



AGENDA ITEM: 2

DATE OF MEETING: September 6, 2012

ACTION: X

INFORMATION: _____

DETERMINATION IN SUPPORT OF SPECIAL COMMISSION MEETING

SUMMARY OF REQUEST

A special commission meeting has been convened on less than ten days' notice for the purpose of appointing an interim executive director, as permitted under the Bagley-Keene Open Meeting Act (Bagley-Keene) at Government Code section § 11125.4(a)(9). Before the Commission can discuss that item, however, it must first make a finding that the delay necessitated by providing notice 10 days prior to the meeting as typically required by Bagley-Keene would cause a substantial hardship on the body or that immediate action is required to protect the public interest.

BACKGROUND

On Friday, August 23, 2012, First 5 California Executive Director Kris Perry gave notice to the Commission of her resignation from the organization, to accept a job as Executive Director of the First Five Years Fund, a national organization dedicated to advancing policies on behalf of early childhood. The official date of her resignation is September 7th although her effective last day was August 31st.

Pursuant to Proposition 10, the Executive Director is to be appointed by the Commission, and acts under the authority of and in accordance with the direction of the Commission. (Health & Safety Code, § 130120.) The Bylaws of First 5 California provides that the appointment of an Executive Director by the Commission confers signature authority upon that person for the purpose of executing all contracts and other legal documents on behalf of the Commission. The appointment of the Executive Director further confers the delegated authority upon that person to enter into or amend contracts of \$150,000 or less. In addition, the Executive Director is delegated the authority to award and enter into contracts above \$150,000 after the Commission has authorized such expenditure. (First 5 California Bylaws, Article XI.)

Even though the Commission intends to diligently recruit for a new permanent Executive Director, it is essential for the smooth, continuous operation of First 5 California to appoint an Interim Executive Director. Given the ongoing business and administration of First 5 California consistent with previous authority for programs and contracts granted by the Commission, a gap of even a few days in the signature authority could expose the Commission to lapses of its current legal and contractual obligations. Several recruitment efforts are underway to hire mission-critical staff, and staff is prepared to extend

employment offers to at least three highly-qualified candidates for key positions in the agency. Several new and amended contracts are awaiting execution, consistent with previous approvals by the Commission. On a daily basis, invoices and other approvals demand the Executive Director's signature for final sign-off.

Therefore, it is essential to promptly appoint an Interim Executive Director with full authority for executing contracts and legal documents on behalf of the Commission, to ensure that the business of the agency continues uninterrupted until a permanent Executive Director may be appointed. Bagley-Keene permits a state body to convene on less than ten days' notice for a few, specified reasons. Appointing an interim executive officer of a state body upon a vacancy in that office is one of the permitted reasons. (Govt. Code, § 11125.4(a)(9).

Government Code section 11125.4(b) requires that, before conducting any business at a special meeting, even business that is permitted by Government Code section 11125.4(a), at the commencement of the special meeting the state body must first make a finding in open session that the delay necessitated by providing notice 10 days prior to such a meeting would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The facts contained herein demonstrate that it would cause substantial hardship on First 5 California to await the ten days' notice normally required under Government Code section 11125 for a publicly noticed business meeting, before appointing an Interim Executive Director.

This finding must be adopted by either a two-thirds vote of the body, or if less than two-thirds of the members are present, a unanimous vote of the members present. (Govt. Code, § 11125.4(c). Because exactly four of the seven members of the Commission are expected to be present, a unanimous vote of those present is required. Pursuant to Bagley-Keene, the finding adopted by the Commission will be made available on the Internet following the Special Commission Meeting, on the First 5 California website at www.cffc.ca.gov. (*Id.*)

STAFF RECOMMENDATION

Staff recommends that the members present at the Special Commission Meeting unanimously find that the delay necessitated by providing notice of this meeting 10 days prior to it would cause a substantial hardship on the responsibilities and smooth operation of First 5 California.