

Metropolitan Transportation Authority

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TO: BOARD OF DIRECTORS

**THROUGH: ROGER SNOBLE
CHIEF EXECUTIVE OFFICER**

**FROM: MARIA GUERRA, CHIEF OF STAFF *MGH*
STEVE CARNEVALE, COUNTY COUNSEL *SC***

SUBJECT: PROPOSED ETHICS LEGISLATION

ISSUE

At the January 15, 2004 meeting of the Executive Management and Audit Committee, staff was directed to provide to the Board, the draft legislation that has been prepared regarding modifications to the ethics laws applicable to the MTA.

BACKGROUND

The 2001-2002 State Legislative Program included a provision that authorized staff to pursue changes in ethics laws affecting the MTA to streamline Board procedures and to make such laws affecting the MTA consistent with similar laws for other public entities.

The attached memo, prepared by the Chief Ethics Officer outlines the work done in response to that effort and the proposals developed by staff. Staff identified four proposals that were deemed to be non-controversial and did not lower the ethical standards of the agency. The four proposals are as follows:

1. Allow for the return of a contribution within a reasonable timeframe.
2. Incorporate the MTA's existing "rule of necessity".
3. Clarifies one of the contribution provisions to be more consistent with the Attorney General's interpretation of this section.
4. Allows for increases in disqualifying thresholds consistent with recent changes to the Political Reform Act.

Other changes, which could be considered by the Board, include increasing the ten dollar (\$10) contribution limit and decreasing the (4) four-year time frame for receiving a contribution.

NEXT STEPS

At the January 15, 2004 meeting, the Executive Management and Audit Committee approved the 2003-2004 Legislative Program and directed staff to provide proposed changes to the Ethics Legislation prior to the January Board meeting. Since the item is on the Board Consent Calendar, the Legislative Program will need to be pulled for discussion should the Board wish to add the following language authorizing staff to pursue the attached changes in the 2004 session of the State Legislature.

- Pursue changes in ethics laws affecting the MTA to streamline Board Procedures and to make such laws affecting the MTA consistent with similar laws for other public entities.

Attachment A: Chief Ethics Officer memo dated January 16, 2004

**INTEROFFICE
MEMO**

Los Angeles County
Metropolitan
Transportation
Authority

Date: January 16, 2004

To: Michael Turner, Manager
Government Relations

From: Karen Gorman, Chief Ethics Officer/Manager Ext. 22987
Ethics and Lobby Registration Department MS 99-7-5

Subject: Proposed Ethics Related Legislation

TASK

The Office of Government Relations and the Ethics & Lobby Registration Department were assigned a joint action item. That action item was to evaluate avenues for streamlining board meeting administration rules. A fertile area for exploration is the rules concerning conflicts of interest.

PHASES TO COMPLETE TASK

We met and determined that the action item would have several phases.

The first phase was for the Ethics Department to research the MTA experience under current legal requirements. From that research we would attempt to distinguish those requirements that tend to protect the integrity of the proceedings, and those that in practice do not substantially contribute to that integrity. Only those legal requirements that do not substantially contribute to that integrity and jeopardize appropriation of government funding to the Authority, delay urgent Authority business, unnecessarily increase the costs of board meeting administration, or cause other unintended harsh results, would be the subject of our focus for change.

The next phase was to draft proposed legislation to mitigate any gross inefficiencies resulting from the focus category of legal requirements but without lowering the Authority's commitment to high standards of ethical conduct and accountability to the public.

The third phase is to communicate to the Board our proposals for its consideration and approval and subject to such approval and other instructions, initiate the legislative enactment process by locating a sponsor for the legislation and support the approval process.

PROGRESS TOWARDS COMPLETION

We have completed the first phase of the action item. We have reviewed the conflicts reports and board minutes, including casting of votes and dispositions of particular agenda items during a defined period. This period begins in 2000 because we have better records beginning in May of that year.

The second phase of the action item has also been completed. We worked with County Counsel to draft several proposals for discussion with you. We considered many options. Some were dismissed immediately as not within the parameters discussed above. Others received more consideration (those are identified in the attachment) but were excluded as ill advised or unlikely to be successful. The remaining suggestions were drafted and are attached for your review.

WORK REMAINING

These legislative proposals have been communicated in the past to the Board without objection, however we should renew its approval of our efforts and actions.

Government Relations should initiate regulatory changes at the state level subject to any other instruction by the Board.

Thank you for your participation in this project. I am available as necessary for further consultation on this matter or to attend any such meetings.

Attachments: Proposals
Appendix

Proposal #1

Amend Public Utilities Code Section 130051.20(a)(4) as follows:

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a participant, or its agent, involved in the contract decision.

