



# INSTITUTE FOR LOCAL GOVERNMENT

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## Menu of Public Trust Best Practices Relating to First 5 Commissions

*July 12, 2010*

### Key Goal

A key goal of identifying these best practices is to promote the public's trust in First 5 commissions' decisions-relating to funding. A key element of such trust is the public's confidence that funding priorities are motivated solely by the public's interests and not by decision-makers' narrow personal, organizational or familial interests.

Two key ethical values at stake in this goal are *fairness* (assuring that decisions are based on merit and that no one is receiving preferential treatment) and *trust* (assuring the public that all decisions are being made transparently with the public's interests foremost in mind).

### Role of Best Practices

The concept underlying these suggested best practices is that county appointing authorities and local First 5 commissions would evaluate them to determine how many, if any, make sense for a given area. For example, a given county First 5 commission could adopt (and adapt) none, a few or many of these practices as make sense for that area's individual situation.

There is a companion document entitled "Supplemental Ethics Policies" that can serve as a vehicle through which First 5 Commissions may adopt one or more of these best practices.

If asked about a potential conflict-of-interest issue, the officials in a given county would then have the option of responding that it had adopted one or more Institute for Local Government suggested best practices to address the concern identified. The entire list of best practices, when finalized, will be posted on the Institute's and the statewide First 5 Association of California websites. It would then be up to the inquirer to evaluate whether a given set of best practices go far enough.

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These values reflect a reality of public agency decision-making. A decision can be the best decision based on the merits, but if the public does not have confidence in the decision-making process, the merits of the decision get overshadowed. In essence, the public's perceptions can become reality.

Note that a number of entities may play a role in implementing these recommendations. Many will be appropriate for consideration by First 5 commissions. Some – for example, those relating to the appointment of First 5 commissioners – may be considered by the county board of supervisors if they choose. The informational and educational materials could be developed by the statewide First 5 Association of California which then could be applied or disseminated locally.

## **Background: Issues First 5 Commissions Have Faced**

- State law requires the appointment of agency heads to First 5 commissions, whose agencies are sometimes the most effective/efficient contractors from the point of view of those served by First 5 programs.
- Even when First 5 commissioners do not vote on decisions or participate in discussions in which they have a potential conflict, they can be perceived as influencing other commission members because of their membership and good relationships on the commission.
- Some counties have advisory committees that weigh in on the strategic planning process or other decisions. Even if such committees do not play a role in actual funding decisions, their role in setting funding priorities can be seen as influencing funding decisions and therefore creating issues if funding priorities result in their organizations receiving funds.
- Smaller counties sometimes lack a pool of conflict-proof individuals to tap for commission or advisory committee membership, since both bodies need people with expertise.
- Accountability and efficiency sometimes is better achieved with a single large contract (with subcontractors) than multiple smaller contracts for a commission initiative, but this may increase the potential for appearance of conflict of interest.
- Agencies or organizations that don't get funded will tend to perceive a conflict if funding goes to a department or large organization that is represented on the commission, even if steps were taken to avoid unfairness or improper influence.

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- Even when a member of the public or applicant organization has not raised issues about a decision, the media will sometimes find fault with a process that seems to allow those whose organizations benefit from decisions to participate or influence those decisions.
- Having a commissioner or advisory committee member be in full compliance with ethics laws is not necessarily sufficient to meet a commission's goal of assuring the public that the commission's decisions are merit-based, fair to all who seek funding, and do not reflect personal, organizational or other familial interests.

### **Policy and Practice Tools Available to Achieve These Goals and Address These Issues**

- 1) Transparency (disclosure requirements, competitive bidding, audits/performance reports)
- 2) Prohibitions (disqualification requirements, appointment criteria, receipt of campaign contributions while matters pending)
- 3) Education (decision-makers and public, both before appointed and during service)

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## Best Practices Options Relating to First 5 Commissions

### Recruitment and Appointment Process<sup>1</sup>

1. **Broad-based Recruitment.** Recruit candidates for local commission and advisory committee<sup>2</sup> positions from a broad cross section of the community. Publicize openings on the commission broadly (including through county and commission websites, as well as through outreach to the philanthropic, faith-based, education and nonprofit communities) and encourage applications to serve.<sup>3</sup> Engage in additional outreach through lines of communication offered through ethnic and community-specific media.
2. **Notice and Opportunity to Comment on Appointments.** Include explanation of processes used to recruit applicants for commission and advisory committee position in agenda materials relating to appointments. Provide a specific opportunity for public to comment on appointments (in other words, do not put on consent agenda). Post upcoming appointments and related agenda materials on county and commission website a week [or more] before public meeting at which appointments will be made.

