Ms. Whitmarsh and Mr. Fox thanked Ms. George for her work on this issue.

2.2) Personal Information Involving Child Victims and Witnesses [RCW 42.56.240\(5\)](#) – Review Committee Discussion and Vote at Previous Meeting

Chair Schwab introduced the agenda item and provided background. At the August 18 meeting, the Committee voted on a motion to adopt a proposal to recommend amending RCW 42.56.2450(5), an exemption concerning personal information of child victims and witnesses. The motion received four "yes" votes, three "no" votes, and four abstentions. Chair Schwab explained at the August meeting that *Robert's Rules of Order* would be reviewed and a report made back to the Committee as to the effect of the votes.

At the October 20 meeting, Dionne Padilla-Huddleston described that under *Robert's Rules of Order*, the motion passed four to three (the affirmative votes outnumbered the negative votes) and the abstentions are not calculated in the vote count.

The Committee discussed whether it should permit members to abstain. Chair Schwab described that while he cannot require members to vote affirmative or negative, it is his view that the Committee members should vote affirmative or negative. Nick Brown described that abstention may be appropriate when a member does not have enough information to make an informed decision. Ms. Kessler described that the Legislature pays attention to the Committee's votes on a proposal. Sen. Roach described the voting process in the Legislature including the process for seeking reconsiderations.

The Committee discussed its voting process, and the process to ask for reconsideration of a motion. Ms. Padilla-Huddleston stated that the Committee's bylaws provide that it will use *Robert's Rules of Order*, and that under *Robert's* a person voting on the prevailing side can seek reconsideration of a previously-adopted motion.

3) 2016 Legislative Session

Chair Schwab introduced the agenda topic concerning what may be ahead for the 2016 legislative session. Sen. Chase stated there will be a lot of discussion in the session about the *McCleary* schools funding decision from the State Supreme Court. Chair Schwab described there are recommendations the Sunshine Committee has sent to the Legislature that have not been acted upon, including a recommendation two years ago to repeal some inactive laws. He described the proposal should be noncontroversial. Sen. Roach described the legislative process, and encouraged more lobbying of Sunshine Committee bills by members of the Committee. Sen. Chase described the process for a bill to get on legislative committee's hearing calendar.

4) 2015 Annual Report

Chair Schwab reminded the Committee that its annual report is due November 15 and said he has begun working on it. Members can provide input to the Chair.

1.1) Review Membership Appointments (*Carried over from earlier in the agenda*)

Chair Schwab updated the Committee on the status of members' appointments. He described that all appointments are current except for Representative Jeff Holy, whose term has expired but he continues to serve as a holdover member. Ms. Kessler said she has been assured he wants to continue to serve and she has made several inquiries to the House of Representatives about his appointment, and she will follow up again.

5) Committee Discussion on Best Methods to Review Exemptions

Chair Schwab introduced the agenda topic and provided background. At the August 18 meeting, the Committee approved a motion to (1) divide up the exemption topics by subject area, (2) let the Chair or staff take the subject matters in the Schedule of Review and have it reviewed by people who have an interest in this, pro and con, and (3) then the Sunshine Committee can look at what information comes back in order to determine what exemptions should be reviewed by the Committee.

At the October 20 meeting, the Committee discussed the motion further in order to clarify what the steps to implement the motion would include.

Nancy Krier handed out an updated draft to date of the Schedule of Review exemptions list, which she said is still in the process of being made current. The list includes categories of exemptions, and needs to be revised to also include more recent exemptions added by the Legislature. Ms. Krier and Ms. Padilla-Huddleston have discussed how to update the list. Chair Schwab described that Sen. Roach had described in her motion how to break down the Schedule of Review so the Committee can consider the exemptions. He invited further discussion.

Sen. Roach introduced legislative staff members Sam Brown and James Crandall. They described there are approximately 13 legislative policy and fiscal committees. Sen. Roach suggested dividing up the exemptions by committee assignments, and then have the legislative staff review the exemptions to provide background, history, etc. Sen. Roach explained these assignments go through the staff coordinators, after a request from legislators. Ms. Kessler described the committee referral process in the House of Representatives.

In sum, as further discussed and clarified, the process under Sen. Roach's motion would include:

- Asking legislative staff coordinators to assess which exemptions would go to which legislative committee, based on the current Schedule of Review.
- Legislative staff for those committees would get the bill report on each exemption, and provide information on the exemption (a synopsis, who testified in support or against, etc.).
- Legislative staff could also provide insight on what exemptions would be more productive to review.
- The Committee's agenda subcommittee would review those documents/information from legislative staff, to determine which exemptions could be reviewed next by the Committee.

Sen. Roach described the process will help move the exemptions review along faster. Sen. Roach explained that legislative staff time will become more limited as the 2016 session nears. Sen. Roach said she or Sen. Chase will follow up with legislative staff coordinators in order to start this project. Mr. Brown said this approach is a good idea.

Ms. Krier confirmed that the work on updating the Schedule of Review would also continue at the Attorney General's Office.

Ms. George described that the Committee may want to look again at seeking specific funding for staff support for the Committee. Sen. Chase also stated she would look into Joint Legislative Audit and Review Committee's (JLARC's) review of tax exemptions.

6) Public Comment

There was no further public comment.

7) Adjourn

The Committee adjourned at 11:45 a.m.