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# Legislative Bulletin

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*A Publication of the County Executive Office/Legislative Affairs*

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Item No. 48

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## **County of Orange Positions on Proposed Legislation**

The Legislative Bulletin provides the Board of Supervisors with analyses of measures pending in Sacramento and Washington that are of interest to the County. Staff provides recommended positions that fall within the range of policies established by the Board. According to the County of Orange Legislative Affairs Procedures adopted by the Board of Supervisors on June 3, 2003, staff recommendations for formal County positions on legislation will be agendized and presented in this document for Board action at regular Board of Supervisors meetings. When the Board takes formal action on a piece of legislation, the CEO will direct the County's legislative advocates to promote the individual bills as approved by the Board. The Legislative Bulletin also provides the Board of Supervisors with informative updates on State and Federal issues.

The 2009 Legislative Platform was adopted by Board of Supervisors' Minute Order dated November 25, 2008. On December 16, 2008, the Board of Supervisors will consider the following actions:

### **RECOMMENDED ACTIONS**

1. Approve Additional State/Federal Proposals to be added to the 2009 Orange County Legislative Platform:
  - a. Reducing Unfunded Pension Liabilities
  - b. Ethics Training for Advisory Boards, Committees and Commissions
  - c. Utilization of Special Assessment Appeals Board Panels Filed by Certain Individuals
  - d. In-Home Support Services
  - e. Eliminate Alternative Minimum Tax on Airport Private Activity Bonds
2. Receive and File Legislative Bulletin

## 2009 LEGISLATIVE PLATFORM

### ACTION ITEMS

#### **Approve Additional State/Federal Proposals to be added to the 2009 Orange County Legislative Platform**

Following are additional State and Federal Legislative proposals for your Honorable Board's consideration. If approved, they will be incorporated into the 2009 Legislative Platform.

##### **a. Reducing Unfunded Pension Liabilities**

The County of Orange presents this proposal as a way to address our state and local government's severe budget crisis. A balanced approach to restoring long-term fiscal responsibility must include limiting the cost of government employee pensions which have grown dramatically in recent years.

Current laws allows retirement systems to pay a cost of living increase when the consumer price index increases. This proposal would apply to pension systems, at minimum all systems governed under the County Employees Retirement Law of 1937, and would require a system to suspend paying out annual cost-of-living adjustment (COLA) increases until the system is at least 80% funded. For example, a system's funded ratio (of actuarially accrued assets to actuarially accrued liabilities) must be equal to or greater than 80% in order to pay out a COLA.

This proposal seeks to reduce unfunded pension liabilities by encouraging pension systems to reach and maintain a minimum threshold (80%) of funding to fully fund the system's liabilities. Pension obligations are a substantial cost to government entities and provide a valuable benefit to employees, yet many pension funding ratios have decreased, or are decreasing. Strengthening the financial health of a system by trending the funded ratio upward is important for fiscal integrity, long-term stability, and viability of the system (Attachment 1).

##### **b. Ethics Training for Advisory Boards, Committees and Commissions**

Current law requires ethics training for local agency officials in subjects of public meetings, public records, ethics, and contracting procedures.

This proposal, submitted by the Clerk of the Board, would clarify existing law to make it clear, which members of advisory boards, committees, and commissions who receive only parking and/or mileage within the jurisdiction for participation at the meeting and are not subject to Conflict of Interest filing requirements do not have to undergo training.

AB 1234 of 2005 required that members of advisory boards, committees, and commissions who receive compensation, stipends or reimbursement of expenses must attend training on topics such as public meeting law and ethics. Several purely advisory boards, commissions, and committees do not provide compensation or reimbursement of travel expenses to their members, but may provide de minimus reimbursement for parking and/or any required mileage within the jurisdiction for participation at their meetings (Attachment 2).

