

Minutes
Nevada State Emergency Response Commission (SERC)

Policy Committee Meeting

*2621 Northgate Lane, Suite 12
Carson City, Nevada*

September 3, 2009

Members Present

Jim O'Brien, Chair (video conference)
Larry Farr
Jim Reagan

Members Absent

Tom Porta

Staff

Suzie Adam
Shelley Fleming
Karen Pabón
Glade Myler

I. CALL TO ORDER

Jim O'Brien called the meeting to order at 9:07 a.m.

II. INTRODUCTIONS

Members and staff introduced themselves as shown above. A quorum was present.

III. *APPROVAL OF THE JANUARY 5, 2009 MEETING MINUTES

Jim Reagan made a motion to approve the minutes of the January 5, 2009 meeting. Larry Farr seconded the motion which was approved unanimously.

IV. NEW BUSINESS

A. *Discussion/Recommendation regarding possible awarding of grants with penalties to LEPCs who fail to be in compliance with NAC regulations and SERC policies

Karen Pabón advised at the July 9, 2009 SERC meeting the SERC awarded grants with penalties although there are no policies in place for this. This item is for consideration of this Committee to make recommendations to the SERC as to whether there should be additions made to SERC policies, i.e., what the wording should be, what the contingencies should be, what conditions there should be for awarding grants with penalties, etc.

Mr. Reagan asked if SERC has a consideration in existing policy for accepting incomplete applications on time and awarding them with contingencies.

Ms. Pabón advised it was a past practice which went into policy January 2009.

Ms. Pabón stated policy prior to January 2009 included minutes needed to be submitted prior to funding the grant. Then last January the Committee added the ability for the SERC to approve a grant with contingencies.

Mr. O'Brien was video conferencing from Las Vegas and had problems with the audio. The recording was stopped at 9:13 a.m. to allow time to set up teleconferencing in addition to the video conference. The meeting resumed at 9:15 a.m.

To answer Mr. Reagan's question, Ms. Pabón read Policy 8.2-5, letter A, the last sentence, "A copy of the LEPC meeting minutes approving said request and supporting the grant application must be submitted prior to release of grant funds." In addition, Ms. Pabón read 8.2-5, letter G, second paragraph, the first sentence, "The SERC may approve amounts of money with contingencies or conditions to be met prior to preparation and funding of the grant award."

Mr. Reagan asked how should this Committee set policy for grant awards that have come in late whether complete or incomplete. Ms. Pabón advised she was not sure the considerations are for only late applications. Ms. Pabón stated at the July 2009 SERC meeting there were two separate issues. One application came in late and another met contingencies late making it out of compliance with Policy 8.1 that gives the LEPC 45 days to come into compliance. Now SERC is proposing awarding grants with penalties for any kind of noncompliance issue. Mr. Reagan advised that is why he and a few Commissioners voted in the negative on this particular issue.

Mr. Farr inquired of Glade Myler, Deputy Attorney General (DAG), why SERC had to go in the direction of awarding grant funds with penalties. Mr. Farr stated with Mr. Myler's advice, the Committee wrote policies so the SERC would not be arbitrary. Awarding grant funds with penalties makes it look like the SERC is being arbitrary. Mr. O'Brien stated there was opposition to this decision. Mr. Farr stated, with all due respect to Mr. Myler, he did not believe the SERC received good counsel on this issue. Mr. Myler advised he sent an email to the SERC documenting the meeting between himself and the Commissioners on July 6, 2009. Mr. Myler stated he provided advice based on his experience with these types of situations. Mr. Myler advised setting drop dead deadlines can be arbitrary and capricious. His experience in the past has been the courts will decide against an agency if the decision looks draconian. The argument against that is the administrative responsibility SERC has. Mr. Myler stated if he were to go to court on this issue, the argument would be for the administrative convenience of SERC. SERC has these deadlines, but it would be difficult to support when the LEPC only missed it by one day. Mr. Myler advised the courts will be in favor of people getting the grant funds because SERC's purpose is to help them prepare, plan and exercise with the money available. SERC set deadlines without having some kind of graduated system of penalties which would make it difficult for the courts to support SERC's denial of the grant application. Mr. Farr advised that is Mr. Myler's opinion since the appeals have never gone to court. Mr. Farr stated the federal government has strict deadlines. Mr. Farr recommended sending the SERC policies to the Attorney General's office to see which policies are considered draconian.

Mr. Reagan stated the precedent has been set. Mr. Reagan recommended leaving the policies as they are. Mr. Reagan asked if the Committee would be forced into creating a policy. Mr. Myler stated he could not say.

Mr. Myler responded to Mr. Farr's earlier comments about federal grants. The SERC is not federal government. There will not be the same response in a court of law as with the federal government. Mr. Myler advised it has been his experience the federal government has been known to make exceptions with grant awards.

Mr. O'Brien stated these grants are not entitlements, they are competitive. The SERC needs to stand by its policies. A discussion ensued. The Committee agreed the policies did not need to be changed at this time and no motion was necessary. The Committee will report to the SERC at the October 8, 2009 meeting.

No action was necessary.

B. Discussion regarding possible revisions to SERC policies. This item will be a working session to review policies and determine possible revisions. Any items requiring action will be included on a future agenda of this Committee and/or the SERC

Ms. Pabón stated staff did not have any particular issues with the policies. Shelley Fleming is working on better wording the policies in general, but not changing the intent of the policies. Staff wanted the Committee to review the policies. The handouts provided are the main policies pertaining to grants.

Mr. O'Brien recommended staff put the sentences in the active voice, not the passive voice. Mr. O'Brien stated this would make the policies clearer. He has some examples available to staff.

Mr. Reagan advised staff to point out specific things in the policies that do not work well and let the Committee know. Mr. Farr agreed with Mr. Reagan.

Mr. O'Brien stated he did not feel the Committee needed to work on anything further today. The Committee members were in agreement with Mr. O'Brien.

No action was necessary.

V. Public Comment

There was no public comment.

VI. *Adjournment

Mr. Farr made a motion to adjourn the meeting at 9:43 a.m.