If a member or employee who receives a contribution, which would otherwise require disqualification from participation in a contract decision under this Section, returns the contribution prior to voting and within 30 days after he/she knows or should have known about the contribution and the proceeding involving the contract decision, he/she shall be qualified to participate in the contract decision.

Notes:

The amendments to Section 130051.20(a)(4) are indicated in bold underlined italics.

The complete text of Public Utilities Code Section 130051.20 is in the attached Appendix.

The above proposal is based on the notion included in Government Code Section 84308 (see attached Appendix for the complete text of that Section). That statute that requires disqualification from participation in a matter in which a party to the matter or its agent has made a contribution of \$250 or more, *unless the contribution is returned*. The above-proposed language is substantially the same as in Section 84308 and makes Section 130051.20 consistent with Section 84308 in that regard. This amendment does not alter the disqualification amount (i.e., \$10) or period (i.e., 4 years) in Section 130051.20(a)(4).

Consistency in the language between the two Sections will allow for consistent accounting practices and remove uncertainty caused by two similar but different restrictions concerning the same circumstances. It will also eliminate a result not intended by the legislature, whereby a person may selectively incapacitate an unfriendly board member from performing their duties by mailing an unsolicited contribution that the board member has no opportunity to avoid or from which to recover. This change will not lessen the restrictions on Board Members from accepting contributions or participating in matters in which they have a conflict.

Proposal #2

Amend Public Utilities Code Section 130051.20(a)(4) as follows:

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a participant, or its agent, involved in the contract decision.

Provided proper notice of a meeting has been provided to those board members who are not present at a board meeting, if a quorum of members qualified to vote is not present, then members who are otherwise disqualified may be randomly chosen from among those members present in sufficient quantity to achieve the minimum number of votes necessary for action to be taken and those chosen members may vote notwithstanding disqualification under Public Utilities Code Section 130051.20 or 130700, Government Code Section 84308, and any other laws which disqualify MTA board members from participating in a contract decision.

Notes:

The amendments to Section 130051.20(a)(4) are indicated in bold underlined italics.

The complete text of Public Utilities Code Section 130051.20 is in the attached Appendix.

The amendment proposed above would be the third paragraph of Section 130051.20(a)(4) if the MTA determines to proceed with Proposal #1 and Proposal #2.

While there is some dispute about the requirements of the common law rule of necessity, it is generally believed that to avoid government paralysis due to a majority of the board members being disqualified from voting on an item because of conflict of interests, the rule of necessity may be invoked to allow disqualified members to draw straws to vote in sufficient quantity to reach a quorum, *provided all disinterested persons are present.*

This proviso creates a potential for abuse by any disinterested board member. It places too much power on one or a few members on a board. Also, if one disinterested person is unavoidably absent due to illness or accident or whatever other reason, the Authority is paralyzed and the action cannot be taken for however many months are required to achieve full attendance of all necessary persons. It is costly and burdensome to schedule additional regular or emergency special meetings and delay action on items.

This proposal would maintain the integrity of the voting process, but eliminate the potential for abuse or costly delays.

The placement of the provision is most appropriate in Public Utilities Code Section 130051.20, a provision which only applies to the MTA. It could be inserted as an amendment to Government Code Section 87101, found in Political Reform Act, however that is not recommended. If inserted into the Political Reform Act it would be applicable to all entities, not merely the MTA, and would likely be opposed by the Fair Political Practices Commission.

Proposal #3

Amend Public Utilities Code Section 130051.20(a)(4) as follows:

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a **party**, participant, or its agent, involved in the contract decision.

Notes:

The amendments to Section 130051.20(a)(4) are indicated in bold underlined italics.

The complete text of Public Utilities Code Section 130051.20 is in the attached Appendix.

The insertion of the word "party" is required for the sentence to make logical sense, it is the way the MTA has always interpreted the sentence, and it is consistent with the way the California Attorney General interprets the sentence [see California Attorney General opinion No. 00-603 dated October 23, 2000]

Proposal #4

Amend Public Utilities Code Section 130700(c) as follows:

130700. (a) Board members or their staff shall not participate in an MTA decision in which they know or have reason to know that they have a financial interest.

(b) Board members shall not be purchasers at any sale, or vendors at any purchase, that is made personally by that member.

(c) An individual is deemed to have a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on that individual or the individual's immediate family, distinguishable from its effect on the public generally, or on any of the following:

(1) Any business entity in which the board member or staff member has a direct or indirect investment worth one thousand dollars (\$1,000) or more. **This amount shall be as adjusted consistent with the amount in Government Code Section 87103(a) as amended from time to time.**

(2) Any real property in which the board member or staff member has a direct or indirect interest worth one thousand dollars (\$1,000) or more. **This amount shall be as adjusted consistent with the amount in Government Code Section 87103(b) as amended from time to time.**

(3) Any source of income, other than gifts and other than loans by a commercial lending institution made in the regular course of business in terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the board member or staff member within 12 months prior to the time when the decision is made. **This amount shall be as adjusted consistent with the amount in Government Code Section 87103(c) as amended from time to time.**

(4) Any business entity in which the board member or a member of his or her staff is a director, officer, partner, trustee, or employee, or holds any position of management.