**c. Utilization of Special Assessment Appeals Board Panels Filed by Certain Individuals**

Pursuant to Revenue and Taxation Code Sections 1622.6 and 1612.7, when Assessment Appeals Board Members or Clerk of the Board staff file an assessment appeal on behalf of themselves or their immediate family members, it must be heard by a special Alternate Assessment Appeals Board that is appointed by an order of the Presiding Judge of the Superior Court in the county in which the appeal has been filed.

This proposal would amend the current Revenue and Taxation Code by adding language to section 1622.6 and adding section 1622.7 to expand the list of individuals that are required to utilize a special assessment appeals panel. The list would include Assessor deputies and staff, and County Counsel, who regularly appear before their local Assessment Appeals Board. It would also allow for the Clerk to utilize qualified assessment appeals board members from surrounding counties, rather than obtaining an order from the Presiding Judge of the Superior Court (Attachment 3).

**d. In-Home Support Services**

In-Home Support Services is an entitlement program administered by the Social Services Agency (SSA) of the County of Orange that provides assistance to low income elderly and disabled to enable them to continue to live in their own home as an alternative to institutional care. This program is based upon the assumption that it is more compassionate and cost-effective to care for the elderly and disabled in a home setting rather than through institutionalization.

For FY 2008-09 the payments from the County of Orange to providers under IHSS are budgeted at \$29.9 million; the actual payments to providers from the County for FY 2007-08 were \$28.3 million. The cost sharing ratio of total provider payments is allocated as follows: 50 percent from federal agencies, 32.5 percent from the State of California, and 17.5 percent from the County of Orange. Since this is an entitlement program, the costs for provider payments cannot be easily controlled or limited. Although the hourly wage paid to providers is negotiated locally, the number of hours paid is controlled by state regulation.

A fixed amount is allocated by the state for the cost of administration and oversight of this program. This allocation is also funded by federal, state, and county sources, at the same sharing ratios as provider payments.

*CEO/Legislative Affairs Comments*

The troubled state of the economy and the current budget problems with the State of California are resulting in substantial revenue cuts to many programs administered by the County of Orange. The IHSS caseload continues to grow rapidly, leading to increasing provider and administrative costs. In addition, the administrative allocation provided by the state lags far behind the increasing cost of doing business. At the same time, the major source of the funding for the county share, the realignment fund, has decreased, creating a significant funding gap.

It is desirable for the County to find means of managing the growing caseloads and reduced revenues so that the IHSS program can continue to operate in an effective and efficient manner during this period of financial uncertainty.

Financial eligibility for IHSS is determined by the eligibility standards for Medi-Cal. There are opportunities for increased local control over how funds are expended if the State and/or federal laws and regulations can be changed or relaxed.

*Recommendation*

It is recommended that the Board of Supervisors add the following language to the 2009 Legislative Platform:

Current economic conditions combined with very difficult State budget deficits are creating the need for deep budget cuts in many County of Orange departments. This situation applies to the County's Social Services Agency and the In-Home Support Services (IHSS) program. The Board of Supervisors directs County staff to work with County advocates at the State and Federal levels to effect changes in regulations and/or law to enable the County to operate the IHSS program in a more efficient and cost-effective manner.

**e. Eliminate Alternative Minimum Tax on Airport Private Activity Bonds**

The County of Orange is currently implementing the John Wayne Airport Improvement Program which includes construction of a new 250,000 plus square foot terminal building, 2,000 plus space parking structure, central plant, and enhancements to the existing terminals. The Airport Improvement Program financing plan includes the issuance of over \$300 million in bond debt. Under current law, the Airport's bonds will be subject to the Alternative Minimum Tax (AMT).

*Background*

Although most U.S. airports are operated by state, regional or local governments, many airport bonds are deemed "private activity bonds" because private parties, such as commercial service airlines, are significant users of airport facilities. However, projects built with these bonds, while used by private entities, provide terminal, runway, taxiway and other critical facilities that clearly benefit the public.

