

This memo is provided in advance of the September 15, 2011 Commission meeting in response to Commissioner Dai's request for an analysis of our current functions , opportunities to reduce costs and alternative approaches to providing basic services to the assist the Commission to fulfill its fundamental Constitutional responsibilities.

### The Commission's Current Staffing Situation

The two entities responsible for approving the budget and staff for the commission are (1) the commission itself, and (2) the Department of Finance (DoF). In our most recent discussions with the DoF, it recommended approval of our basic structure to the Legislature for this fiscal year, ending June 30, 2012, after a thorough review and evaluation of our existing positions. DoF reached this conclusion based on its experience as to the essential elements any state department must have in place to operate.

### What's in Place?

Staffing levels:

- The DoF and the State Controller's Office (SCO) have approved eight full time, limited term positions which we currently have filled as follows:
  - Overall Administration & Finance: Executive Director Dan Claypool
  - State Legal Services and Legal Liaison: Chief Counsel Kirk Miller
    - Legal Assistant: 2/5's time Retired Annuitant Marian Johnston (as needed).
  - Media Liaison: Communications Director Rob Wilcox
  - Budget Officer: 2/5's time Retired Annuitant Deborah Davis
  - Contracts and Procurements: Business Manager Raul Villanueva
  - Communications and Web Specialist: Senior Communications Analyst Christina Shupe
  - General Accounting and Payments: Staff Services Analyst Lisa Halterman
  - Procurements and Public Records Act Requests: Associate Governmental Program Analyst Lon Leitch
- At our current work levels, this staffing level allows for temporary, crossover coverage for sick leaves, vacations and appointments with slight levels of overtime. The only exceptions to coverage are:
  - Communications Director. Rob Wilcox has taken leave time while maintaining his required duties from home or other off sight locations.
  - Business Manager/Contract Specialist. Raul Villanueva has written and completed contracts, as the need arises, from home or other off sight locations while taking leave time.
  - Senior Communications Specialist. Cover for Christina has been obtained from our contract web services provider at \$75 per hour versus Christina's hourly rate of \$32.70 per hour.

### Reductions in Costs and Staff to Date

- Staff overtime hours has been reduced 90% since the maps were released on 8/15/2011, from an average of 334 hours per month to 34 hours this month. This is the equivalent of two full time positions.
- Actual staff positions have been reduced 46% from a total of fifteen positions, including student assistants, to eight positions.

### Barriers to Future Hiring

#### Change in Status, Permanent to Limited Term:

- The commission's employee status is currently being changed from permanent to limited term positions because of a budget construction error made by the DoF. The change is non-negotiable despite the error. Our positions can only be made permanent if they are passed as permanent in an actual budget approved by the Governor. The commission's current staff positions were administratively created outside of the Governor's prior budget. For the commission, this change affects hiring because Limited Term positions do not accrue seniority in a job position making the position less desirable to a career employee. The net result will be an increased difficulty to find suitable replacement staff for any of the commission's positions.

#### Unique job classification of Exempt from Exempt:

- The commission's employment classification does not allow mandatory return rights to a current state employee applying for a position with the commission. Only two of your current staff were willing to leave their mandatory return rights and come to work for the commission, myself and Kirk Miller, Chief Counsel. This will also increase the difficulty of finding qualified replacement staff for any positions when current staff leaves to take more secure employment.

### What Alternatives are Available to the Commission If It Eliminates or Lose Staff

#### Outsource a Specific Service:

- When the commission was working with the Secretary of State Office (SoS), it was suggested by SoS staff that the commission could outsource whole functions with entities such as the Department of General Services (DGS), the Bureau of State Audits (BSA), the Attorney General's (AG) office, or the Franchise Tax Board (FTB). Commissioner Dai asked that staff obtain bids for outsourcing the legal or administrative functions with one or more of these entities. As of Tuesday, we were able to obtain the following information:
  - The DGS will not perform work without a liaison staff person for each major function where they provide services. That is, it will advise and provide expertise, but will not serve as the primary provider for any fundamental service, such as legal or accounting. The commission currently has a contract in place with DGS for accounting and Human Resources and uses the DGS Office of Procurement and Office of Legal Services on an as

needed basis because the commission lacks the delegated authority to enter into its own contracts. The current commission liaison for each function noted is:

- Kirk Miller and Raul Villanueva: Office of Legal Services
- Deborah Davis and Lisa Halterman: Accounting, Payroll and Travel Services
- Raul Villanueva and Lonn Leitch: Office of Procurement
- The Chief Counsel at the BSA stated that the bureau's charter doesn't allow it to perform these types of functions for outside entities. In addition, Ms. Reilly stated that it would be a conflict of interest with the commission in the event that an audit was required of the commission's expenditures and funding.
- The AG will not provide legal services at any level.
- The FTB has not returned my call from Monday.