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<sup>1</sup> Under state law, the county board of supervisors appoints the members of First 5 commissions. See Cal. Health & Safety Code § 130140(a)(1)(A). In some areas, a board of supervisors will seek the commission's help in identifying and recruiting possible commission candidates. Local practice and custom will therefore determine whether these listed practices are suitable for consideration by either the board or the First 5 commission.

<sup>2</sup> State law contemplates that county commissions create one or more advisory committees to provide technical and professional expertise and support for "any purposes that will be beneficial in accomplishing the purposes of the act." See Cal. Health & Safety Code § 130145. Advisory committees offer the opportunity to expand public input into a commission's decision-making.

Some First 5 commissions use advisory committees for input on elements of the commission's strategic plan. See Cal. Health & Safety Code § 130140(a)(1)(C). Advisory committees are often used (these are not necessary mutually exclusive) to: 1) provide technical expertise to the commission; 2) get input from various sectors of the community not explicitly represented on the commission; and 3) assist in the strategic planning process. Advisory committees can assure that any decisions to fund county programs do in fact reflect the best interests of the public (see best practice #5 under When Making Funding Decisions below) given the statute's requirements that two members of local commissions be county staff with certain functions. See Cal. Health & Safety Code § 130140(a)(1)(A)(i).

<sup>3</sup> Minimum requirements include those specified in Government Code sections 54970 through 54975.

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3. **Advance Disclosure of Appointee Affiliations.** Develop and use a form that requires prospective appointees to the commission and advisory committees to disclose organizations with which they or their family members are affiliated.<sup>4</sup> Include information from form (or form itself) in agenda materials relating to appointment. Have decision-makers update this disclosure as their affiliations change.
4. **Avoiding Appointees with Conflicts.** When alternatives exist,<sup>5</sup> avoiding appointing people to a local commission or advisory committees who are affiliated with organizations that receive or may seek funding from First 5 programs [better practice: indicate to organizations who may seek First 5 funding that their organizations will not be eligible for funding if they are affiliated with a decision-maker]. When alternatives do not exist, have larger commissions<sup>6</sup> to allow interested commissioners to step aside from the decision-making process and increase the range of perspectives involved in decision-making.
5. **Advance Notice to Potential Appointees.** Alert people being considered for appointment to the commission and advisory committees of the need, as applicable, to 1) timely and accurately file state-required personal financial interest disclosure forms (Form 700s), 2) timely comply with the commission's ethics training requirements (see best practices on ethics training below), and 3) step aside from any decision-making process that could benefit organizations with which they are affiliated.<sup>7</sup>
6. **Term Limits.** Promote inclusivity in decision-making process by limiting terms of those commission members who do not serve by virtue of their position (for example, the county health officer<sup>8</sup>) to three years.

## After Appointment

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<sup>4</sup> "Affiliated with organizations" includes being employed by an organization, being on an organization's governing board or having a family member who has such an affiliation.

<sup>5</sup> An example of when an alternative may *not* exist is when the Children and Families Act specifies that certain county officials shall participate on First 5 commissions. See Cal. Health & Safety Code § 130140(a)(1)(A)(i) and (ii).

<sup>6</sup> See Cal. Health & Safety Code § 130140(a)(1)(A) (providing for a commission size of at least five but not more than nine).

<sup>7</sup> Sample advisory pamphlet: <http://www.ca-ilg.org/candidatepamphlet>

<sup>8</sup> See Cal. Health & Safety Code § 130140(a)(1)(A)(i) and (ii).