While generally considered tax-exempt, interest paid to investors on Private Activity Bonds is subject to the AMT. This results in investors demanding an interest rate premium. Historically, the cost of the AMT "penalty" has added 10 to 30 basis points (0.10 percent to 0.30 percent) to the cost of a long-term borrowing. As more taxpayers have fallen under the AMT classification, investor interest in AMT bonds has decreased dramatically and airports are encountering penalties as high as 150 basis points (1.5 percent) when compared to other types of non-AMT issuers like toll roads, hospitals and housing projects.

*CEO/Legislative Affairs and John Wayne Airport Comments*

CEO Legislative Affairs and JWA staff recommend that the Board of Supervisors support the elimination of the AMT penalty on private activity bonds for airport purposes. If the AMT penalty on private activity bonds for airport purposes is not removed, the Airport anticipates that it will pay approximately \$100 million in additional interest costs over the life of the repayment period. The County will seek the inclusion of a provision in the jobs creation/economic recovery package that would exempt private activity bonds for airport purposes from the AMT.

The Airports Council International/North America (ACI/NA) and the American Association of Airport Executives (AAAE) are supporting efforts to remove the AMT penalty. In addition, Congressman John Mica, Ranking Member of the House Committee on Transportation and Infrastructure, along with Congressmen John J. Duncan and John Boozman, sent a letter in November to the Committee on Ways and Means requesting the exemption of transportation private activity bonds from the AMT.

## WASHINGTON LEGISLATIVE REPORT

### WASHINGTON UPDATE

James F. McConnell, Washington, D.C., Legislative Advocate will provide an oral report on activities of the Congress as part of this agenda item.

A copy of the 2009 County of Orange Legislative Platform will be available at: <http://www.oc.ca.gov/> under OC Links.

If you or your staff have any questions or require additional information on any of the items in this bulletin, please contact Bruce Matthias, at 714.834.7010.

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2009-2010 LEGISLATIVE SESSION**

**AGENCY/DEPARTMENT:** BOARD OF SUPERVISORS – 2<sup>ND</sup> DISTRICT  
**CONTACT PERSON:** Supervisor John Moorlach or April Rudge  
**Phone:** (714) 834-7663 **Fax:** (714) 834-6109  
**email address:** april.rudge@ocgov.com

**SUBJECT: REDUCING UNFUNDED PENSION LIABILITIES**

**AFFECTED DEPARTMENT(S)/AGENCY(IES):**  
Orange County Employees Retirement System

**CODE SECTION AFFECTED:**  
Government Code Article 16.5 Cost of Living Adjustment (Sections 31870 through 31874.6); Government Code Article 16.6 Retrospective Cost-of-Living Adjustment (Sections 31875 through 31879.2)

**DESCRIPTION OF CURRENT LAW:**  
Retirement systems pay cost of living increases when the consumer price index increases.

**PROPOSAL:**  
To apply pension systems, at minimum all systems governed under the County Employees Retirement Law of 1937. Require a system to suspend paying out annual cost-of-living adjustment (COLA) increases until the system is at least 80% funded. For example, a system's funded ratio (of actuarially accrued assets to actuarially accrued liabilities) must be equal to or greater than 80% in order to pay out a COLA.

DISCUSSION:

This proposal seeks to reduce unfunded pension liabilities by encouraging pension systems to reach and maintain a minimum threshold (80%) of funding to fully fund the system's liabilities. Pension obligations are a substantial cost to government entities and provide a valuable benefit to employees, yet many pension funding ratios have decreased, or are decreasing. Strengthening the financial health of a system by trending the funded ratio upward is important for fiscal integrity, long-term stability, and viability of the system.

