

**MINUTES OF
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST
LEGAL COMMITTEE MEETING
HELD ON MAY 14, 2024**

PRESENT: Derek N. Rabb, Chair
Thomas G. Fierke, Committee Member
Deborah M. Settoon, Committee Member
William A. Settoon, Jr., Committee Member

The Legal Committee of the Southeast Louisiana Flood Protection Authority-East (Authority or FPA) met on May 14, 2024, in the Franklin Avenue Administrative Complex, Meeting Room 201, 6920 Franklin Avenue, New Orleans, La. Mr. Rabb called the meeting to order at 9:00 a.m.

Opening Comments: Mr. Rabb advised that because Burglass and Tankersley, LLC, was representing the FPA in the litigation entitled “Robert v State of Louisiana, et al” (the Robert case), the discussion of the retention of the law firm (Item 2), would need to take place in Executive Session.

Adoption of Agenda: A motion was offered by Mr. Rabb, seconded by Mr. Fierke and unanimously adopted to amend the agenda to include the discussion of the retention of Burglass and Tankersley, LLC, under Executive Session since it was tied to the Robert case. The agenda as amended was approved.

Approval of Minutes: The Committee approved the minutes of the meeting held on April 18, 2024.

Public Comments: None.

New Business:

- 1. Discussion of the proposed amendment of the Board’s Bylaws under Article IV Officers Section 3.1 (Duties of the President) by adding the following: “(j) The President may delegate the appointing authority authorized under Section (f) of this article to the Regional Director only, or in the absence of a Regional Director to the Human Resources Director only, subject to the provisions of Article VI Section 5 below”, and recommendation to the Board.**
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Mr. Rabb requested comments on the proposed amendment to the Board’s Bylaws.

Kelli Chandler, Regional Director, stated that she did not propose the amendment. She explained that for budget and procedural reasons, it was difficult having more than one appointing authority.

Clay Cosse, President, commented that he did not think that the Regional Director needed to be designated more power than currently designated.

Rick Duplantier, Commissioner, stated that his opinion was there should be one appointing authority and it should be directed at the Regional Director when the President does not exercise appointing authority. Roy Arrigo, Vice President, commented that having the appointing authority in one place, regardless of who the appointing authority may be, would prevent potential ambiguities that could occur with splitting appointing authority.

Kirk Ordoyne, Executive Counsel, explained that with appointing authority split between the Regional Director and Superintendent of Police, the Regional Director would still have authority over all administrative matters. Ms. Chandler stated that splitting appointing authority creates conflict. She stated that there should be only one person who acts as the Chief Administrative Officer and is responsible for budgets, performance and consistent policy implementation. Civil Service recommended that there be only one appointing authority.

Herbert Miller, Commissioner, explained that the President has the authority to designate whomever he/she wishes as the appointing authority. The appointing authority must be familiar with procedures and is responsible for new hires and disciplinary actions. He expressed concern about a bill in the current legislative session that would allow the Governor to take control of certain boards and to name the presidents of certain boards. He pointed out the risks of politics becoming involved in the naming of board presidents and the designation of appointing authority. He stated that the appointing authority should be the Regional Director, and in the event of a vacancy, the Human Resource (HR) Director. The HR Director is the individual most familiar with the rules and regulations relative to hiring and firing personnel and disciplinary actions. If disciplinary action is taken and all of the rules are not followed, the action could be appealed and overturned by Civil Service or by a court of law. In addition, appointing authority should be delegated by authentic act. President Cosse delegated appointing authority to the Regional Director and the Superintendent of Police by authentic act. Authority was given to the Executive Counsel verbally or in a letter. If Executive Counsel took an action that was appealed, the President and Executive Counsel would have to appear at the hearing because appointing authority was not delegated by authentic act. He stated that, in general, appointing authority should be designated to one individual along with a backup. He stated that the President should make that individual the Regional Director.

Ms. Settoon commented that the appointing authority as currently designated was working well and that no emergency situations had occurred. She inquired about supervisory authority over the Police Superintendent. Mr. Ordoyne advised that the Police Superintendent can be under the Regional Director. However, the Regional Director cannot make law enforcement decisions. Law enforcement decisions must be made by the Police Superintendent.

Ms. Chandler stated that the Police Superintendent had always reported to the Regional Director (the positions formerly held by Regional Director Robert Turner and Chief Administrative Officer Derek Boese).

Ms. Settoon stated that her opinion was that it works better when the President has the authority to appoint all of the authorities needed to run the organization. She pointed out that the Board votes to elect the President. She added that she did not see a problem; therefore, she did not want to change the current provision in the Bylaws.

Mr. Fierke inquired about law enforcement decisions. Mr. Ordoyne explained that law enforcement decisions, which must be made by the Police Superintendent, includes decisions on who should be investigated, investigations, patrols and other law enforcement matters. The Police Superintendent did not have to be the appointing authority for the Police Department.

