

June 23, 1999

To: Board of Directors (Executive Committee--Action)

From: General Manager _____

Submitted by: Board Executive Officer _____

Subject: Establishment of Metropolitan Office of Ethics

RECOMMENDATION(S)

Authorize establishment of Metropolitan Office of Ethics with guidelines for implementation.

EXECUTIVE SUMMARY

Senate Bill 60 (Hayden) would require Metropolitan to establish an Office of Ethics with certain responsibilities. The legislation has been supported by the District. While specific in some respects, the legislation is more permissive and permits greater latitude in developing alternatives for implementation than the legislation creating ethics offices within other agencies, such as the Los Angeles County Metropolitan Transportation Authority (MTA). This letter explores alternatives for the Board's consideration in establishing the scope and authorities of Metropolitan's Office of Ethics.

DETAILED REPORT

Requirements of SB 60

Senate Bill 60 (Hayden) states that Metropolitan shall establish and operate an Office of Ethics and adopt rules relating to internal disclosure, lobbying, conflicts of interest, contracts, campaign contributions, and ethics for application to its board members, officers, and employees consistent with the intent and spirit of the laws and regulations of the Los Angeles City Ethics Commission, the Fair Political Practices Commission, and the Los Angeles County Metropolitan Transportation Authority.

The rules described above shall address and seek to avoid potential ethical abuses relating to all of the following matters:

- The direct and indirect business relationships between board members, contractors, and vendors, and between board members and officers or employees of member public agencies;
- The solicitation of campaign contributions by board members, officers, or employees and the receipt of contributions from bidders, contractors, or subcontractors; and

- Public notice and approval procedures for contracts of fifty thousand dollars (\$50,000) or more.

Furthermore, the Office of Ethics shall:

- Operate as an independent entity that is not subject to political influence and shall be staffed with professional, qualified persons.
- Adopt rules for approval by the board; educate the board, staff, contractors, and subcontractors concerning those rules; and investigate complaints concerning the violation of those rules.
- Adopt procedures for protecting the confidentiality of sources, the job security of "whistle blowers," and the due process rights of the accused.
- Make available to the public the results of the investigations that it undertakes; and
- Propose, and the board shall adopt, a schedule of penalties for violations of these rules by board members, officers, staff, or contractors.

Issues and alternatives for Metropolitan's Office of Ethics

With respect to the following issues, staff recommends the Board consider the following alternatives:

Organization of office

1. Establish Office of Ethics as independent unit reporting directly to Board of Directors.
2. Establish Office of Ethics as independent unit within one of the three existing departments (General Manager, General Counsel, Auditor) and adopt protections to insulate office from political influence.

Appointment of Chief Ethics Officer

1. If Office of Ethics is housed within an existing Department, direct Department Head to make nomination with appointment by majority vote of Board of Directors.
2. If Office of Ethics is independent from current Departments, select and appoint by Board of Directors.
3. Under either scenario, appoint independent committee of jurists or other impartial individuals to nominate candidate for Board's appointment by majority vote.

Budget: Decisions regarding alternatives will determine the scope of staffing and budgetary requirements for the Office of Ethics.

Investigative powers

1. Give Office of Ethics same investigative powers as currently exists with respect to investigations of employees, Directors, and consultants. Rely upon existing law

enforcement agencies and powers for the Chief Ethics Officer to obtain records not available under Public Records Act and District policies.

2. Seek subpoena power from Legislature to enable ethics office to access records for investigations. City Ethics Commission and MTA's Inspector General have subpoena powers. Subpoena power must be granted through specific state legislation.

Prosecution of violations

1. Establish internal procedures for prosecuting minor violations and for referring serious violations to criminal enforcement authorities.
2. Utilize outside arbiters such as Administrative Law Judges from state Office of Administrative Hearings to hear serious cases involving Directors or senior managers.

Lobbying

1. Address through codes of conduct restrictions on contact between potential contractors and Directors or staff.
2. In addition, develop extensive system of lobbyist registration and reporting of activity expenses similar in scope to the Fair Political Practices Commission (FPPC), MTA, and City Ethics Commission.

Note: Some divergence with the practices of MTA and City Ethics Commission may be appropriate to the extent direct "lobbying" of Metropolitan Directors occurs to a lesser extent than MTA Board members or Los Angeles City Council.

Campaign contributions

1. Address through codes of conduct restrictions on solicitation and receipt of campaign contributions by Directors elected to any office and staff from contractors and consultants.
2. In addition, develop extensive system of reporting and disclosure of campaign contributions similar in scope to FPPC, MTA, and City Ethics Commission.

Note: Some divergence with the practices of MTA and City Ethics Commission may be appropriate. Metropolitan's Directors are not elected to their positions and most Directors do not hold elected office elsewhere.

Staff recommends the Board include the following components in any plan adopted to establish an Office of Ethics:

- Direct the Office of Ethics to develop comprehensive ethics educational programs for mandatory training of all employees and directors.
- Direct Office of Ethics to develop detailed codes of conduct for directors, employees, and MWD contractors/consultants, similar in scope and content to MTA and City Ethics Commission. Codes of conduct would be subject to approval by Board of Directors.

- ❑ Require all MWD contractors and consultants to agree in writing to code of conduct prior to submission of bids or proposed contracts. Provide for disqualification of contractors and consultants who violate codes of conflict.
- ❑ Direct Office of Ethics to operate a “whistle blowers hot-line,” with specified privacy and due process protections for the reporting party and all other persons involved in an investigation arising out of a “whistle blower” complaint.
- ❑ Direct Office of Ethics to establish schedule of administrative penalties for violations by Directors, employees, and contractors/consultants.
- ❑ Give Office of Ethics authority to make findings of probable cause prior to prosecution of cases, and direct Office of Ethics to develop and implement procedural safeguards to protect rights of the accused.

If the Board approves establishment of an Office of Ethics at this time and identifies the elements of the operation of the Office of Ethics, staff will prepare a detailed plan, schedule for implementation, and proposed budget for Board approval. If SB 60 is passed by the Legislature and signed by the Governor, the law will be effective on January 1, 2000.

PVH:sk