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**MEMORANDUM
GUIDANCE FOR THE FIRST EIGHT COMMISSIONERS
CITIZENS REDISTRICTING COMMISSION**

TO: First Eight Commissioners, Citizens Redistricting Commission

FROM: Sharon Reilly, Chief Counsel, California State Auditor
Donna Neville, Associate Chief Counsel, California State Auditor

DATE: November 18, 2010

SUBJECT: Guidance for the first eight members of the Citizens Redistricting Commission

Congratulations on your selection to California's first-ever Citizens Redistricting Commission ("Commission"). As you know, the first eight commissioners are charged with the important responsibility of selecting the final six commissioners from those remaining in the applicant pool. You must complete your selection of the final six commissioners at an open, public meeting no later than December 31, 2010.

We have prepared this memorandum in advance of your first meeting so that you will have important information about the requirements that apply to you in your role as a commissioner. This memorandum provides guidance related to the responsibilities of the first eight commissioners; rules related to communication and meetings; ethical conduct; conflicts of interest; and related matters. In addition, this memorandum provides important practical information related to making travel arrangements and submitting claims for reimbursement.

We ask that you review the material in this memorandum carefully prior to your upcoming meeting beginning on November 30, 2010. If you have questions regarding the information in this memorandum, please send them to us by e-mail at votersfirstact@auditor.ca.gov or call Wesley Opp at (916) 445-0255. At the meeting

Citizens Redistricting Commission



beginning November 30, 2010, there also will be an opportunity to discuss the information contained in this memorandum. We hope you will find this information helpful as you embark on your role as one of the first eight commissioners.

Schedule and Upcoming Meetings

The Bureau of State Audits (“Bureau”), under the oversight of the California State Auditor, will provide assistance and support to the first eight commissioners as they select the final six commissioners. The Bureau will provide meeting space at the same location in Sacramento where the Applicant Review Panel conducted its interviews during the selection process; will assist the first eight commissioners in making travel and other arrangements, and will provide staff support, including legal counsel, to assist the first eight commissioners as they select the final six commissioners. Also, as required by law, the Bureau will provide training to the first eight commissioners on the Bagley-Keene Open Meeting Act, California’s demography and geography, the Voting Rights Act of 1965, and the process of redistricting.

To facilitate these activities, we have scheduled an open, public meeting at our offices at 555 Capitol Mall in Sacramento, beginning on November 30, 2010, at 9:30 a.m. The first two days of the public meeting, November 30 and December 1, 2010, will be devoted primarily to training and to other procedural matters, such as the selection of a temporary chair and vice-chair to preside over the meeting where the first eight commissioners select the final six commissioners. In all likelihood, the first eight commissioners will need to meet from 9:30 a.m. until 4:30 p.m., or later, on these two days. Following the first two days of meeting, the first eight commissions will need to meet on additional days in December to select the final six members of the Commission prior to the December 31, 2010 deadline imposed by law. The frequency and duration of the actual meeting days in December is a matter for the commissioners to decide, so we cannot tell you at this point exactly how many days the commissioners will meet or how long their meeting days will last. At this point, we have published an agenda for this meeting, indicating that the meeting will begin on Tuesday, November 30, and will continue, from day-to-day, through as late as December 17, 2010. A copy of that agenda is enclosed with this packet of materials and is posted at www.wedrawthelines.ca.gov.

Guidance Related to Communication and Open Meetings

The Commission is required to conduct its business in a way that is open and transparent to the public. Its meetings and communications outside of meetings are governed by the Bagley-Keene Open Meeting Act (commencing with section 11120 of the Government Code), and by the Voters FIRST Act. Because the requirements of these laws apply to you from the date you are appointed to serve on the Commission, it is very important for you to review this section carefully and to follow the guidance provided here.

The Bagley-Keene Open Meeting Act (Bagley-Keene) is California's state open meeting act, and it applies to all "state bodies." The Voters FIRST Act expressly states that this law applies to the Commission. Bagley-Keene is very similar to the Ralph M. Brown Act (Gov. Code § 54950 et seq.), which applies to local legislative bodies such as the governing boards of cities, counties, and school districts. In addition to the requirements of Bagley-Keene, the Voters FIRST Act contains provisions that differ from the requirements set out in Bagley-Keene regarding the amount of notice that must be provided prior to certain meetings of the Commission and to communications outside of an open, public meeting. Throughout this memorandum, we will highlight those specific areas where the Voters FIRST Act imposes a requirement on you that may differ from the general provisions of Bagley-Keene. Wherever the Voters FIRST Act imposes a requirement that may differ from Bagley-Keene, you are required to comply with the requirement contained in the Voters FIRST Act.

