

## **CHSRA Board Meeting - Executive/Admin Committee January 6, 2010**

*Transcript provided by Rita Wespi of CARRD; [rwespi@carrdnet.org](mailto:rwespi@carrdnet.org).*

*NOTE: Partial transcript. Cambria font is verbatim; Calibri is either verbatim, close to verbatim or paraphrased. Use the audio link to verify before quoting passages where exact accuracy matters. Rita*

*Audio: [http://www.cahighspeedrail.ca.gov/images/chsr/20100126133012\\_Jan\\_6\\_2010\\_Exec\\_Admin\\_Cmte.mp3](http://www.cahighspeedrail.ca.gov/images/chsr/20100126133012_Jan_6_2010_Exec_Admin_Cmte.mp3)*

### **Agenda: Policies & Procedures; Conflict of Interest; A&E Contracts; Senior Staff Hiring**

Present: Curt Pringle, Quentin Kopp, Fran Florez, Mehdi Morshed, George Spanos. (Daryl?)

Pringle: Calls meeting to order.

Chair Curt Pringle: what would you like to do with your recorder?

Richard Hackmann: All I'd like to do is place it somewhere where it can be heard. [] Richard Hackmann, I am from Palo Alto, California on the peninsula. My only request today, was, obviously, as I'm sure you all know the high-speed rail has a lot of interested people there. Luckily I work for myself and I work for my own community group so I would was able to take time off and I came up here on my interest of HSR, however I was asked by some of my neighbors if I could record it because I know a lot of moms with kids and things like that can't make it. So the only request from the community was if there could be an audio or video recording. They're really interested in what's going on and they really appreciate you getting the board meetings recorded but they also wanted the subcommittee meetings recorded. it be much appreciated thank you.

Curt Pringle: thank you very much. You're more than welcome to leave your tape recorder there. We will endeavor to figure that out as I've said we've only had 3 executive committee meetings, one operations committee meetings so a total of four meetings since committee structure was established in September. So every action item taken by the committee must go through the full board so there's no public action taken that would affect any planning or anything else unless the full board is aware of it and participates on a vote on that. I certainly know that these committees are important and we're going to endeavor to figure out how to get microphones working in a Senate committee room and to provide that information to everybody on the web. []

Quentin Kopp: You make an important point because people might misunderstand the responsibility and Authority of the committee as it reports to the authorities. And I'll repeat it: that a committee,

unless there is a specific authority granted by the whole board but not at the board meeting, of course, only the authority by majority vote.

Pringle: since our microphones are not up this is the first time in my life that I could ask you to speak up. So that all of the tape recorders that are playing here, every word [inaudible]. So keep that mind alright? Therefore after that on our agenda is approval of **minutes**.

[Discussion of **approval of minutes**.]

## **5:00 Policies and Procedures**

Pringle: next item of business is the board's policies and procedures. I think it's slightly premature and probably appropriate to at least initiate some discussion on what should be a part of policies and procedures. I know it's one of the goals of the executive committee to fully explore policies and procedures of the authority and to adopt them as such to make them available. So if I may ask Mr. Spanos to come forward. As you Mr. Spanos put together an overview of the policies and procedures of the board that have been adopted by the board up to this point for us to see in terms of[]. Is that correct?

George Spanos (CHSRA's legal counsel): Item number 5 which deals with compensation reflects what I think has been agreed upon and I don't know it was in the policies as was adopted in July meeting.

Pringle: it was adopted in a new meeting has a board policy.

Mr. Spanos: okay in any event what I intended to do here was restructure it. I understand it's a work in progress I accept that. I did have a few specific comments just to raise some issues. Now, 2.3 which states each chairperson and vice chairperson may hold that office to consecutive terms, I interpret the intent behind that to mean that no board member can serve more than two consecutive terms as chairperson and likewise as chairperson. In other words it's not an absolute limit of two consecutive terms and you can never be chairman again, but rather you can't serve three consecutive terms. That's my interpretation, if you'd like I can propose a clarification if that's what you intended.