Ms. Chandler stated that appointing authority is about making sure Civil Service processes are followed and decisions regarding pay rates are consistent across the agency. Ms. Settoon asked, was this not already done by the HR Director? Ms. Chandler explained that HR staff make recommendations; however, inconsistencies and pay disparities would occur having two appointing authorities.

Mr. Cosse noted that Ms. Settoon brought up a good point. He pointed out that a good President would not do anything unless a majority of the Board was in agreement. The Board has the authority to elect or remove the President.

Mr. Cosse asked that Ms. Heaton provide historical information regarding the position of Superintendent of Police. Wilma Heaton, Director of Governmental Affairs, explained that the initial legislation establishing the Flood Protection Authorities (East and West), specified that the FPA could not have a police force. However, the FPA could govern the Orleans Levee District Police Department and East Jefferson Levee District Police Department. Special legislation (Act No. 757 of 2012) was passed that allowed the FPA to have a Superintendent of Police. The President, in consultation with the Board, was the appointing authority for the Police Superintendent from 2012 to 2018. About midway in the Presidency of former Commissioner Joe Hassinger, the Police Superintendent was placed under the Chief Administrative Officer. Ms. Chandler pointed out that this occurred prior to the regionalization.

Mr. Rabb pointed out that the Regional Director is responsible for the finances of the agency and for ensuring that staff acts fiscally responsible.

Mr. Miller noted that the President retains appointing authority even if it is delegated. The President can at any time rescind or change the designation of appointing authority.

Mr. Settoon asked about the status of the proposed legislation (SB 462). Ms. Heaton advised that Senate Bill (SB) 462 was passed in the Senate and was amended to

remove the State Retirement Board and higher education. In its current form, SB 462 would apply to most boards and commissions in Louisiana, including the FPA. The bill could be amended in the House or could fail.

Mr. Arrigo asked for a clarification of the purpose of the proposed amendment. Mr. Miller clarified that the amendment was to consolidate appointing authority under one individual (i.e., the President and the President's designee as the appointing authority). If the President does not designate appointing authority, he/she would have to sign all documents to hire, fire and discipline employees. Mr. Fierke asked how many of these actions take place each month. Ms. Chandler estimated between 10 and 15 per month. Mr. Fierke pointed out that staff would work together, and, regardless, HR would do its job and provide recommendations to whomever is designated appointing authority. He stated that he saw the Police Superintendent having more autonomy and authority to hire his/her police force as an advantage. The Police Superintendent would hire personnel in conjunction with HR and Finance and coordinate with the Regional Director relative to policy.

Ms. Chandler stated that she works with all of the hiring managers and that they have the ability to select individuals and make recommendations to the HR Director. She stated that her role is just a final review to ensure consistency and that she did not participate in interviews, other than for her direct reports. Mr. Fierke clarified that the Regional Director would not be taken out the loop should appointing authority be designated to the Police Superintendent.

Mr. Fierke offered a motion, which was seconded by Mr. Settoon, that the Legal Committee make a recommendation of no recommendation to the Board. He clarified that motion would result in the Committee not taking a position on the proposed amendment to the Bylaws. Mr. Fierke and Mr. Settoon voted yea and Ms. Settoon voted nay on the motion. No further action was taken on the item.

Executive Session:

1. Robert, Joseph et al. versus State of Louisiana et al., Civil District Court for the Parish of Orleans, No. 2016-09374, Division F, Section 14.
2. Discussion of the retention of the firm of Burglass and Tankersley, LLC, as special counsel to represent the FPA in the litigation entitled, "Robert, Joseph et al. versus State of Louisiana et al., Civil District Court for the Parish of Orleans, No. 2016-09374, Division F, Section 14".

A motion was offered by Mr. Fierke, seconded by Mr. Settoon and unanimously adopted, for the Committee to meet in Executive Session to discuss the items listed above. The Committee convened in Executive Session at 9:29 a.m.

A motion was offered by Mr. Fierke, seconded by Ms. Settoon and unanimously adopted for the Board to reconvene in regular session (10:00 a.m.).

Mr. Rabb advised that no action was taken in the Executive Session.

New Business: (continued)

2. **Discussion of the retention of the firm of Burglass and Tankersley, LLC, as special counsel to represent the FPA in the litigation entitled, “Robert, Joseph et al. versus State of Louisiana et al., Civil District Court for the Parish of Orleans, No. 2016-09374, Division F, Section 14”, and recommendation to the Board.**
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A motion was offered by Mr. Fierke, seconded by Ms. Settoon, to amend agenda Item 2 under New Business, in order to provide a two-part recommendation to the Board: 1) relative to retention of Burglass and Tankersley, LLC, and 2) relative to the budget. The Committee voted unanimously in favor of amending the agenda item.

Mr. Fierke offered a motion that the Committee recommend that the Board approve the retention of Burglass and Tankersley, LLC, and a budget of \$330,050. The motion was seconded by Ms. Settoon and unanimously adopted.

There was no further business; therefore, the meeting was adjourned at 10:02 a.m.