The information provided in this memorandum is designed to provide you with a general overview of the requirements that apply to meetings and communications outside of meetings. It does not cover all aspects of the law. At your upcoming meeting, we will provide a formal training session on the requirements of Bagley-Keene as well as the provisions of the Voters FIRST Act that apply to the Commission. Attached to this memorandum is "A Handy Guide to the Bagley-Keene Open Meeting Act of 2004" (Guide), as published by the Office of the Attorney General. The Guide provides a very helpful discussion of Bagley-Keene, along with the full text of the law, as of 2004. We also have attached the most recent version of Bagley-Keene.

Purpose of the Law

The purpose of Bagley-Keene is to ensure that the meetings of "state bodies" are open to the public, that the public has prior notice of meetings, and that the public has the ability to participate in meetings. The Commission is required by law to comply with the open meeting act.

Meetings and Public Notice

A central requirement of Bagley-Keene is that the public must receive prior notice of meetings. Bagley-Keene generally requires publication of a meeting notice on the Internet ten days prior to a regular meeting. The notice must contain specific items of information, including an agenda that provides a brief description of each item of business to be conducted. There are some limited exceptions to the general 10-day notice requirement, when, for example, an *emergency*, as defined by law, exists, or when the state body calls a *special* meeting, which, as its name suggests, only may be called for the special purposes set out in statute.

Significantly, the Voters FIRST Act imposes prior notice requirements on meetings of the Commission that differ from those in Bagley-Keene. The meetings of the full 14-member Commission must generally have 14 days of prior notice. It is important to note, however, that the **meetings of the first eight members of the Commission are subject to the 10-day notice requirement contained in Bagley-Keene**. The Bureau will assist the first eight members in developing and publishing the agendas and related

written materials for the meetings of the first eight commissioners in accordance with the applicable legal requirements.

A “meeting” occurs when a quorum of a state body convenes, either by gathering together at the same location or through a series of communications, to deliberate on issues that are within the state body’s jurisdiction. A quorum of the first eight members of the Commission is made up of five members. Once the full 14-member Commission is formed, a quorum is nine members. A meeting includes not only those situations where the state body acts on a matter by voting or otherwise committing itself to a course of action but also those situations where a quorum of the members receive information, are briefed on a matter, or discuss a matter. So, for example, if five of the first eight members of the Commission were to meet for the purpose of hearing a staff briefing on the required procedures for selecting the final six commissioners, but took no action, this still would constitute a meeting that is subject to Bagley-Keene.

Certain types of gatherings of a quorum of the members are exempt from the open meeting act. For example, a purely social gathering of a majority of the members of a state body is not subject to Bagley Keene. However, the members of the Commission may not discuss matters within their jurisdiction at such social situations, including during lunch breaks on meeting days. Having discussions regarding the business of the Commission outside of a properly noticed, open, public meeting may violate the open meeting act, as we discuss below.

Serial Meetings and Impermissible Activities

As mentioned above, it is possible to violate the provisions of the open meeting act if a majority of the members of a state body communicate among themselves, outside of an open, public, meeting, regarding business that is within their jurisdiction. These communications may take place in ways that we might normally not think of as a traditional meeting. For example, if a majority of the members of the Commission were to communicate by e-mail, outside of an open meeting, regarding matters within their jurisdiction, this would be a violation of the open meeting act.

We strongly encourage you to read pages 5 and 6 of the Guide very carefully because it explains various situations where the members of a state body may violate the law by communicating outside of a meeting. In our upcoming training meeting, we will discuss this prohibition further and will provide guidance on how to ensure that you do not violate the open meeting law by communicating among yourselves outside of an open public meeting regarding the business of the Commission. In the meanwhile, our advice to you is that you should not communicate with any other commissioner outside of an open public meeting regarding any matter that is within the Commission’s jurisdiction. This includes, among other things, communication regarding the selection of the final six commissioners.