Pringle: what I would really like to do is make a broader proposition. These are policies and procedures that have been adopted and I think[] things have moved forward. And they haven't been approved in terms of a [] set up policies and procedures for the operation[]. So I really would like to 1) contemplate what it would take to create a set of policies and procedures the address each of the areas that we want to have addressed and then talk about what elements should be part of that. So I think such things as the Board of Directors -- I'm looking at OCA's policies and procedures just so you know -- I don't have another copy of it so I apologize. They have one [] 2 board of directors, and under their there are some employees, 3) administration, 4 meetings of the Board of Directors, 5) corporate powers 6) contracts 7) budget 8) audit. I believe with you Mr. Spanos the CTA policies and procedures but I'd also like to get a couple other agencies - the Los Angeles Transportation Authority certainly any of the Transportation Authority's in the Bay Area, so we have a proper reflection of policies and procedures. And reload scratch that and really look at what other agencies that we have -- we all know we're transitioning from

our purpose really over the last 12 years. Developing the idea of the high-speed rail and getting it to a point of establishing a route and some preliminary engineering work and that would complete engineering work and moving to construction phase and that changed the level of focus our organization has to have. So we need to be a lot more precise. If I could, I look through the Orange County transportation authority, and I'm not saying they're a perfect set of[] policies and procedures but let me read some of the subcategories for number one the purpose [ reads from it]

#### 11:00 Conflicts of Interest

Quentin Kopp:

Curt Pringle: [] awareness and reinforcement so the public knows that the policies are all in one place that govern the board. also for the senior management -- their responsibilities for conflict . And further I would like to review for some of the committee members and consultants conflict issues. I know it's a challenging place to go. George, could you share with us right now, -- you provide a [] contract which has a conflict of interest restrictions that would be in place.

Spanos: any consultant who would be involved in making decisions is subject to the conflict of interest laws. And in a nutshell that's the law. And so somebody who is performing a purely clerical function for example would not be. But somebody who's in a position to influence governmental decision ideally should be covered by the conflict of interest code and by whatever similar provisions might be applicable. I mean in a sense they are almost forming a staff function -- a high level staff function. I don't know if that answers your question.

Pringle: do any of our contractors file a form 700?

Florez: yes.

Pringle: which ones and at what level is that?

Morshed: I don't know -- I think it's mostly top-level management but beyond that --

Florez: right but the lets say with PB, it would be the program manager Tony Daniels , all his regional managers who work at the regional level and any of their functionaries like their engineering managers or their environmental manager. They do submit form 700s.

Pringle: full 700s? Wow.

Florez: yes.

13:45

Quentin Kopp: supplementing that, the conflict of interest code which is --

Pringle: May I just finished this? So, PB does; but what about all of the regional engineering consultants?

Florez: I have to go back and check to see, I think that was a requirement but I need to make sure that it is being fulfilled.

Pringle: okay.

Spanos: can I just clarify one thing? Because we had a conversation some time back about having the consultants -- which consultants should comply -- and to put it in simple terms because I can't remember the details because of the complexity of it, but to take a simple perspective -- PB has a lot of people employed by it who are working on this project part-time and full-time. People whose work is going to be reviewed substantially who don't really -- who may be making a recommendation but that recommendation has to be approved by several levels above that person -- that person at the bottom end of that hierarchy probably is not required to comply with the same rules and regulations as some at the top. So Tony Daniels --

Pringle: that's legitimate, I mean, personally I know how onerous 700 forms are -- I fill out a lot of them at multiple times for different people for [] that I sit on -- and if part of your work at an engineering firm, say, 10% of your day is to work on this project, and you make someone fill out a form 700 that is a huge burden to be placed upon them. So I can understand that there's got to be a line drawn, just like there is in government, not every government employee is required to fill out a form 700.

Spanos: let me clarify, it's not based on the percentage of time a person devotes to working on the authority project, it depends on the nature of the work and whether his recommendations will be passed on up unfettered and without substantial review and approval at a higher level.

Pringle: the state's conflict law applies to anyone who fills out a form 700?

Spanos: generally speaking those people who are designated filers are people who are in a position -- at least potentially -- to influence governmental decisions.

Pringle: but they must -- so legally they are bound by the conflict law -- in terms of gift restrictions, in terms of all interactions that are representative under form 700?

Spanos: well form 700 -- and I'd have to look at the law to give a more precise answer -- form 700 and what one is required to report doesn't define what constitutes a conflict of interest. The function of the form 700 is to reveal somebody's economic interests -- at least those economic interests that might cast light or illuminate a potential conflict of interest. That's why some people -

Pringle: I guess that's my second question was -- and that is if you have a financial interest of \$500 or more within a calendar year you are prohibited from participating in the decision with that entity.

