



Contra Costa County

TO: BOARD OF SUPERVISORS

FROM: LEGISLATION COMMITTEE
Supervisor Mary N. Piepho, Chair
Supervisor Susan A. Bonilla

DATE: October 14, 2008

SUBJECT: Legislative Advocacy by Mandated Advisory Bodies

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATION:

APPROVE an amendment to the Board-adopted policy on the role of advisory boards and commissions in legislation position development and advocacy to provide for legislative advocacy by mandated advisory bodies in adherence to a specified protocol, as recommended by the Legislation Committee of the Board of Supervisors.

FISCAL IMPACT:

No fiscal impacts associated with this action.

BACKGROUND:

At its February 25, 2008 meeting, the Legislation Committee considered and discussed the County's policies and procedures with regard to "Positions on Bills." These policies and procedures were then adopted by the Board of Supervisors on April 22, 2008 as the County's protocol for bill position development, recommendation, adoption, and advocacy.

Subsequent to the adoption of these policies and procedures, staff was advised of advocacy activity by various advisory boards and commissions that may have been inconsistent with the protocol. The protocol includes the following excerpt with respect to the role of advisory boards and commissions and the communication of County positions. (Areas of concern have been highlighted and italicized for the purposes of this report.)

5. Role of Board Committees and Advisory Boards and Commissions

b. County Advisory Boards and Commissions

Like County departments, County Advisory Board and Commission members possess a high level of knowledge and expertise and can provide detailed impact analyses of issues affecting the County. As advisors, board and commission members are encouraged to alert the Board of Supervisors of relevant issues and bills. To that end, County Advisory Board and Commission members are encouraged to:

CONTINUED ON ATTACHMENT: YES SIGNATURE:

RECOMMENDATION OF COUNTY ADMINISTRATOR X RECOMMENDATION OF BOARD COMMITTEE
APPROVE OTHER

SIGNATURE(S):

ACTION OF BOARD ON APPROVED AS RECOMMENDED OTHER

VOTE OF SUPERVISORS

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.

UNANIMOUS (ABSENT)
AYES: NOES:
ABSENT: ABSTAIN:

Contact: L. DeLaney 5-1097

Cc: Legislation Committee (Supvs. Piepho & Bonilla)

ATTESTED

DAVID TWA, CLERK OF THE BOARD OF SUPERVISORS

BY: , DEPUTY

- Identify and analyze legislative issues of concern to board/commission subject areas. For those issues of importance, the staff person to the board/commission should alert any relevant County department and the CAO's staff (or Transportation Planning staff) about the issue and provide an analysis. ***Public opinion and/or advocacy about the issue should not proceed without Board of Supervisors action on the issue.***
- The analyses should briefly describe the issue and consider both programmatic and fiscal impacts to service delivery as well as impacts on those served. Should the CAO's office (or Transportation Planning staff) determine that the issue conforms with a pre-existing Board policy position, the CAO's staff and the board/commission staff will work collaboratively to draft a Board Order and position letter for signature by the Chair of the Board. Should the CAO's staff determine that the issue does not conform with a pre-existing policy, the issue will be placed on the next Legislative Committee, standing committee, or Board agenda, as needed.

6. Communication of position to legislative delegation and legislative committee members

It is the primary responsibility of the CAO's legislative staff and Transportation Planning staff, in coordination with the federal and state advocates, to advance the official County position on bills as they progress through the legislative process. However, this advocacy may require and include the participation of Board members, the CAO, Department heads, and other designated County staff as appropriate.

Advocacy activities and communication of official County positions may include direct interaction with members of the Legislature and their staff; Legislative Committees and their staff; the Administration and State and federal agencies; statewide organizations, as well as local or regional governmental bodies.

A Department or Advisory Board/Commission may not take any action that would imply the County's support or opposition to any pending legislation in the absence of, or inconsistent with, adopted Board positions.

Any time a County employee appears before a state, federal or local body to express a personal opinion or make a public comment, that individual must state for the record that they are speaking as a private citizen and not as an employee of the County or a representative of the Department for which they work. Further, written personal opinions shall not appear on County or department stationery/letterhead.

These procedures do not apply to elected officials who have been independently elected to represent the County and its residents. However, elected Department heads are encouraged to continue the best practice of open communication with the Board of Supervisors, CAO and CAO staff on important state and federal issues. In addition, the support of our elected officials on behalf of County policy positions can be a persuasive factor when dealing with state and federal representatives, and efforts to maintain this cooperative spirit will be given high priority by the CAO and CAO's staff.