The Voters FIRST Act requires the full 14-member Commission to adopt protocols regarding communication. We expect that this is an issue that will be addressed further by the full Commission in consultation with its legal counsel.

Telephonic Meetings and Technology

Bagley-Keene permits telephonic meetings, but special rules apply to meetings that involve teleconferencing. See page 7 of the Guide and Government Code section 11123 for these rules. We emphasize that if you hold a telephonic meeting, every location must be identified in the notice and agenda and the members of the Commission must attend the meeting at locations that are open to the public. You may not attend a meeting, by telephone from your office, home, or other location unless these locations are published in the meeting agenda and are accessible to the public.

Public Comment

Members of the public must be allowed to attend all meetings, and must be given an opportunity to address the Commission on each agenda item before it takes any action on that item. Page 9 of the Guide summarizes the rights of the public to attend and participate in meetings.

Communication with the Public Outside of Meetings

The provisions of the Voters First Act impose a unique restriction on the members of the Commission regarding their communications outside of an open, public meeting that differs from Bagley-Keene. The Voters FIRST Act prohibits Commission members and staff from communicating with or receiving communications about redistricting matters from anyone outside of a public meeting. This means that if you are contacted outside of a meeting by someone who wishes to provide you with information or discuss redistricting, you are prohibited by law from having that communication. The safest course of action, if you are contacted by someone outside of a meeting who wishes to discuss redistricting with you or provide you with information, is to advise that person to provide his or her comments to the Commission at a public meeting or to submit those comments to the full Commission, in writing, so that they may be made a part of the formal record of a public meeting. In addition, if such a contact occurs, we advise you to disclose this fact, as well as any information that may have been provided to you, at the next open, public meeting of the Commission.

The Voters FIRST Act requires the full 14-member Commission to adopt protocols regarding communication. We expect that this is an issue that will be further addressed by the full Commission in consultation with its legal counsel.

Assuming Office and Taking the Oath of Office

State law requires the members of the Citizens Redistricting Commission to take an oath of office, as provided for by the California Constitution and the Government Code. By law, members of the Commission may not begin their service or perform any of the official functions of the office without first taking the oath of office. The oath of office may be taken before any officer who is authorized to administer oaths. The completed oath, certified by the officer who administers the oath, must be filed with the Secretary of State.

To facilitate the process of administering the oath of office to the first eight commissioners, the State Auditor will administer the Oath of Office as the first item of business at the meeting beginning on November 30, 2010. Commissioners do not need to sign the oath now, but for your reference, the oath of office reads in relevant part, as follows:

“I, _____, do solemnly swear (*or affirm*) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign, and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter . . .”

Required Parliamentary Procedures for Meetings of the First Eight Commissioners

The first eight commissioners, as well as the full 14-member Commission, are required by law to follow *Robert's Rules of Order* when conducting meetings. These rules of procedure are commonly used to facilitate the flow of business at meetings, to ensure fairness in debate, and to maintain order at meetings.

At your upcoming meeting, counsel will be present to provide you with any assistance you may need in using these rules at your meetings. In the meanwhile, we direct your attention to some information that you may find helpful regarding the most commonly used rules. Please see <http://www.robertsrules.org/> for helpful information related to *Robert's Rules of Order*.

Responsibilities of the First Eight Commissioners

The Voters FIRST Act charges the first eight commissioners with the very important task of selecting the final six commissioners from among those who remain in the applicant pool. The first eight commissioners must select the final six commissioners at an open, public meeting no later than December 31, 2010. Once all fourteen commissioners have been selected, the California Secretary of State is responsible for providing transitional support to the Commission until it is fully functional.

Although we can imagine that you are very excited about the challenges that lie ahead of you as one of the first eight commissioners to serve on the Commission, it is important to recognize that the role and the authority of the first eight commissioners is limited exclusively to the task of selecting the final six commissioners, and to performing various procedural steps, such as selecting a temporary chair and vice-chair to preside over their meetings as they select the final six commissioners. Until the full 14-member Commission is selected and convenes at a properly noticed, open meeting, there can be no other discussion or action regarding the work of the Commission. This means that all other work, including decisions regarding the hiring of staff, contracting, and work related to redistricting, may not begin until the full 14-member Commission convenes. The Bureau currently is coordinating with the Office of the Secretary of State

to attempt to ensure a smooth transition from the selection process to the functioning of the full 14-member Commission.