Spanos: yes but that's not a function of having to report that, that's a function --

Pringle: I understand that. So is that restriction, um, a restriction that applies to our contractors?

Spanos: I believe the consultants and everyone else who is a designated filer associated with the authority has to report the widest range of economic interests.

Pringle: yeah but reporting it and being restricted from participating on a project -- I don't know the law in that regard. For example, if you got a gift for over \$400, you are prohibited from voting, yet a contractor is not voting.

Spanos: let me give you a -- when a contractor is engaged in the making of a governmental decision, if he makes a recommendation and you place great reliance on that contractor, that consultant's recommendation, he is making - he is engaged in the making a governmental decision.

Pringle: Yes, so is he prohibited from participating in that governmental decision if he has economic interests over \$500, or a gift over the gift limit, or any of the other elements within this conflict of interest law?

Spanos: what the law says is that a public official -- which is defined to include consultants who are engaged in the process of making governmental decisions -- cannot participate in the making of such a decision if it will have a foreseeable material economic impact on them or on a source of income. Okay? What I'm trying to say is that it's important not to assume that what is required to be reported on the form 700 necessarily constitutes an enumeration of those things that would constitute a conflict. Okay? In other words, they --

Pringle: No, no, I understand, George. I'm just saying, are they the same as me?

Spanos: the same as what?

Pringle: when I fill out a form 700, and I have an economic -- if I've demonstrated that I have an economic interest over \$500 a year and I perceived that there's a -- whatever the language is -- that there could be a material benefit to that entity, I am precluded from voting, therefore is a contractor precluded from participating in the same fashion?

Spanos: yes. I think the general answer is yes. Let me point out, though, to illustrate the point I was trying to make: you probably have to report ownership in stock, okay? So maybe you own 100 shares of Coca-Cola and now you're voting on whether to allow Coca-Cola to install a vending machine in the authority's offices. Is that a conflict? And you precluded --

Pringle: Well I actually think that your challenge because it's a material benefit and the law doesn't say that 100 shares of stock of that size means I have a material benefit. Stock ownership is over 5% ownership to trigger material benefit.

21:00

Spanos: that's right. But you still have to report, that's my point. There's not a 1 to 1 correlation.

Pringle: Right, I got it. But, but, gifts, for example, so the gift restrictions that are presently within a conflict law apply to reportable consultants.

Spanos: I'd have to double check that. The gift limitations --

Pringle: -- what's that? --

Mehdi Morshed: I said let's hope not because the contractors are receiving gifts all over the place.

Spanos: the gift limitations --

Pringle: -- We don't -- don't say that, we don't know that --

Morshed: well, I know, they're getting trips and, you know, all kinds of -- well, anyway.

Pringle: -- The definition of gifts is if any other client of that contractor gave them a gift, that, you know, it's a hard restriction, right? I mean, the present gift law, it might have nothing to do with the contract of HSRA, but if a pal of that contractor gave him a \$2000 watch that is a reportable gift if they are not regularly exchanging gifts. But that might have nothing to do with us, but we still have to report all gifts that they've received if we have to fill out a form 700. I just don't know how that applies to contractors.

Spanos: Well the agency can say that people occupying certain positions do not have to disclose all economic interests. They can be required to disclose a smaller universe of interest--

Pringle: --so we do that?

Spanos: in your case everyone listed who's designated as having to file the statement is within the maximum disclosure category. Whether that's completely necessary or not it is a matter of that may need to be discussed.

22:00

Pringle: so I'd need to have a list on the discussion of conflict with 1) we are asking people to disclose far more than they need to, presently, as private business entities. 2) How far down that line is drawn. 3) I actually would like to have a fuller discussion about receiving any gifts from any entity in which you are engaged with. So this contractor's working in this county and this person living within that county that's a transportation official, or a business person gives that contractor a gift, I actually am concerned even to that very lowest level person who works regularly who receives any gifts to that regard as a contractor of the authority. We as public officials have to provide a list of all of our gifts. If they go over a certain amount we have to disqualify ourselves or reimburse the value of that entity. I just, you know, those people who are non-reportable, I still worry about them receiving gifts. So it's a very cautious area.