FISCAL IMPACT:

Reduce unfunded pension liabilities.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

Would add section 31870.5 to Government Code:

**Section 31870.5. No payment of increase in allowance attributable to increase in cost of living unless value of system's assets is greater than eighty (80) percent of system's liabilities.**

- (a) **Notwithstanding any other provision of law, no increase in a retirement allowance, optional death allowance, or annual death allowance that is attributable to an increase in the cost of living shall be paid by a retirement system governed by this Chapter to or on account of any member of the system or a superseded system, who retires or dies or who has retired or died, unless the actuarial valuation made pursuant to Section 31453 that immediately preceded the date when such an increase otherwise would have become payable determined that the value of the retirement system's assets was equal to or greater than eighty (80) percent of the retirement system's liabilities.**
- (b) **An increase in a retirement allowance, optional death allowance, or annual death allowance for which payment is suspended pursuant to subsection (a) of this section shall become payable upon an actuarial valuation made pursuant to Section 31453 that determines that the value of the retirement system's assets is equal to or greater than eighty (80) percent of the retirement system's liabilities.**

Would Amend section 31875:

Section 31875 Adjustments in accordance with past cost of living changes; ordinance; applicable law

Any county may provide by ordinance that the principles set forth in Article 16.5 (commencing with section 31870), as a basis for adjustment of retirement allowances in accordance with future cost-of-living changes, shall be applied for the purposes of adjusting allowances in accordance with past cost-of-living changes, **provided that no increase in retirement allowance, optional death allowance or annual death allowance that is attributable to a past increase in the cost of living shall become payable until an actuarial valuation made pursuant to Section 31453 determines that the value of the retirement system's assets is equal to or greater than eighty (80) percent of the retirement system's liabilities.**

Approved as to form:  
Orange County Counsel

by Barbara Stocker  
Deputy

POTENTIAL OPPOSITION/SUPPORT:

RECENT LEGISLATIVE ACTION ON THIS ISSUE:

PERSONS RESPONSIBLE FOR TESTIMONY:

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2009-2010 LEGISLATIVE SESSION**

**AGENCY/DEPARTMENT:** CLERK OF THE BOARD/COUNTY COUNSEL

**CONTACT PERSON:** Darlene Bloom Phone: 714-834-6616

**Fax:** 714-834-4439 email address: Darlene.bloom.hoa.ocgov.com

**SUBJECT: ETHICS TRAINING FOR ADVISORY BOARDS, COMMITTEES AND COMMISSIONS**

**AFFECTED DEPARTMENT(S)/AGENCY(IES):**  
all

**CODE SECTION AFFECTED:**  
Amends Government Codes 53234, 53235

**DESCRIPTION OF CURRENT LAW:**

Current law requires ethics training for local agency officials in subjects of public meetings, public records, ethics and contracting procedures.

**PROPOSAL:**

This legislation would clarify existing law to make clear that members of advisory boards, committees and commissions who receive only parking and/or mileage within the jurisdiction for participation at the meeting, do not travel outside the jurisdiction, and are not subject to Conflict of Interest filing requirements do not have to undergo training.

**DISCUSSION:**

AB 1234 of 2005 required that members of advisory boards, committees and commissions who receive compensation, salary, stipends or reimbursement of expenses must attend training on topics such as public meeting law and ethics. Several purely advisory boards, commissions, committees do not provide compensation or reimbursement of travel expenses to their members, but may provide de minimus reimbursement for parking and/or any required mileage within the jurisdiction for participation at their meetings. Members of such advisory boards, commissions and committees are still required to comply with AB 1234 and undergo ongoing ethics training.

FISCAL IMPACT:  
Slight positive impact.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

**Proposed Amendments to Government Code Sections re: Ethics Training  
(AB 1234, Chapter 700 of the Statutes of 2005)**

Government Code Section 53234 is amended to read:

53234. For the purposes of this article, the following terms have the following meanings:

(a) "Legislative body" has the same meaning as specified in Section 54952.

(b) "Local agency" means a city, county, city and county, charter city, charter county, charter city and county, or special district.

(c) "Local agency official" means the following:

(1)(A) Any member of a local agency legislative body or any elected local agency official who receives any type of compensation, salary, or stipend or reimbursement for actual and necessary expenses incurred in the performance of official duties, excluding officials described in paragraph (2).

(2) (B) Any employee designated by a local agency governing body to receive the training specified under this article.