The Voters FIRST Act and its implementing regulations impose specific requirements regarding the qualifications that an applicant must possess to be selected to serve as a commissioner and the manner in which a commissioner shall be selected. As you know, the Voters FIRST Act requires that all commissioners possess three key qualifications: the ability to be impartial; relevant analytical skills; and an appreciation for California's diverse demographics and geography. At this point in the selection process, all of the applicants remaining in the applicant pool have demonstrated to the Applicant Review Panel their possession of these qualifications. In addition, the background information related to the remaining applicants has been reviewed to determine whether these applicants have a disqualifying conflict of interest, as prescribed by the Voters FIRST Act and its implementing regulations. We encourage you to read the enclosed *Legal Handbook for the Citizens Redistricting Commission* to learn more about these requirements.

The provisions of the Voters FIRST Act pertaining to the selection of the final six members of the Commission require that the first eight commissioners review the names in the pool of applicants and appoint six applicants to the Commission as follows: two from the remaining subpool of applicants registered with the largest political party in California based on registration (Democratic Party); two from the remaining subpool of applicants registered with the second largest political party in California based on registration (Republican Party), and two from the remaining subpool of applicants not registered with either of the two largest political parties in California based on registration (as they are registered with some other political party or in registering to vote have declined to state a party affiliation).

The implementing regulations relating to the selection of the final six commissioners require that the final six members of the Commission be selected by the first eight members in the form of a slate, or group, of six applicants comprised of two applicants who are registered Democrats, two who are registered Republicans, and two who are not registered with either of these parties. In proposing one or more slates of six, the first eight members of the Commission must comply with the legal requirement that the final six members be chosen so as to reflect the state's diversity, as well as on the basis of relevant analytical skills and the ability to be impartial. However, the Voters FIRST Act provides that that the final six commissioners cannot be selected by using specific formulas or specific ratios to achieve diversity.

At the upcoming meeting, legal counsel will provide guidance regarding the specific procedures for the selection of the final six members of the Commission, including the presentation, consideration, and approval of slates. You also may find it helpful, prior to the upcoming meeting, to read regulation section 60860 contained in the enclosed *Legal Handbook*, on page 44, which prescribes the legal requirements related to the selection of the final six commissioners.

Materials Related to the Upcoming Meeting

As a commissioner, you are required by law to review the application materials of the remaining applicants prior to making your selection. However, you have not been given the specific training that will be provided at the upcoming meeting to ensure that you are familiar with the legal requirements for selecting the final six commissioners. So even though we are providing the application materials for the remaining applicants at this time, we are only doing this to provide you with an adequate opportunity to familiarize yourself with these materials prior to engaging in the actual selection process. We strongly discourage you from making any judgments regarding any particular applicant until after you receive the training that will be provided on November 30-December 1, 2010.

Quorum and Voting Requirements for the First Eight Members

As mentioned earlier, five members constitute a quorum for a meeting of the first eight members of the Commission. No business may be conducted until a quorum is present. In addition, the Voters FIRST Act requires that when selecting the final six members of the Commission, the slate of six applicants must be approved by at least five of the first eight commissioners, with at least two affirmative votes coming from commissioners who are registered with the Democratic Party; two from commissioners who are registered with the Republican Party; and one from a commissioner who is registered to vote but not with either of those two parties. The selection of a temporary chair and temporary vice chair also must be approved by at least five affirmative votes, consisting of at least two affirmative votes from commissioners who are members of the largest political party, two affirmative votes from commissioners who are members of the second largest political party, and one affirmative vote from a commissioner who is not a member of either of those two parties. Other actions may be taken on the affirmative vote of any five commissioners regardless of their party affiliations.

Requirements for Selection of Chair and Vice Chair

At the first meeting, the first eight commissioners must elect one of the members to serve as a temporary chair and another member to serve as a temporary vice chair. The temporary chair and vice chair are elected solely for the purpose of facilitating the public meetings of the first eight commissioners as they select the final six commissioners. There is no presumption that these individuals will continue to serve as chair and vice chair once the commission is fully formed.