Spanos: Are you -- let me ask you a question --

Pringle: specifically, George, I've been told that certain FRA funded projects are -- there is a total gift ban where there are FRA dollars involved. I just don't know --

Morshed: I know FRA staff people are very restricted, but whether it applies to other people, we don't know. Because we haven't received any money so we don't know what those conditions are yet.

Pringle: Now that was an issue last year with the CTA that certain projects no one involved in that can receive any gifts. FRA, Daryl?

Spanos: let me ask --

Daryl: All federal contractors.

Pringle: So there are higher level gift restrictions, and I just don't know if they apply to consultants, but I would like to at least -- while we're having this discussion -- to fully vet that out.

Spanos: Right—

Mehdi Morshed: Mr. Chairman, while you're looking at the overall conflict of interest codes, it might be worthwhile to also take a look at the categories of disclosures that -- because when the authority started 11 years ago -- the authority established certain categories of stock, financial institutions, utilities, and things that -- those categories if you have investments, you have to report. You might want to revisit that and find out with the changing of the authority's activities -- if there are some additional categories that you need to in cover or if some of them are unnecessary because I think that's an area that is worth visiting in terms of knowing are you covering certain categories that should be covered.

Quentin Kopp: yeah, I want to bring up the conflict of interest code. As I made notes of the code that were adopted in 2001, and that's got to be re-examined, Mr. Chairman, including any statutes that are post 2001 which might apply or California code of regulations, George. But number two, apropos this discussion --

Pringle: on that point, we have a conflict of interest code, right? I want to make sure we incorporate all of that in the policies and procedures in one place that everybody can go and it's all available to them to that regard.

Quentin Kopp: I understand that, I have no objection to that. But there is the conflict of interest code, and George, you explained this, apropos Chairman's line of querying, this conflict of interest code should govern the conduct of all High-Speed Rail Authority members, executive directors and designated staff and *consultants*. This code applies to consultants, and it repeats itself, for example, "no *consultant* shall solicit or accept for personal use directly or indirectly any gift". Next sentence, "no *consultant* shall accept gifts from any single source in any calendar year in excess of the annual limit" which is \$400. So--

Pringle: --okay, so I guess it does interchange the word consultant --

Spanos: Except that, except--

Quentin Kopp: --yeah, a) "consultant" is already covered, b) was consultant there?

Spanos: There's a footnote on the first page of the conflict of interest code --

Quentin Kopp: Yeah I know. But you've got to go to the California code of regulations and see how a consultant is defined.

Spanos: Right. And if I remember correctly, that provision talks about people who are in a position to make decisions where --

Quentin Kopp: That's the standard.

Spanos: Right. Now you can expand that, you know. I mean, within reason I think that can be modified if you feel its embrace is not as inclusive as it ought to be.

Pringle: but if nothing else, we should not just leave the word 'consultant' hanging there, it should be a designated consultant or some way to define who we are talking about as consultants because --

Spanos: How do you mean? In terms of the particular--

Pringle: --as it applies to the California Code of Regulations. So when we reference consultant over and over again here we really don't mean every consultant that has a contract with the authority.

Spanos: well you're referencing --

Quentin Kopp: Excuse me. We don't mean every 'person'.

Pringle: Every person who's in a private consulting entity.

Spanos: That's correct.

Pringle: So somehow we just need to make sure, when people read that, they're not assuming it applies to every person or private company who provides --

Spanos: what I would suggest then, because that regulation that's referenced in footnote one can always be modified by the Fair Political Practices Commission, so what we should do, among other things, is make sure that any regulations cited in the conflict of interest code that copies of them -- updated copies of them -- are attached to the conflict of interest code for easy reference.

Pringle: I think that's a good idea but as I said, the word 'consultant' leaves us hanging -- it includes everyone and in fact it doesn't include everyone because the footnote says it's going to be limited to those where it applies. Right? So there is obviously a more defining word or a preface to the word consultant that might make it more clear.

