

Board Discussion

Amendments to Bylaws Establishing Standards for Executive Sessions

June 9, 2004

Purpose

Propose amendments to Energy Trust bylaws to specify the circumstances in which the board may meet in executive session, and act on the proposal at the next board meeting.

Budget impact

None.

Background

The Energy Trust bylaws recognize that the board may hold executive sessions but do not describe the circumstances for which executive sessions are appropriate. Mr. Schell suggested that standards for executive sessions be developed. The attached proposal was reviewed by the Policy Committee on May 24. Oregon law does not apply to the Trust and any restriction on executive sessions is purely a matter of policy.

Analysis

The proposal would create five general categories for executive sessions to: (1) discuss internal personnel matters; (2) consider litigation, mediation or negotiations to settle a dispute; (3) discuss trade secrets, proprietary or other confidential information; (4) discuss negotiations whose disclosure would likely frustrate corporate purposes; or (5) hold board retreats. The proposal would not adopt Oregon law applicable to public agencies, although the proposal requires almost as much openness.

Alternatives

- I. Follow provisions of Oregon law exactly. Oregon law allows executive sessions to consider employment issues, disciplinary matters, labor negotiations, real property negotiations, records exempt by law from public disclosure, trade negotiations where the governing body is in competition with governing bodies in other states or nations, existing or likely litigation, employee performance evaluations, and negotiations with private businesses regarding acquisition, exchange or liquidation of public investments. We did not take this specific approach because several of the Oregon provisions do not fit Energy Trust, and we have generally taken the position that Energy Trust is not bound by the laws that restrict public agencies.

2. Allow media to attend executive sessions. The proposed amendments do not provide for media to be present at executive sessions. Oregon law requires public agencies to allow media to attend executive sessions except those involving labor negotiations.
3. Restrict board retreats. Some organizations limit discussions at retreats to matters that fit other executive session criteria. In other words, retreats are treated as though they were any other meeting. There is no retreat provision in Oregon law.

Recommendation (*italics are explanatory, not part of the proposed amendments*):

Amend the bylaws as follows:

3.19 Executive Sessions: Executive sessions of the board of directors may be held only for the consideration but not decision of the following matters:

- a. internal personnel matters;

(Oregon law refers to employment, dismissal or discipline)

- b. participation in litigation, mediation or negotiations to settle a dispute; or discussions with counsel regarding potential litigation affecting a corporate choice of action;

(Oregon law doesn't mention mediation or negotiations to settle a dispute)

- c. trade secrets, proprietary or other confidential commercial or financial information;

(Oregon law allows executive sessions to "consider records that are exempt by law from public inspection")

- d. information regarding negotiations whose disclosure of would likely frustrate corporate purposes; or

(Oregon law allows executive sessions for negotiations on real estate transactions and matters of trade in which the agency is competing with agencies in other states or nations)

- e. board retreats.

(No counterpart in Oregon law)

3.20 Notification by chair: Whenever a matter is proposed for consideration in an executive session of the board, the meeting notice shall state the grounds for the executive session.

(Oregon law requires meeting notices to be made public, including the specific legal ground for an executive session.)

3.21 Movement of executive session matters to open meeting: During an executive session, any director may request that the matter under discussion be moved into an open

meeting. Upon receiving such request, the chair will poll the directors present in the executive session. If a majority agree to move the matter into an open meeting, the chair will conclude the discussion and schedule the matter for consideration at the next open meeting of the board.

(No counterpart in Oregon law; this provision reflects the practice of the Northwest Power Planning Council.)