

Attachment #6

Transition2017



TO: Transition Board
FROM: Gregory Weber, Partnership Staff
DATE: March 9, 2017
SUBJECT: Potential Bylaws & Committee Structure Revisions

Recommendation:

Adopt the Governance Committee's recommendation that the Transition Board should establish an ad hoc committee to work with Partnership staff to develop a set of proposals for consideration first by the Transition Board, and then by members, for adoption in Fall 2017.

Background:

In the materials proposing the bylaws amendments members adopted on December 30, 2016, the Council Board envisioned 2017 as a transition year. Working under its new governance structure, the Transition Board and Council members would have the opportunity to consider additional organizational changes not included in the minimal set of bylaws amendments proposed and adopted in 2016.

Matters for potential review:

Chief among these additional changes is the composition of the permanent Board. Issues to be addressed include, but are not limited to:

1. The Board's role— is it to be high-level, direction-setting? Or involved at a level more akin to the Council Board and the Transition Board? What combination of work, wisdom and wealth-development should directors be able to offer the organization?
2. The Board's size— how many directors should it have?
3. Directors—should they all come from members, or should outside directors be invited?
4. Composition— should seats on the Board be reserved for particular interests? For particular geographic areas?
5. Election and selection— how should directors be chosen? Should they all be elected, or should some of them be selected by existing directors? What process should be used for either election or selection?
6. Officers— how many should there be? How should they be chosen?
7. Terms—should they remain two years?
8. Term limits— should there be term limits for directors or officers?
9. Decision-making authority— what organizational decisions can be made solely by the directors? What decisions also require member approval?

Closely related to Board matter #8 above are issues involving the plenary:

1. Is the "Plenary" an appropriate term to describe future members' meetings or an anachronism of the BMP-voting structures and procedures?
2. How many regular members' meetings should be held each year?
3. Do member meeting notice requirements need to remain as complex and formal as those currently found in Article 5 of the bylaws?
4. Do there still need to be provisions for members to call "special meetings" like those found in Article 5?

An issue common to both Board directors and Partnership members are the conflicts of interest provisions of articles 8 and 12.¹ Are they sufficient to address the full range of conflicts that might be presented? (See memo prepared for specific agenda item on Conflicts of Interest.)

A section-by-section review will likely identify other candidates for review and possible revision or elimination.²

Beyond review of the bylaws, Partnership Directors and members should review other possible organizational changes. For example, the ad hoc AWE Relationship Committee is reviewing possible organizational changes that might result from different ways of structuring the Partnership's relationship with the Alliance. The transition year is also an opportunity to review the Partnership's overall committee structure. The current committee structure largely echoes the BMPs. Is this still the appropriate organizing principle? Several of the current committees are either dormant or rarely meet. Why? Should they be combined? Reframed? Refocused? Eliminated?

Suggested review process:

Organizational development can follow either "top-down" or "bottoms-up" approaches. The former rely on formal leaders; the involve broader participation.

During the 2014-2016 strategic planning process, there were multiple opportunities for input from the entire membership. For the most part, however, the process was "top-down," i.e., it was led by the Council Board.

After several years of organizational development, Partnership staff senses "process fatigue" on the part of directors and Partnership members alike. Nevertheless, the Transition Board directors assumed leadership of the transition phase by accepting their position as directors. Partnership staff believes that, to continue to move organizational development forward, transition board members, supported by Partnership staff, should continue to lead the process.

The Governance Committee recommended that the Transition Board adopt the following approach:

- The Transition Board appoints an ad hoc committee to begin to identify and recommend changes to the bylaws and committee structure;
- Partnership members are told that this process is underway and are invited to participate as ad hoc committee members;
- Working with Council staff, the ad hoc committee reaches agreement in principle (not specific text) on the changes it wishes to see; then proposes those changes first to the Governance Committee and then to the full Transition Board; these changes should be presented to the Board by the May 2017 Board meeting;
- Sometime shortly after the May 2017 Board meeting, Partnership members receive a briefing on the changes that have received support from the Board and are invited to give input;
- A first round of proposed text proceeds from ad hoc committee, to Governance committee, and to the Transition Board for its review at the August 2017 Board meeting;
- Sometime shortly after the August 2017 Board meeting, Partnership members again receive a briefing on the changes that have received support from the Board and are invited to give input;
- A final round of proposed text proceeds from subcommittee, to committee, and to the Board for its review at its September 12 -14 strategic planning workshop; and
- Members should vote on provisions adopted by the Board by the middle of October 2017. Those provisions should become effective when adopted.