#### Outsource Selected Services:

- The commission can only contract out with State entities or those entities on the C-Mast list. C-Mast is a list of previously approved vendors.
  - The State collective bargaining units will not allow contracting out to a non-state entity for any essential function that can be performed by state workers.
  - C-mast can provide a list of service provider for work not performed by state workers.
- The commission currently outsources for services to the extent possible, including state services previously noted, and private industry services such as videography, website maintenance, temporary assistance and legal counsel.

#### Utilize Retired Annuitants

- The commission currently utilizes two retired annuitants (RA), Deborah Davis and Marian Johnston. Neither came from the commission's solicitation for services that was broadcast statewide and through the Department of Administrative Services. Ms. Davis was highly recommended by an individual associated with one of the "partner" organizations after we were unable to find a suitable candidate for her position and Ms. Johnston was recommended by our Chief Counsel. While RA's can be highly qualified workers on an hourly basis, they come with practical limitations:
  - RA's are in demand and prefer jobs with limited hours and flexible schedules. Many avoid jobs that have significant commitments. This was the primary hindrance in filling our original two positions.
  - RA's have a 960 hour limit per year. They cannot work beyond those hours or they lose their retirement status. Ms. Davis has already expended significant amounts of her allotment and will be on a two day a week schedule going into next month. Ms. Johnston will have similar considerations.
  - RA's are not obligated to stay on a job if a better one or a better opportunity presents itself or if they stop liking their working conditions. Earlier this year we lost a temporary, procurement RA because he tired of the work.

## Retain Staff

- The commission's staff is motivated, well trained, and care about the process.
- Commission staff has institutional knowledge unique to the commission and the state and make daily decisions that contribute to the commissions savings and well-being. For example:
  - Our outside litigation teams wanted to work across a weekend to prepare for a commission vote on possible litigation over the first referendum. Both Kirk and I told the attorneys to wait until the commission had the opportunity to vote first, thereby saving over \$25,000 in preparation expenses.
  - Our \$1 million augmentation from last year was deleted from the commission's budget on July 1, 2011, after not being used in the prior year, as is typically required by the state budget process. Deborah Davis worked with the State Controller's Office (SCO) for a week to restore the commission's spending authority.
  - The commission's non-managerial staff was initially denied overtime payments and all staff was reclassified to the lowest vacation accrual. Raul Villanueva worked with The DoF, the SCO, and the Department of Personnel Administration for over two months to ensure that staff was provided with the correct levels of compensation and leave balances.
  - I worked closely with the DoF and the Legislature to develop a system of reporting and funding that allows money to be transferred from the commission's provisional funding to its accounts in order to ensure that all invoices are paid on time. There has never been a similar system of funding in the history of the state. At this time, we continue to receive our funding exactly as and when requested.
- The commission hourly rates are significantly lower than the service agency counterparts that would provide contracted services. For those agencies where the rates are known, the staff's comparable rates, including benefits, are:
  - Contract construction: DGS Office of Legal Services: \$140 per hour. Raul: \$43.64.
  - Contract review & supervision: DGS Office of Procurement: \$85 per hour. Raul: \$43.64.
  - Legal services: DGS Office of Legal Services: \$140 per hour. Kirk: \$74.03.
- Commission staff come with instant access and control over costs. State contracted services will be phone and email access only with no control over the response from the entity under contract. Cost disputes over TEC's or funding are handled through the State Board of Control for resolution.

## Recommendation:

The staff workload remains above the level required for a 40 hour week because of its assistance in litigation preparation, public advocacy, budget preparation, current year funding release, contract preparation for legal personnel and expert witnesses, contract review and invoice approval, and commission meeting and payment support. While this level of activity continues, the commission should retain its current staffing level through the end of November when the state litigation period, September 29, 2011, and the referendum filing period is over.

Once these events have ended, the commission will have a better idea of what its staffing needs will be in the upcoming months. If the senate and congressional referendums qualify, there is a possibility that the commission will be involved in litigation and will need the remaining staff to assist in the successful defense of the maps. If there is no litigation and the referendums fail, staff should be reduced to a level commensurate with the lowest level of activities that the commission believes is necessary. This could be as low as five individuals occupying key staff positions.

Finally, there will be a natural rate of attrition that will occur over the coming months as staff look for positions with more security. As staff leave, the commission will have the opportunity to decide whether to fill or fallow the position(s) in question. This will provide an early opportunity to see how difficult it is to refill a position with candidates that meet the commission's high standards.