(5) Any donor or, or any intermediary of, agent for a donor of a gift or gifts aggregating two hundred eighty-nine dollars (\$289) or more in value provided to, received by, or promised to, the board member or staff member within 12 months prior to the time the decision is made. **This amount shall be as adjusted consistent with the amount in Government Code Sections 87103(e) and 89503 as amended or adjusted from time to time.**

(d) This section does not prohibit a board member from participating in a decision if that participation is legally required in order for the decision to be made. In that case the individual shall disclose the nature of his or her interest before he or she participates in the decision. For the purposes of this subdivision, the fact that a board member's vote is necessary to break a tie does not make his or her participation legally required.

Notes:

The amendments to Section 130700 are indicated in bold underlined italics.

The complete text of the cross-referenced Government Code Section 87103 is in the attached Appendix.

The Political Reform Act was recently amended to increase the disqualifying threshold amount for investments from \$1,000 to \$2,000, and for income from \$250 to \$500. The gift threshold is adjusted biennially and is currently \$320.

The MTA Board Members Code of Conduct as codified in Public Utilities Code Section 130700 was written as a mirror image of the Political Reform Act provisions that are cross-referenced in the proposed amendments and should remain consistent with that Act. These amendments will only maintain that consistency henceforth without repeatedly proposing new legislation.

Appendix

Public Utilities Code Section 130051.20

130051.20. (a) (1) No construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the Los Angeles County Metropolitan Transportation Authority shall give to a member, alternate member, or employee of the authority, or to any member of their immediate families, a contribution of over ten dollars (\$10) in value or amount. A "contribution" includes contributions to candidates or their committees in any federal, state, or local election.

(2) Neither the owner, an employee, or any member of their immediate families, of any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority shall make a contribution of over ten dollars (\$10) in value or amount to a member, alternate member, or employee of the authority, or to any member of their immediate families.

(3) No member, alternate member, or employee of the authority, or member of their immediate families, shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from any construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity seeking a contract with the authority.

(4) No member, alternate member, or employee of the authority shall make or participate in, or use his or her official position to influence, a contract decision if the member, alternate member, or employee has knowingly accepted a contribution of over ten dollars (\$10) in value in the past four years from a participant, or its agent, involved in the contract decision.

(5) No member, alternate member, or employee of the authority, or member of their immediate families shall accept, solicit, or direct a contribution of over ten dollars (\$10) in value or amount from a construction company, engineering firm, consultant, legal firm, or any company, vendor, or business entity that has contracted with the authority in the preceding four years.

(b) A member, alternate member, or employee of the authority who has participated as a decision maker in the preparation, evaluation, award, or implementation of a contract and who leaves the authority shall not, within three years of leaving the authority, accept employment with any company, vendor, or business entity that was awarded a contract as a result of his or her participation, evaluation, award, or implementation of that contract.

Public Utilities Code Section 130700

130700. (a) Board members or their staff shall not participate in an MTA decision in which they know or have reason to know that they have a financial interest.

(b) Board members shall not be purchasers at any sale, or vendors at any purchase, that is made personally by that member.

(c) An individual is deemed to have a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on that individual or the individual's immediate family, distinguishable from its effect on the public generally, or on any of the following:

(1) Any business entity in which the board member or staff member has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(2) Any real property in which the board member or staff member has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(3) Any source of income, other than gifts and other than loans by a commercial lending institution made in the regular course of business in terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the board member or staff member within 12 months prior to the time when the decision is made.

(4) Any business entity in which the board member or a member of his or her staff is a director, officer, partner, trustee, or employee, or holds any position of management.

(5) Any donor or, or any intermediary of, agent for a donor of a gift or gifts aggregating two hundred eighty-nine dollars (\$289) or more in value provided to, received by, or promised to, the board member or staff member within 12 months prior to the time the decision is made.

(d) This section does not prohibit a board member from participating in a decision if that participation is legally required in order for the decision to be made. In that case the individual shall disclose the nature of his or her interest before he or she participates in the decision. For the purposes of this subdivision, the fact that a board member's vote is necessary to break a tie does not make his or her participation legally required.

Government Code Section 84308

84308. (a) The definitions set forth in this subdivision shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

(3) "Agency" means an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.

(4) "Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7. If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the

Government Code Section 87103

87103. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503. For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.