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1. **Public Information about Decision-makers.** Publicly disclose (for example, on website) who serves on the local commission and advisory committees, the qualifications they bring to their service (including their organizational affiliations – see best practice #3 above, relating to developing an affiliation form), and the process by which they are appointed.
2. **Orientation Materials.** Provide appointees to commissions and advisory committees the local commission’s policies and practices relating to avoiding even the appearance of conflicts of interest [and other information relating to public service ethics] as part of the appointee’s orientation process/packet. Note: some commissions have the commission counsel meet with each new appointee to convey this information. Include in these materials contact information for individuals appointees may consult for advice about how these principles apply to specific situations that may arise. Have appointees sign a form indicating they have received and reviewed materials.
3. **Financial Interest Disclosure.** Require filing of Form 700 within statutory deadline as a condition of continuing to serve<sup>9</sup> as a commissioner and, if applicable, advisory committee member (Alternative: require initial Form 700 as pre-condition to appointment finalization).
4. **Ongoing Disclosure of Appointee Affiliations.** Require appointees to commissions and advisory committees to update their affiliations disclosure (see best practice #1 above) as their affiliations change.

## Ethics Training

1. **Tailored Ethics Training.** Develop and deliver to First 5 commissioners and advisory committee members ethics training to meet the specific information needs and legal obligations of First 5 decision-makers.<sup>10</sup>

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<sup>9</sup> See Cal. Gov’t Code § 87202-87204, 87304; 2 Cal. Code of Regs. § 18722.

<sup>10</sup> State law allows those counties who choose to participate in the California Children and Families Program to create a local First 5 commission that is *either* a legal public entity separate from the county or an agency within the county with certain independent authorities. See Cal. Health & Safety Code § 130140.1(a)(1) and (2). It is not clear that commissions in the former category are subject to the state law (AB 1234) that requires city, county and special district officials to receive periodic ethics training.” See Cal. Gov’t Code § 53235(a), (b). This creates the opportunity, however, for independent commissions to adopt their own training requirements and specifically tailor that training to the issues that are likely to arise for First 5 commissioners. Note that either standard AB 1234 training or more tailored training can be either in person or through self study exercises (for example, using written materials and a test – see [www.ca-ilg.org/AB1234compliance](http://www.ca-ilg.org/AB1234compliance) for examples of self study materials).

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2. **Timing for Ethics Training.** Require whatever type of training will be necessary for commissioners and advisory committee members to be accomplished within six months of becoming a First 5 decision-maker and then every two years thereafter as a condition of continuing to serve.<sup>11</sup>
3. **Staff Training.** Require top level staff to satisfy the commission's training requirements for decision-makers.
4. **Documentation.** Post certificates of compliance with ethics training requirements on the commission's website, in addition to maintaining such certificates as public records available for inspection.

## When Making Funding Decisions

1. **Broad-based Public Input Sought.** Use and document use of inclusive processes<sup>12</sup> to seek broadly-based community input on strategic plan updates, including funding priorities (in addition to the public hearing required by law<sup>13</sup>). Outreach strategies can include invitations to participate to the philanthropic, faith-based and nonprofit communities, as well as through county and commission websites and social media outlets. To seek the input of relevant but traditionally less engaged communities, consider partnerships with trusted community leaders or organizations to host informational and priority-setting sessions.
2. **Process for Funding Decisions.** Use a merit-based, competitive process for grant and contract awards.
3. **Findings for Non-Competitive Processes.** When a commission determines that a competitive process does not best serve interests of the populations served by First 5 programs, document that determination with specific findings as to why the commission reached that determination.
4. **Publicity for Funding Opportunities.** Widely publicize the opportunity to compete for contracts and grants (through website, mailings and other outreach mechanisms),

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<sup>11</sup> The AB 1234 standard is that the first training must occur within one year of joining local agency service and every two years thereafter. *See* Cal. Gov't Code § 53235.1.

<sup>12</sup> Ideas for authentic public engagement techniques are available at [www.ca-ilg.org/cgi](http://www.ca-ilg.org/cgi).

<sup>13</sup> *See* Cal. Health & Safety Code § 130140(a)(1)(E).

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allowing a generous timeframe for interested organizations to respond. Develop an up-to-date database of potential partners (either for programs or help with getting the message out), that includes community leaders, service and advocacy organizations, community/neighborhood and ethnic media, local community foundations and other philanthropic organizations, and area clergy.