With regard to written correspondence:

- Following action by the Board of Supervisors on legislative matters, the CAO's staff (or Transportation Planning staff) shall coordinate with the Board Chair and federal/state advocates to forward copies of such action to appropriate state and federal representatives, committees, and agencies.
- Letters of support or opposition to legislation will be prepared and coordinated with departments by the CAO's staff in accordance with Board-adopted positions.
- ***Written correspondence on behalf of the County to elected officials at the federal, state, or local level shall be transmitted over the signature of the Board Chair.***
- ***Only the Board of Supervisors can send position letters on a particular piece of legislation.*** Of course individual Board members and other elected officials have the right to express their positions on bills on behalf of themselves (but not the County).

DISCUSSION:

The amendment would clarify that state or federally mandated advisory boards or commissions may engage in legislation position development and advocacy according to the following protocol:

- **Positions may be taken only insofar as they are not inconsistent with Board-adopted policies or positions;** Staff of the mandated advisory body must review the position recommendation for consistency with the Board-adopted State/Federal Platforms and advise the board/commission if an inconsistency exists; and
- **Positions must be consistent with an adopted advisory body platform that is included in the Board-adopted State and Federal legislative platforms;** and
- **Positions must be communicated in a manner that clearly states through the use of a disclaimer/disclosure on any stationery and in the body of the letter that the advisory board or commission is advisory to the Board of Supervisors and that any comments, recommendations, opinions, and positions made by the board or commission or its individual members do not represent the official position of the County or any of its officers;** and
- **Position letters must be distributed by the CAO's staff, who will include in its distribution the Board of Supervisors and any relevant Board committee.**

With this amendment to the Board-adopted protocol on position development and advocacy for advisory boards or commissions that are state or federally mandated, these boards or commissions can continue to perform their advocacy efforts in a manner that is consistent with the positions and priorities of the Board of Supervisors and not purporting to represent the positions of the Board of Supervisors or its members.

The state and/or federally mandated advisory bodies to which this protocol would apply include:

1	Advisory Council on Aging, Contra Costa County
2	Airport Land Use Commission
3	Assessment Appeals Board
4	CCC Law Library Board of Trustees
5	Economic Opportunity Council
6	First 5 Contra Costa Children & Families Commission
7	In-Home Supportive Services Authority Advisory Committee
8	Local Child Care & Development Planning Council
9	Mental Health Commission, Contra Costa County
10	Merit Board
11	Relocation Appeals Board of Contra Costa County
12	Workforce Development Board

With regard to the County's requirements in state law for reporting lobbying or advocacy activities of advisory body members or staff to those advisory bodies/commissions, staff reviewed the matter with its state lobbyist, Nielsen Merksamer. An attorney for the firm provided the following information:

California Government Code 86116 provides that "Every person described in Section 86115 shall file periodic reports containing the following information: . . .

- (h) (1) Except as set forth in paragraph (2), the total of all other payments to influence legislative or administrative action including overhead expenses and **all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or administrative action.**"

FPPC Regulation 18616 provides further: "(f) Other Payments to Influence Legislative or Administrative Action. All persons who file periodic reports under Government Code section 86116 shall report the total of all other payments to influence legislative or administrative action made by the filer during the reporting period. The total amount reported shall include the following: (1) Compensation of Employees Other Than Lobbyists. This shall include a **proportionate share of the compensation paid to employees other than lobbyists who are engaged for 10 percent or more of their compensated time in a calendar month in or in connection with the activities described in subdivision (a)(4) of this regulation**. Such employees include those providing research services and those preparing materials to be used by a lobbyist or to be used in direct communication or in soliciting or urging others to engage in direct communication for the primary purpose of influencing legislative or administrative action. Compensation includes gross wages paid plus any benefits which are in lieu of wages such as the granting of stock options or the purchase of annuities. It does not include, however, routine fringe benefits, such as the employer's contribution to health plans, retirement plans, etc., which are made on behalf of all employees nor does it include the payment of the employer's payroll taxes."

Because staff who support the mandated advisory bodies/commissions are not expected to spend 10% or more of their compensated time in any one month in activities related to influencing legislative or administrative action, it is unlikely that there will be reportable expenditures for these advisory body advocacy activities. However, staff will be requested to provide the information if there are reportable expenditures.

Staff also discussed with its lobbyists whether Contra Costa County would be required to report matters lobbied by unpaid volunteer advisory board members on its quarterly lobby report (Form 635). It was not clear from the statute, regulations, or FPPC material, so we called FPPC Technical Assistance, who confirmed the answer was "yes." Therefore, in order for the matters to be reported correctly, the position letters must be distributed through the CAO's office, which coordinates the preparation of the quarterly lobby reports.