(2) "Local agency official" does not include a member of a local agency legislative body that serves a solely advisory function and has no decisionmaking authority if all of the following criteria are met:

(A) The individual is not required to file a statement of economic interests pursuant to Title 9 (commencing with Section 81000) due to his or her membership on the legislative body;

(B) The individual receives no compensation, salary or stipend from the legislative body;

(C) The individual only receives reimbursement for parking expenses and/or mileage relating to travel within the jurisdiction of the legislative body for the purpose of participating in a meeting of the legislative body of which he or she is a member; and

(D) The individual does not otherwise travel for the legislative body at local agency expense, whether inside or outside of the jurisdiction.

(d) "Ethics laws" include, but are not limited to, the following:

(1) Laws relating to personal financial gain by public servants, including, but not limited to, laws prohibiting bribery and conflict-of-interest laws.

(2) Laws relating to claiming perquisites of office, including, but not limited to, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies.

(3) Government transparency laws, including, but not limited to, financial interest disclosure requirements and open government laws.

(4) Laws relating to fair processes, including, but not limited to, common law bias prohibitions, due process requirements, incompatible offices, competitive bidding requirements for public contracts, and disqualification from participating in decisions affecting family members.

Government Code Section 53235 is amended to read:

(a) If a local agency provides any type of compensation, salary, or stipend to a member of a legislative body, or provides reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties, then all local agency officials, as defined in this article, shall receive training in ethics pursuant to this article.

(b) Each local agency official shall receive at least two hours of training in general ethics principles and ethics laws relevant to his or her public service every two years.

(c) If any entity develops curricula to satisfy the requirements of this section, then the Fair Political Practices Commission and the Attorney General shall be consulted regarding the sufficiency and accuracy of any proposed course content. When reviewing any proposed course content the Fair Political Practices Commission and the Attorney General shall not preclude an entity from also including local ethics policies in the curricula.

(d) A local agency or an association of local agencies may offer one or more training courses, or sets of self-study materials with tests, to meet the requirements of this section. These courses may be taken at home, in-person, or online.

(e) All providers of training courses to meet the requirements of this article shall provide participants with proof of participation to meet the requirements of Section 53235.2.

(f) A local agency shall provide information on training available to meet the requirements of this article to its local officials at least once annually.

Approved as to form:  
Orange County Counsel

by Ann Fletcher  
Deputy

**POTENTIAL OPPOSITION/SUPPORT:**

This proposal has been drafted in cooperation with County Counsel. The California Association of Clerks and Elections Officials supports this proposal.

**RECENT LEGISLATIVE ACTION ON THIS ISSUE:**

No. This proposed legislative amendment is for the purpose of clean-up to identify those advisory Boards, Commissions and Committees that merely receive a de minimus compensation for parking or travel within their jurisdiction that are exempt from the Ethics Training requirements of AB 1234.

**PERSONS RESPONSIBLE FOR TESTIMONY:**

Darlene J. Bloom                      Clerk of the Board

**PROPOSAL FOR COUNTY SPONSORED LEGISLATION  
2009-2010 LEGISLATIVE SESSION**

AGENCY/DEPARTMENT: CLERK OF THE BOARD/COUNTY COUNSEL

CONTACT PERSON: Darlene Bloom Phone: 714-834-2206

Fax: 714-834-4439 email address: darlene.bloom@ocgov.com

**SUBJECT: UTILIZATION OF SPECIAL ASSESSMENT APPEALS BOARD PANELS  
FILED BY CERTAIN INDIVIDUALS**

AFFECTED DEPARTMENT(S)/AGENCY(IES):  
Assessor, County Counsel

**CODE SECTION AFFECTED:**

Amends Revenue and Taxation Code section 1622.6 and adds Revenue and Taxation Code section 1622.7.

**DESCRIPTION OF CURRENT LAW:**

Pursuant to Revenue and Taxation Code Sections 1622.6 and 1612.7, when Assessment Appeals Board Members or Clerk of the Board staff file an assessment appeal on behalf of themselves or their immediate family members, it must be heard by a special Alternate Assessment Appeals Board that is appointed by an order of the Presiding Judge of the Superior Court in the county in which the appeal has been filed.