5. **Special Procedures for Funding County Programs.** To address concerns about any decisions to fund county programs given statutory requirements concerning the composition of local commissions, require all decisions relating to county program funding be reviewed by an advisory committee that does not include county employees or elected officials<sup>14</sup> (see also best practices about appointing members of such committees above). Ample notice and opportunity to have input at the meeting(s) during which the committee considers its recommendations relating to the merits of using First 5 monies for county programs should be provided. The committee's recommendations (and reasoning underlying the recommendations) should be included in the staff reports to the First 5 commission. County members of the First 5 Commission should not participate in the decision on funding county programs (see also meeting best practices below).
6. **Anti-Nepotism Policies.** If a decision-maker's family member (including parent, grandparent, child, sibling, relation by marriage or civil union, aunt, uncle or cousin) works for an organization being considered for funding, prohibit the decision-maker from participating in or influencing the decision on whether that organization receives funding. "Influencing" includes not only voting on a matter, but discussing it with staff or other decision-makers.

## At Each Meeting (When Making Decisions about Funding)

1. **Alerting Decision-Makers to Potential Conflict Issues.** Include "conflict of interest advisory" on each agenda explaining: 1) the circumstances under which decision-makers need to step aside from the decision-making process,<sup>15</sup> and 2) highlighting the organizations which are being considered for funding in that meeting (to minimize the

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<sup>14</sup> State law allows county commissions to create one or more advisory committees to provide technical and professional expertise and support for "any purposes that will be beneficial in accomplishing the purposes of the act." See Cal. Health & Safety Code § 130145.

<sup>15</sup> These circumstances should include both state law requirements for disqualification (including receipt of campaign contributions under Government Code section 84308) and locally adopted policies.

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likelihood a decision-maker will be unaware of an organization's involvement in an agenda item).<sup>16</sup>

2. **Disqualification Item on Each Agenda.** Have a standing agenda item on every agenda to enable those decision-makers who will not be participating on an agenda item to announce that fact and why.<sup>17</sup> Include as part of the announcement that a) the decision-maker will not be voting or participating in a discussion on that item, and b) the decision-maker has not discussed that item with other decision-makers or staff.<sup>18</sup>
3. **Leave the Room Requirement.** Require anyone who is disqualified from participating in a decision because of a conflict of interest to leave the room when that agenda item is called.<sup>19</sup>
4. **Public Notice and Comment Opportunities.** Maximize the public's knowledge and opportunity to comment on proposed funding decisions by posting them a week [or longer time period] in advance on agency's website, including any proposed decision and findings relating to not using a competitive process for awarding grants/contracts.
5. **Document Efforts.** Include in staff reports the process used to publicize the funding opportunities and the process used to select proposed grantee/contractor(s).

## In General

1. **First 5 Legal Framework Explanation.** Develop a plain language explanation of the law relating to First 5 commission membership and conflicts of interest exceptions to enhance public understanding of the legal framework within which First 5 commissions operate that can be posted or linked to on local First 5 commission websites.

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<sup>16</sup> Note that the obligation to step aside from the decision-making process extends to all aspects of influencing the decision, including talking to staff and colleagues.

<sup>17</sup> See Cal. Gov't Code § 87105.

<sup>18</sup> See 2 Cal. Code of Regs. § 18702.5 (regulatory requirements relating to what a disqualified official must say when recusing him or herself upon which this best practice expands).

<sup>19</sup> See Cal. Gov't Code § 87105(a)(3) (statutory requirement that applies to elected officials and top level managers on which this best practice expands).

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2. **Commitment to Ethics Demonstration.** Include a section on local commission website relating to decision-making ethics that explains and includes: a) the local commission's conflict of interest code, b) the practices decision-makers employ to assure that decisions-relating to funding and funding priorities are motivated solely by the interests of the populations served by First 5 programs and not narrow personal, organizational or familial interests, c) copies of decision-makers' most recent Form 700 filing [alternative: provide list of decision-makers who have filed a Form 700 and link to county agency that will provide these forms as a public record], and d) decision-makers' and staffs' ethics training documentation.
  
3. **Accountability Mechanism Explanations.** Develop plain language materials for the local commission website 1) to help the public understand the accountability mechanisms for contracts and grants provided for in the California Children and Families Act, and 2) share the results of (or copies of) audits and performance reviews to help the public understand how contractors and grantees performed under their agreements with the commission.<sup>20</sup>

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<sup>20</sup> See Cal. Health & Safety Code §§ 130100 (referring to "outcome based accountability"), 130140 (a)(1)(C)(ii) (county plans must have measurable outcomes, commission must use reliable indicators, services and programs must be consumer oriented and easily accessible); §130140 (a)(1)(C)(iv) (measure outcomes annually and review as part of public review of strategic plan).