The temporary chair is responsible for presiding over the meetings. If the temporary chair is absent, then the vice chair will preside over the meetings. The temporary chair and vice chair cannot be registered with the same political party. To select the temporary chair and vice chair, a commissioner must make a motion to elect the chair and it must be seconded by another commissioner prior to the vote of the commissioners. To be elected to this position, the individual under consideration must receive at least five votes, including two votes from the members of the Commission

who are registered with the Democratic Party, two votes from the members of the Commission who are registered with the Republican Party, and one vote from a commissioner who is either registered as Decline to State or registered with another party. This same voting method will be used to select the vice chair, or to replace the temporary chair or vice chair. In the absence of both the temporary chair and the temporary vice chair, an acting temporary chair may be elected to preside over a meeting on the affirmative vote of a majority of the members present and voting.

Counsel will be present at your upcoming meeting to assist you in conducting the procedures for the selection of the temporary chair and vice chair.

Office Holding Restrictions that Apply Specifically to Commissioners

As you are aware from your involvement in the earlier stages of the selection process, the Voters FIRST Act prohibits a person from serving on the Citizens Redistricting Commission if he or she has engaged in various activities in the ten-year period prior to serving on the Commission. In addition, the Voters FIRST Act contains specific restrictions that make those individuals who are ultimately selected to serve on the Commission ineligible to hold certain elective or appointive public offices for specified periods of time from the date of their appointment to the Commission. Thus, for the first eight members of the commission, those restrictions begin to apply to you as of November 18, 2010, and for the final six members of the Commission, the restrictions apply as of the date of their selection.

These office holding restrictions are contained in paragraph (6) of subdivision (c) of section 2 of Article XXI of the California Constitution (hereafter "section 2"), which reads as follows:

"A commission member shall be ineligible for a period of 10 years beginning from the date of appointment to hold elective public office at the federal, state, county, or city level in this State. A member of the commission shall be ineligible for a period of five years beginning from the date of appointment to hold appointive federal, state, or local public office, to serve as paid staff for the Legislature or any individual legislator or to register as a federal, state, or local lobbyist in this State."

The regulations that have been adopted by the Bureau provide additional specificity regarding how these office holding restrictions operate and define such terms and phrases as "elective public office at the federal, state, county or city level" and "appointive federal, state, or local public office." See the enclosed *Legal Handbook*, on pages 14 and 18, respectively, to learn more about how these phrases are defined for purposes of the office holding restrictions. If you have specific questions about how these restrictions may apply to you, please address those questions to legal counsel.

Ethical Conduct: the Political Reform Act of 1974

The Political Reform Act of 1974 (“reform act”) is an important law that governs the ethical conduct of public officials in California. It is beyond the scope of this memorandum to provide a detailed discussion of that law, but we direct your attention to various important areas of the reform act. First, the reform act requires that public officers disclose certain financial interests upon assuming office, as described below. Secondly, the reform act contains specific limitations on the receipt of gifts, honoraria, travel payments, and loans, as described below. Third, the reform act requires that public officials complete a required training in ethics, as described below. Finally, once the full Commission is formed, it will need to adopt a Conflict of Interest Code that sets forth the specific financial disclosure requirements that will apply to its staff. The first eight members do not have the legal authority to adopt this Conflict of Interest Code, but this is an issue they should pursue with their legal counsel as soon as practicable after formation.

Once the full Commission is formed, it will likely wish to receive additional guidance from its legal counsel regarding the reform act. In the meanwhile, you may wish to review the *Guide to the Political Reform Act of 1974*, which can be found at <http://www.fppc.ca.gov/index.php?id=51>.

Financial Disclosure Requirement (FORM 700)

As a new commissioner, you are required to file a Form 700 (Statement of Economic Interests) within 30 days of assuming office. For your convenience, we have enclosed a copy of the Form 700. You can find an electronic copy of this form at <http://www.fppc.ca.gov/forms/700-09-10/Form700-09-10.pdf>. As you recall, you filled out this form previously during the application process. Although that form covered a reporting period beginning 12 months from the date of your application, you may find it helpful to refer to your prior redacted form, which is located at <https://application.wedrawthelines.ca.gov/applicants>. If you have questions regarding how to complete this form, please call the Fair Political Practices Commission (FPPC) at (866) ASK-FPPC. Please provide your completed form to Bureau legal counsel by no later than December 18, 2010.