**PROPOSAL:**

The current proposal would amend the current Revenue and Taxation Code by adding language to section 1622.6 and adding section 1622.7 to expand the list of individuals that are required to utilize a special assessment appeals panel. The list would include Assessor deputies and staff, and County Counsel, who regularly appear before their local Assessment Appeals Board. It would also allow for the Clerk to utilize qualified assessment appeals board members from surrounding counties, rather than obtaining an order from the Presiding Judge of the Superior Court.

DISCUSSION:

The current law requires the use of a special Assessment Appeals Board for assessment appeal applications filed by members of the Assessment Appeals Board or staff. If amended as proposed, the Revenue and Taxation Code would expand the use of alternate boards where assessment appeals have been filed individually by Assessor or County Counsel that regularly appear before the Assessment Appeals Board. The amendment will help to avoid any possible appearance of conflict or impropriety in the appeals process.

The new statutory language will also provide the Clerk of the Board with the discretion of utilizing an existing, trained assessment appeals board panel from a neighboring county, in addition to the use of a special panel appointed by the Superior Court that is already authorized by the Revenue and Taxation Code. At one time there was a residency clause for the special panel appointed by the Presiding Judge; however, that was removed several years ago. Therefore, the change in to the proposed language will allow for Clerks of the Board to utilize assessment appeals board member panels from neighboring counties, who are already qualified and trained professionals without having to go to Superior Court, when possible.

FISCAL IMPACT:

Improves and streamlines process to ensure finalization of appeal within the statutory 2-year limit.

PROPOSED SPECIFIC LANGUAGE: (As approved by County Counsel)

**Revenue and Taxation Code, Section 1622.6: Hearing on application by counsel to member or member's application for reduced assessment**

An application for equalization filed pursuant to Section 1603 or 1605 by a member or alternate member of an assessment appeals board, or counsel who regularly advises the assessment appeals board, or an application in which that member or counsel represents his or her spouse, parent, or child, shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed or, in the discretion of the Clerk of the Board, by an alternate board consisting of three special alternate assessment appeal board members who are qualified and in good standing from another county in California.

A member, or alternate member of, or counsel to, an assessment appeals board shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal matter. A special alternate assessment appeals board member may hear only

the application or applications for equalization set forth in the superior court order appointing the member. **For special alternate assessment appeals boards that consist entirely of assessment appeal board members from another county in California, those members may hear only the applications designated by the Clerk of the Board or Clerk of the Assessment Appeals Board.**

Any person shall be eligible for appointment as a special alternate assessment appeals board member who meets the qualifications set forth in Section 1624.

Sections 1624.1 and 1624.2 shall be applicable to the appointment of a special assessment appeals board member.

**Revenue and Taxation Code, Section 1622.7: Application by assessor**

**An application for equalization filed pursuant to Section 1603 or 1605 by a deputy assessor who regularly appears before the assessment appeals board, or counsel who regularly represents the Assessor before the assessment appeals board, or an application in which that deputy assessor or counsel represents his or her spouse, parent, or child, shall be heard in accordance with the provisions set forth in Section 1622.6. The deputy assessor or the applicant counsel to assessor shall notify the clerk immediately upon filing an application on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal matter.**

Approved as to form:  
Orange County Counsel

by Paula A. Whaley  
Deputy

**POTENTIAL OPPOSITION/SUPPORT:**

This proposal has been submitted to the State Assessors Association and to the State County Counsels Association for review, as well as OC Assessor and County Counsel. We have received no opposition to this proposal. It is anticipated that the California Association of Clerks and Election Officials will sponsor/support this proposal.

**RECENT LEGISLATIVE ACTION ON THIS ISSUE:**

NA

**PERSONS RESPONSIBLE FOR TESTIMONY:**

Darlene J. Bloom

Clerk of the Board