

NATURAL RESOURCES BOARD

MINUTES

The organization and procedure meeting of the Natural Resources Board was held on Tuesday, June 22, 2004 at the Southeast Regional Headquarters, Milwaukee, Wisconsin.

PRESENT: Gerald W. O'Brien, Chair
Jonathan P. Ela, Secretary
Herbert F. Behnke
Christine Thomas
John Welter

ABSENT: Howard D. Poulson, Vice Chair
Stephen Willett

ORDER OF BUSINESS

The meeting was called to order at 10:30 a.m. Mr. O'Brien asked for a motion to be made to go into a committee of a whole to have discussion on organization and procedures of the Natural Resources Board.

John Welter MOVED, seconded by Christine Thomas to discuss matters as the committee of a whole. The motion passed unanimously by all members present. Mr. Poulson and Mr. Willett were absent.

The purpose of the meeting was to familiarize the Board with its function, organization, authorization, duties, responsibilities, particularly how it relates to the Department as whole.

1. Statutory Foundation for the Natural Resources Board.
- 1.A. Section 15.04, Stats. Heads of departments and independent agencies; powers and duties.
Richard L. Prosis, Director, Bureau of Legal Services explained (2) Deputy. Each secretary of a department may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The secretary shall exercise the powers, duties and functions of the secretary or agency head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes.
- 1.B. Section 15.05, Stats. Secretaries.
Mr. Prosis explained (b) if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board, outside the classified service. However (c) states the secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The powers and duties of the board shall be regulatory, advisory and policy-making, and not administrative.
Mr. O'Brien asked about the sentence that says the secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.
Ms. Thomas stated she studied that issue when she did her doctoral dissertation on the NRB and she described it as a continuum with mission being on one end and management being on the other end. The Board should not deal with management issues unless there is a public outcry because something in the Department isn't working.
Mr. Behnke added another situation may be when a citizen requests it.
- 1.C. Section 15.07, Stats. Boards.
Mr. Prosis explained (1) selection of members. (a) if a department is under the direction and supervision of a board, the members of the board shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law. (3) Frequency of meetings. (a) the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. In addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department for the succeeding fiscal biennium.
- 1.D. Section 15.34, Stats. Department of Natural Resources; creation.
Mr. Prosis stated this statute outlines the Department of Natural Resources (DNR) and the creation DNR. The DNR was created under the direction and supervision of the Natural Resources Board. NR 15.34 (2)(c) states that no person may be appointed to the natural resources board, or remain a member of the board, who receives, or has during the previous 2 years received, a significant portion of his or her income directly

or indirectly from holders of or applicants for permits issued by the department under ch. 283, except that this paragraph does not apply to permits issued under s. 283.33. This language comes from the Clean Water Act. Wisconsin doesn't have any case law to define "significant portion of income", but federal law defines it as 10% of income. Before someone is appointed to the Board, the Department would examine whether there was 10% of that person's income coming from holders of or applicants of permits under ch. 283, wastewater discharge permits.

Mr. Behnke asked who does the examination of someone's income.

Mr. Prosis stated that the department gets involved if asked, but we haven't been asked for a considerable period of time. The governor's office does the examination and could ask for assistance from Department of Justice or DNR legal counsel.

Mr. Welter stated the new board members were not asked this question. They only completed a statement of economic interest from the ethics board. It doesn't capture permit applications.

Mr. Prosis stated he would call the governor's office and let them know that the Department hasn't been involved in the process for last couple of years and coordinate for future appointments to ensure this question is asked.

He also explained 15.348, Stats, Conservation Congress. The conservation congress shall be an independent organization of citizens of the state and shall serve in an advisory capacity to the natural resources board on all matters under the jurisdiction of the board.

1.E. Section 23.12, Stats. Bylaws.

Mr. Prosis explained that the natural resources board may make and establish such rules and bylaws, not inconsistent with law, as it deems useful to itself and its subordinates in the conduct of the business entrusted to it.

Mr. Welter asked about Board members attending public meeting requirements. He requested a memo address what Board members can do as far as talking to other Board members, visiting with groups that invite more than one Board member.

Mr. Prosis stated that he and Mr. O'Brien have discussed that. They will work together to get some materials together and present it to the Board.

Mr. O'Brien stated we should do that as soon as possible.

2. Organization and Operation of the Natural Resources Board

2.A. Manual Code 1103.1

Mr. O'Brien asked whether the Committee of the Whole needed to be on the agenda or if it could just be added when it was needed. He stated that he thinks the agenda should be changed because it is misleading to the public. It appears that the Board is breaking into committees when more often than not they meet as a full Board.

Mr. Behnke stated that operating committees are utilized when there is a full agenda to save time and work through the agenda more efficiently.

Mr. Welter suggested that the Committee of the Whole is appropriate for round table discussions, but items like retirement resolutions should not fall under this category.

Mr. Ela suggested revising the manual code 1103.1(c) to delete following form and order because the agenda typically isn't in the order listed in the manual code.

Mr. O'Brien stated due to the lack of time, he would just mention a few other points and if there are other questions or concerns they could be addressed at a future meeting. He mentioned the modification that was made to VII. B. regarding individual board members authority.

Mr. Behnke raised concerns about when the Board has taken action, there is split vote and those who lost on that motion take further action on their own such as contacting a legislator. That should be prohibited as far as Board member conduct is concerned.

Secretary Hassett asked the Board if they had any objection to not reading the retirement resolutions.

Mr. O'Brien stated it would be sufficient to just read the names of the retirees to recognize them. He also stated there would be a subcommittee appointed at the regular Board meeting to address these issues.

2.B. Manual Code 1020.7 (Information to Department employees.)

3. Responsibility of the NRB for the Direction and Supervision of the DNR (Richard L. Prosis)

The meeting was adjourned at 12:00 p.m.