



**ERIE COUNTY WATER AUTHORITY**  
**INTEROFFICE MEMORANDUM**

January 31, 2019

To: Jerome D. Schad, Chair  
Mark S. Carney, Vice Chair  
E. Thomas Jones, Treasurer

Cc: Terrence D. McCracken, Secretary  
Jacqueline Mattina, Associate Attorney

From: Margaret A. Murphy, Attorney

Subject: Proposed By-Law Revisions

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This staff memorandum will be placed on the Governance Committee's agenda for February 21, 2018. I would request that you review and provide me your *individual* comments, suggestions and changes before the February 13, 2019 filing deadline. Once I have your individual comments, suggestions and changes, I will be able to present the Governance Committee with various versions of the by-laws to review and consider.

Attached is a revised draft of the by-laws. These revisions are based on comments and suggestion made during the January 24, 2019 Governance Committee.

**ARTICLE III, § 8: RULES OF ORDER**

Commissioner Jones suggested that the Board adopt its own parliamentary rules of order. Until the Board has adopted its own parliamentary procedure, the Board should designate a published, parliamentary rules of procedure as a default.

Commissioner Schad stated the Board should be using the most recent version of Robert's Rules of Order. Just as a point of information, the phrase "Robert's Rules of Order" has been in the public domain for more than a century. Major Henry M. Roberts first published his rules of order in 1876. In 1923, his estate transferred his copyright to a family trust. After the family trust lost the copyright and the

trade name, members of the Roberts family formed the “Robert’s Rules Association.” The Association continues to revise and publish “Robert’s Rules of Law,” claiming to be the only official version.

I have obtained copies of three published, parliamentary rules of procedure based on the original works of Major Henry Robert. I would ask each Commissioner to review these books and designate one version to be used if the Board does not adopt its own rules.

1. Jones, O.G., (1990) *Parliamentary Procedure at a Glance*. New York, Penguin Books.
2. Robert III, H.M., Honemann, D.H. & Balch, T.J. (2011) *Robert’s Rules of Order Newly Revised*, 11<sup>th</sup> Ed. Boston, DaCapo Press.
3. Robert III, H.M., Honemann, D.H. & Balch, T.J. (2011) *Robert’s Rules of Order Newly Revised in Brief*, 2<sup>nd</sup> Ed. Boston, DaCapo Press

Once the Board has designated a publication, the Authority can order copies for the Commissioners, the Secretary and the Legal Department.

#### **ARTICLE V, § 2: CHAIR “FINALIZING” AGENDA**

Commissioners Carney and Jones both expressed concerns over the authority of the Chair to “approve” the agenda and to “remove” items from the agenda. In this new version, the Chair has the power to “review and finalize” the agenda. The Chair cannot remove from the agenda any item or resolution requested by another Commissioner. If the Chair determines there are too many items on the agenda, he/she will have the authority to remove items “so meetings can be conducted within a time frame conducive to the schedule of each Member.” However, any item removed from the agenda will be placed on the agenda for the next meeting.

#### **PUBLIC AUTHORITIES LAW § 1054(10): BONDHOLDER AGREEMENT**

Commissioner Jones asked for an opinion as to whether Public Authorities Law § 1054(10) would require any changes to the by-laws be approved by the Authority’s bondholders. In my opinion, the answer would be no.

Pursuant to Public Authorities Law § 1054(4), the Authority has the power “[t]o make by-laws for the management and regulation of its affairs, and subject to agreement with bondholders, rules for the sale of water and the collection of rents and charges therefor.” The phrase “subject to agreement with bondholders” does not modify the power to “make by-laws for the management and regulation of its affairs.” Because a comma is inserted before the word “and,” the phrase “and subject to agreement with bondholders” modified “rules for the sale of water and the collection of rents and charges therefor.” The phrase “rules for the sale of water

and the collection of rents and charges” is a reference to the Authority’s Tariff. Any amendment to the Authority’s Tariff must be consistent with the terms of any outstanding bond.

If the Legislature intended the phrase “subject to agreement with bondholders” to modify the power to make or amend by-laws, then subdivision 4 would have read as follows: “(4) subject to agreement with bondholders, to make by-laws for the management and regulations of affairs and rules for the sale of water and the collection of rents and charges therefor.”

However, like the Tariff, once the Board has approved changes to its by-laws, those changes must be duly certified by the Secretary, filed in the office of the County Clerk, and published once in two newspapers having a general circulation in the county. Newspapers having a general circulation in the county would include *The Buffalo New, Business First*, and *Buffalo Law Journal*.

### **PUBLIC AUTHORITIES LAW § 2824: COMMITTEES & CHARTERS**

Commissioner Jones brought to the attention of the Governance Committee Public Authorities Law § 2824, setting for the role and responsibilities of board members on all state and local public authorities. Section 2824 requires every state and local public authority to have the following standing committees: Audit, Governance, and Finance. Pub. Auth. Law § 2824(4)[Audit], (7)[Governance], (8)[Finance]. This section also requires a state or local public authority to adopt a Code of Ethics but does not require it to establish an Ethics Committee.

The Authorities Budget Office has drafted model “charters” for the Audit, Governance and Finance Committees. Commissioner Jones has questioned whether the Authority should include these committees within its by-laws or whether these committees should have their own separate “charter.”

Section 2824 directs every public authority “to establish” these standing committees. No where in the section does it state such committee shall be “established” by charter.

In reviewing the legislative history for § 2824, the statement of support contained in the legislation’s bill jacket recommended the adoption of the “best practices of corporate governance utilized by private sector companies.” The bill jacket states these reforms were recommended by “renowned corporate-governance expert Ira Millstein.” This would explain why the ABO used the word “charter.” In most states, corporations have charters (or articles of incorporation), approved by the Secretary of State.

Municipal charters have been used to create municipal corporations for cities and

counties. These charters were generally first proposed and approved by the state legislature, then modified by the municipality through municipal home rule laws and procedures.

Public authorities do not have charters and are created by state enabling legislation. Therefore, most public authorities have “established” such committees by modifying their by-laws. *See, e.g., [Monroe County Water Authority](#) and [Onondaga County Water Authority](#).*

### **PUBLIC AUTHORITIES LAW § 2824: INDEPENDENT MEMBERS**

In accordance with Public Authorities Law § 2824, the Authority must appoint “not less than three independent members” to each committee. Commissioner Jones questioned the meaning of the phrase “independent members.”

The phrase “independent members” is defined by Public Authorities Law § 2825 (2). Certain statutes designated individual who serve in certain civil offices of the state to be a member of certain local or state public authorities. However, the majority of remaining members must be independent members. All members of the ECWA Board of Commissioners must be independent, as that phrase is defined by § 2825(2):

[A]n independent member is one who:

(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority;

(c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and

(d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.

Because the Authority only has three members, all members must serve on its standing committees.

I have addressed in this memorandum every point discussed at the last Governance Committee on January 24, 2019. If you have any other questions regarding the proposed by-laws, please do not hesitate to contact me. Again, I would request that you give me your suggestions and changes prior to the February 13, 2019 filing deadline.