30:00 Mehdi Morshed: Mr. Chairman, the other thing is, both as far as the consultants are concerned, my suggestion would be if it's possible, to develop a set of levels that either the board somehow to the[] who are even in the staff and how low do you go []. Working the legislature, if you work there [] if you don't you don't have to do that and so my suggestion is that the board do the same thing for your own staff. Exec dir, [] and if there's a 4<sup>th</sup> level, how far do you want to go to

Consultant. Our definition of the program mgr, that the program mgr and actually identify the level of consultant that formalizes if you should or I you should not. Because so far it's been very informal. And because we didn't have [] it was all okay. But it's -- eventually the board should have a formal process that, you know, at this level you should file form, at that level you don't need to.

Pringle: I guess I look beyond just the form. I think that's exactly right, Mehdi, and I hope we can work that through, George, [] by the form [] as it pertains to accepting gifts. And that doesn't necessarily then require them to fill out a form, just a prohibition that we've established. So, you know, it's open to [] a certain level of interaction to the public. I'm concerned about receiving gifts at that level.

Morshed: Yeah, and you could be – separate from that – a policy to say that no staffer who works for the authority takes a gift for himself exceeding 400 -- x number of dollars. [] But those are the kinds of things that obviously we like, you know,

Kopp: A procedural question, George. Chairman's suggestion of holding the **conflict of interest** [] in the board policy would seem to make it easier for the public to find a [] Do we also separately never let staff adopt a duplicate set of provisions in a conflict interest code?

Spanos: Well, in the way—

Kopp: --just like the college board policy of conflict of interest []

Spanos: What I would do is adopt let's say, a revised conflict of interest code, because I see that that's going to happen, but have a section of the policies and procedures with a section titled Co of I code, and whatever you adopt, which requires APC approval, okay, will then be inserted into that section of the P&P for easy reference. As long as it is easy reference, so write it so that it's easy enough to reference. Put it in English, okay?

Morshed: George, what you're saying is that the Conflict of Interest the board has to submit it to FPTC for their approval, but the rest of the policy the [] don't need to have it approval.

Spanos: Precisely, you don't want to make it all one organic document, but you can compile these things in one place.

Kopp: If I could make this observation. The last paragraph of our Conflict of Interest code [] file the form 700 lacks any reference to consultants. So that's the answer?

Spanos: Where is that?

[]

Kopp: Last paragraph. It says employees. It refers to

Spanos: Except that in Appendix A that it designates the position of for designates the positions and they include consultants. That s the 4<sup>th</sup> category under designation. And as to each category, authority members, exec dir, deputy dir, and consultants, you'll see the assigned disclosure categories which happen to be all 3 disclosure categories which in turn are defined in the following 2 pages.

Kopp: Okay, but make it easier to read.

Pringle: So again, I'd like to see how that other examples are full policies and be able to fill those out. I wrote down a few of those things – I don't know if they're redundant.

Kopp: before you read that, let me suggest adding bars. [] until project in the last 20 years.

Morshed: one thing that [] the fact that all the other agencies have not stated the limitations, that doesn't apply to us, necessarily and you have to make sure

Kopp: [] BART's the only one I know in the Bay Area

?:

MM:

36:00 P: structure, who's included, and make sure [] certainly it lacks what we have now. My notes are [] also things I'd like to see [] more things on the Brown Act so the public understand how our meetings act under the Brown Act. Additionally, having remote meetings, potential of having meetings where a member calls in and we also have Umberg, and I'd like to make sure that's a policy that we have and people understand how things occur. [] Additionally, I'd like to be very clear on how agenda item distribution, how it's available, again, some of that government brown act, I'd like to go beyond that. I'd like more documentation information provided earlier to the public. And actually reference to have them available on the website of a way of public notification. At least with the BA requirement

[. . .]

#### 40:00 Architectural & Engineering (A&E) Contracts discussion

Spanos describes A&E contracts and the challenge of carving out a role for the Board. Pringle gives analogy to other agencies. Morshed asks for clarification. Pringle describes a process for authorizing a contract. Kopp points out distinction between standardized and non-standardized contracts. Wants to be able to review all non-standardized contracts.

46:00 Florez: all our contracts are standard boilerplate, what Caltrans uses.

Spanos: The problem I was touching on before, is what happens if you're presented with a ranking, you know, the exec & his designees have reviewed and interviewed these firms –

K:

S: No, you don't use an RFP for an A&E contract. You do a –

K: using a low bid.

S: No. You do a request for qualifications, you do a short list, you interview them, you rank them, and then you—

P: rank them on everything but the price.