This timeframe will allow time for elections in December 2017 for directors to take office in 2018.

¹ For the complete text of the relevant provisions, see Appendix A.

² For examples of how some similar organizations address such matters, see the chart set out at the end of this memo.

Appendix: Bylaws Provisions on Conflicts

Section 8.02. Limitations on Powers.

(a) ...

(b) Self-Dealing Transactions. Notwithstanding the powers conferred on the Board pursuant to Sections 7.01 and 8.01, above, the Council shall not engage in any transaction which meets the definition of a "self-dealing transaction" as defined in California Nonprofit Corporation Law Section 5233 unless the transaction has been approved by one of the means specified in Section 5233(d). Generally speaking, Section 5233 defines a "self-dealing transaction" as any transaction to which the Council is a party and in which one or more of its directors (i.e., Board members) has a material financial interest. Certain transactions are excluded by that statute from being classified as self-dealing transactions.

(c) Transactions Between Corporations Having Common Directorships. Unless it is established that the contract or transaction is just and reasonable as to the Council at the time it is authorized, approved or ratified in accordance with the requirements imposed by California Nonprofit Corporation Law Section 5234, the Council shall not enter into a contract or transaction with any other corporation, association, or entity in which one or more of the members of the Council's Board are directors, unless the material facts relating to the transaction and the common directorship of the Director are fully known or disclosed to the Board. The Board must approve, authorize, or ratify any such contract or transaction in good faith and by a vote sufficient without counting the vote of the member(s) of the Board having a common directorship in another corporation that is a party to the transaction.

(d) Loans to Directors or Council Officers. The Council shall not make any loan of money or property to, or guarantee the obligation of, any Director or other officer, unless the transaction is first approved by the California Attorney General. This provision shall not apply to any reasonable advance on account of expenses anticipated to be incurred in the performance of the duties of the Director or other officer.

Section 12.01. Conflicts of Interest.

(a) No Representative of a Member of the Council shall make, participate in making, or in any way attempt to use his or her position as a Representative, Director, or officer of the Council to influence any decision or action of the Council at a Plenary Meeting or any decision or action of the Board with respect to contracts to provide services to the Council if the Representative is personally aware that the Member he or she represents on the Council, or any constituent organization that is a Member, or an affiliate of the Member, or the Member Representative him or herself, has a direct or indirect material financial interest in the subject matter of the decision or action to which the vote of the Council pertains. For purposes of this Article XII, a material financial interest is defined as an interest satisfying each of the following three elements:

(i) the interest relates to a grant received by the Member (or any Member-affiliated organization or the Member Representative him or herself) or originates from an agreement between the Member (or any Member-affiliated organization or the Member Representative him or herself) and any other person;

(ii) the interest is or will be worth \$2,000.00 or more in value provided to, received by, or promised to the Member, any Member-affiliated organization or the Member Representative him or herself) within twelve (12) months of the date when the Council vote is conducted; and

(iii) the outcome of the vote is, or is likely to have, a positive impact on the aforementioned interest which will enhance its value by a factor of ten percent or more during the term of the agreement or grant.

(b) If a Member Representative knows that a material financial interest of his or her Member (or any Member-affiliated organization, or the Member Representative him or herself) may be positively influenced by a Council vote on any of the matters described in subparagraph (a) above, then prior to any vote by the Council on the matter the Representative shall be obligated to disclose to the Council the fact that his or her Member (or one or more of its Member-affiliated organizations, or the Member Representative him or herself) has/have a conflict with respect to the matter which involves a material financial interest. As a result of that disclosure, the Representative must be recused from voting on behalf of the interested Member, or any Member-affiliated organizations, or the Member Representative him or herself.

(c) Prior to entertaining any discussion and vote on any matter described in subparagraph (a) above, the presiding Chair shall read a statement reminding all attending Members of their obligations under this Article XII. That statement shall include a recital of the above definition of what constitutes a material financial interest.