Limitations and Restrictions on Gifts, Honoraria, Travel Payments, and Loans

As a member of the Commission, you are subject to limitations and restrictions regarding gifts, honoraria, travel payments, and loans as specified in the reform act. In some cases, these limitations and restrictions will apply to your family members as well. Failure to abide by these limitations and restrictions can result in significant costs and negative repercussions. Further, failure to report gifts, honoraria, loans, and travel payments may result in monetary penalties of up to \$5,000 per violation.

Enclosed in this packet, please find the FPPC document entitled “Limitations and Restrictions on Gifts, Honoraria, Travel and Loans.” You also can find an electronic copy of this document at http://www.fppc.ca.gov/factsheets/StateBds-Commissions_gifts_travel.pdf. The enclosed document summarizes the major provisions

of the reform act concerning gifts, honoraria, travel payments, and loans. Additionally, if you have any questions about this topic, please contact the FPPC at (866) ASK-FPPC.

Required Ethics Training

California law requires you to complete ethics training within the first six months of your appointment and to repeat this training every two years throughout your term. This training includes important information on activities and actions that are inappropriate or illegal, e.g., taking part in a decision that directly affects your own economic interests.

An online, interactive version of the ethics training is available on the Attorney General's website at <http://ag.ca.gov/ethics/>. An accessible, text-only version of the materials is also available at the Attorney General's website. Once you have completed your training, provide your certificate of completion to the designated ethics officer for the Commission.

Sexual Harassment Training

As a new commissioner, you are required to attend at least two hours of classroom or other interactive training and education regarding sexual harassment prevention within six months of your appointment. Once the full Commission is formed, it will be important to receive this training.

Guidance Related to the Disclosure of Information (Public Records Act)

The first eight members of the Commission and the full 14-member Commission are subject to the California Public Records Act, which generally requires the disclosure of the written records of the agency, upon request, unless there is some law that allows or requires a written record to be withheld from disclosure. For your reference, we have provided a link to the *Guide to the California Public Records Act*, <http://ag.ca.gov/consumers/general/pract.php>. Be advised that any written communication you have related to Commission business may be a public record.

During the time the first eight members are convened, the Bureau will assist them in responding to any requests for information under the California Public Records Act. Once the full Commission is formed, it should consult with its legal counsel regarding compliance with the California Public Records Act.

Travel Arrangements

As previously mentioned, a meeting of the first eight commissioners begins on November 30, 2010 at our offices at 555 Capitol Mall, Sacramento, California, and the Bureau will arrange for your travel to Sacramento on November 29, 2010 for that meeting. The Bureau is authorized to reimburse, or pay directly, the reasonable and actual expenses for commissioners to travel to attend meetings. If the Bureau

determines that a commissioner requires air travel to attend a meeting, the Bureau will directly purchase the airline ticket. Non-air transportation and living expenses will be reimbursed and computed in accordance with regulations governing state travel, and may not exceed those established for non-represented state employees. Overnight accommodations only may be reimbursed if the Bureau determines such accommodations are necessary. Additionally, commissioners may request a travel advance if incurring travel expenses would constitute an undue financial hardship for a commissioner. All requests for travel advances are subject to Bureau approval.

To confirm and facilitate your travel to the upcoming meeting, a Bureau representative will be contacting you soon. In the meanwhile, if you have any questions about your arrangements for travel associated with the work of the first eight commissioners, please contact Kim Lorenzen at (916) 445-0255 or kiml@bsa.ca.gov.

Per Diem and Submitting Claims for Reimbursement

As a member of the Citizens Redistricting Commission, you will be compensated for your work. The Voters FIRST Act provides that you will receive \$300 for each day that you are “engaged in commission business” and the implementing regulations clarify that “commission business” includes your training and activities as one of the first eight commissioners. Additional information about how to claim reimbursement for per diem will be provided later.

We hope you find this information helpful as you embark on your new role as a member of the Citizens Redistricting Commission.