S: Well, wait a minute. [] – exactly. You don't rank them based on price. You're absolutely right. So let's say –

P: RFP A&E contract except a price.

S: Where I'm going with this is if he – the exec dir – talks to the highest ranked firm and they cannot reach a fair, reasonable price, and he says, okay, good bye, and that's it, and then he goes to the second ranked firm. And let's say they reach a fair, reasonable price, he brings it to you, you approve it, fine. What if you don't approve it? Can he go to number 3? That's – I'm not prepared to say that he can. That's where we end up with a problem because –

P: You're not prepared to say that he can?

S: I'm not prepared to say that he can then discuss with number 3 because he's the one who came up -- because he's already had negotiations with number 2 and reached what he considers in his discretion to be a fair reasonable price for the state, and that's where we –

P: But George, you know, it's very difficult to run down every hypothetical in that regard.

S: I was just explaining why –

P: If I were to oppose that, I would say, I don't like firm number 2 because I don't like their work plan, that they presented - the work plan does not match our needs. Does that mean we could go back to the exec dir and negotiate that within the contract, which you may not be able to modify that, or negotiate with firm #3 which may have a different work plan. So you do not necessarily deny a contract at that point based upon the price. I think that's what you're getting at, right?

S: Well, what I need to do is take a closer look at this and draft a memorandum that explains what I'm getting at.

P: I think you need talk to other transportation agencies that go through A&E contracts every single week.

S: Okay, I don't know what's done by local agencies like OCTA or LAMTA—

P: there's no different law. They're bound by federal law just as we're bound by federal law. []

S: No, it's the state law that's patterned on the Brooks act.

P: Which every local agency I know is following the Brooks Act.

S: I'm not familiar with local agencies.

P: How do we not follow – because our [] contracts follow federal law.

S: It is patterned on, but you don't follow federal law – if it's an A&E contract led by a state agency you follow the state law. It's in the gov code. I mention the Brooks Act because it's patterned on the Brooks Act.

P: The Brooks Act is what restricts the awarding of the AE contract based on price.

S: if tomorrow the congress repealed the Brooks Act you would still follow the state law and your regulations in letting – in awarding AE contracts. You're not relying on the Brooks Act when you rely on – when you reward AE contracts.

P: As every local agency establishes a contracting policy based on fed & state law that local agencies follow.

S: to the extent that fed \$'s are involved, you may have to comply with fed law as well, I don't deny that. But when you're awarding a state contract, funded purely by state dollars, you are following state law, you're not following the Brooks Act. The Brooks Act has no application in that situation.

P: Well, I would say that, yeah,

S: That's why I said before that it's patterned after—

P: It's the same thing in the state, because all you're talking about is awarding a contract based upon price for AE service.

S: Based on a fair and reasonable price, but the determining factor is to the person to whom it's going to be awarded, is qualifications, not price. Price is the last thing you look at before you enter into a contract or decide whether or not to do so. I think what I need to do is – and I understand – what I perceive from all of this is that the board wants its policies to define its role with regard to awarding of contracts, both AE contracts and the other kind. So I will look into that and I will take what we've talked about and try to make something of it.

[small talk.]

52:31

P: okay, appreciate everyone's interest in hashing it out and setting George on a mission.[] I think it'd be best to take one product to full authority board with all the concerns & issues we have and if it takes another month, or another 2-3 months, so be it. It'd be nice to hash it out.

S: it'll take at least a couple of months to do a few of these things.

M: The good thing is that in at least the next two months I don't anticipate any major contracts in that time.

P: We do have that in our policies & procedures; we don't have a lot of the other stuff.

K: Not on the subject of contracts, but on the subject of the board's policy, what are the parameters for board members of engaging in discussions with bidders, contractors, etc.?

S: with regard to state law or your policies?

K: in other words, a guide to what board members can and cannot produce.

P: The issue is what restrictions are there – and if there are restrictions on, you know, pre-award contact and things like that, we should talk about it. I don't believe there are any, but if there aren't, we should discuss if we want to put something in place.

K: I thought there were. But that's what I'd like you to put together.

P: Okay, anything else? That's just a good project to be working on. Try to stay one step ahead of the State Auditor's office.

K: and you'll give a report?

P: Yes, I will, I'll be very concise.

**55:20 Last Item on Agenda: Senior Staff Hiring**

1:26:00 meeting adjourns.