Section 12.02. Enforcement. If any Member Representative or Member is found by the Board to have willfully failed to disclose a conflict of interest, as defined in Section 12.01 above, said conduct shall be grounds for voiding the vote of the Member. In addition, if it is determined that the Member Representative with the undisclosed conflict actively participated in any deliberations of the Board preceding the vote, it shall be presumed that the vote was adversely affected and thus rendered void and of no effect unless subsequently ratified by a proper vote which excludes the Member Representative with the conflict.

Organization	ACWA	ACWA Selection Processes	AWE	AWE Selection Processes	CASA	CASA Selection Processes	CASQA	CASQA Selection Processes	WaterRe-Use California	WaterReUse Selection Processes
Voting Membership Eligibility	Water Agencies		Anyone		Public Agencies and Organizations		NPDES Stormwater Permit Holder		National Association Members in California	
Other Membership Classes?	No		No		Associates	Anyone	Affiliates	Anybody Else	No	
					Honorary	Special Appointment Process				
Membership Meetings	2/year		1		1		4		1 specified	
Quorum	50 members		None Specified		30 members		2/3 of voting power		None specified	
Dues Required?	Yes		Yes		Yes		Yes		Yes. See Notes.	
Number of Board Members & Selection Process	36--Includes Regional and Committee Representatives	Some: All Members. Some: Ex Officio by Region or Committee	3+ (currently 18)	Approved by majority of current Directors in attendance	13	12 elected by CASA Members, one appointed by President from Associates	11	Nominating Committee proposes; Voting Members select 8 from among Voting Members and 3 from among non-voting Members	At Least 10 (Currently 16)	Nominating committee proposes; Members elect
Alternates?	Yes		"No proxies"		None Specified		None specified		None specified	
Quorum	50%		51%		50% + 1		Majority of Authorized		50%+1	
Voting Rules	Unspecified		Majority of Quorum		None Specified		Majority of Quorum		50%+1	
Term	2 years		3		3: Elected; 1: Appointed		2 (Staggered)		Officers: see below; at Large: 3 (staggered); Chapters: 1	
Term Limits?	No		9 years on; 3 years off		None Specified		6 on, 2 off		2 on, 1 off	
Number of Meetings	6		1 Specified		1 Specified		6		None specified	
Executive Committee & Selection Process	7	4 ex-officio, 3 elected by Board	4	4 Officers			Yes	Up to 27 members selected by Chair (with Board consent) from among Full and Associate Members		
Number of Meetings	"Regular"		None Specified				6			
Officers & Selection Process	President, Vice-President	Nominated by Special Committee, Elected by members	Chair, Vice-Chair, Secretary, Treasurer	Majority vote of AWE Members attending annual meeting	President, Vice-President, Secretary/Treasurer	Elected by Board from Among Board Members	Chair, Vice-Chair, Secretary & Treasurer	Chosen by Board from Among the Board Members; appointment power may be delegated to Chair	President, Vice-President (President - Elect), Secretary, Treasurer & Immediate Past President	
	Executive Director/Secretary	Appointed by Board			Executive Director	Appointed by Board; May not be Board Member	Chair & Vice Chair may be concurrent		Secretary/Treasurer can be combined and combined with Director	
	Controller/Treasurer	Unclear. Reports to ED					Secretary & Treasurer may be concurrent			
Terms	President & Vice-President	2 Years	1 year		1 year		2 Years		1 Year (extendible to 2)	
	Others	At pleasure of Board or unspecified								
Term Limits?	None Specified		None Specified		No		2 on, 1 off		None specified	
Chapters?	10 Regions		Yes	Policy ready for 9.2016 Board approval			None specified		It is itself a Chapter (Section); it can have its own chapters as well-- currently has 7	
How Amend Bylaws	2/3 of ACWA Members in attendance		2/3 vote of directors in attendance		Some: by Majority of Board; Others: by Members		Any means permitted by Corp. Code section 7150		2/3 of members	
Notes	Specific rules on recommendation, appointment and confirmation of Committee membership		Members may debate but may not vote on any resolutions				Bylaws are supposed to be reviewed annually		Members pay dues to National. National rebates 30% to California section; section may levy supplements	Members may also be charged fees to participate in section events.