



Agenda Date: 8/9/2005

Agenda Placement: 9B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Silva Darbinian for Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Brandi Periera, PARALEGAL , 251-1090
SUBJECT: Fair Payment Initiative

RECOMMENDATION

County Counsel requests the Board:

1. Receive certification of sufficient signatures on the initiative known as the "Fair Payment for Public Benefit Act" from the Registrar of Voters; and
2. Take one of the three following actions as required by Elections Code Section 9118:
 - a. Direct staff to prepare an ordinance tracking the "Fair Payment for Public Benefit Act" without alteration for adoption by the Board on or before August 19, 2005; or
 - b. Adopt a resolution ordering an election and placing the "Fair Payment for Public Benefit Act" initiative on the ballot for the November 8, 2005 statewide special election; or
 - c. Order the appropriate department(s) to prepare and present to the Board a report within 30 calendar days, pursuant to Elections Code Section 9111, and identify the information which should be included in the report.

EXECUTIVE SUMMARY

Upon the receipt of certification of sufficiency of signatures for the initiative known as the "Fair Payment for Public Benefit Act," the Board is required to take one of the three following actions: (1) direct staff to prepare an ordinance without alteration for adoption by the Board on August 16, 2005; or (2) adopt a resolution placing the initiative on the ballot; or (3) order the appropriate department(s) to prepare a report pursuant to Elections Code section 9111.

FISCAL IMPACT

Is there a Fiscal Impact? Yes
Is it currently budgeted? No

What is the revenue source?	General Fund.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	Assuming the initiative is consolidated with the November 8, 2005 statewide special election, additional costs for presenting this measure to the voters will be minimal in terms of additional pages in the sample ballot booklet at \$1500 per page for arguments and analysis, and the possibility that the paper ballot for absentee voters might be slightly larger than if the measure was not included. If a Section 9111 report is ordered, there would be a modest cost to the General Fund associated with staff time, requiring the reallocation of department priorities. If a consultant is hired to prepare the report, there would be an additional cost of approximately \$30,000.
Consequences if not approved:	Unknown.
Additional Information:	None

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Calling an election required to be held as a result of gathering signatures pursuant to Elections Code section 9118 is ministerial and is not subject to CEQA. (Friends of Sierra Madre v. City of Sierra Madre 25 Cal.4th 165, 189.)

BACKGROUND AND DISCUSSION

Pursuant to California Elections Code section 9114, the Registrar of Voters has examined the petitions filed on June 22, 2005 by the proponents of the initiative known as the "Fair Payment for Public Benefit Act." The Registrar of Voters' examination shows that the requisite number of registered voters have signed the initiative petition. The Registrar of Voters' certificate showing these results was submitted to the Clerk of the Board on August 4, 2005. The Registrar of Voters notified the proponents of the petitions of the sufficiency of signatures that same day.

Elections Code section 9118 provides that if an initiative petition is signed by voters not less than 10 percent of the entire votes cast in the county for all candidates for governor at the last gubernatorial election preceding the publication of the notice of intention to circulate an initiative petition, the Board of Supervisors must do one of the following: either (1) adopt the initiative as an ordinance without any change within 10 days of receipt of the certification of signatures by the Registrar of Voters, or (2) submit the initiative ordinance, without alteration, to the voters at the next statewide election occurring not less than 88 days after the date of the order of election, in this case November 8, 2005. Taking one of these two actions may be delayed for up to 30 calendar days should the Board elect to have a report prepared pursuant to Elections Code section 9111 discussing the effects of the initiative.

Section 9111 of the Elections Code provides that the Board may refer the proposed initiative measure to County staff for a report on any or all of the following:

- (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the county's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on county actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the county to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
- (6) Its impact on the uses of vacant parcels of land.
- (7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- (8) Any other matters the board of supervisors request to be in the report.

If the Board requests preparation of a Section 9111 report, it should specify the desired contents of the report, and also indicate the day on which the completed report should be presented to the Board. The statutory timeframe of 30-days would require presentation of the report at the Board's August 23, 2005 meeting, unless a special meeting is noticed on or before September 8, 2005. Regardless of the date selected, the Board's request for a 9111 report and the timeframe associated with preparation of the report would preclude placement of the initiative on the November 8, 2005 ballot, since state law requires items to be placed on the ballot at least 88 days in advance of the election. If a 9111 report is prepared and the Board then votes to place the initiative on the ballot, it would be presented to the voters at the June 2006 election.

In addition to the analysis described above, Elections Code section 9160(c) authorizes the Board to order the County Auditor to prepare a fiscal analysis to be included as a part of the official ballot materials. That fiscal analysis is limited in content and length:

"(c) Not later than 88 days prior to an election that includes a county ballot measure, the board of supervisors may direct the county auditor to review the measure and determine whether the substance thereof, if adopted, would affect the revenues or expenditures of the county. He or she shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the county if the proposed measure is adopted. The fiscal impact statement is "official matter" within the meaning of Section 13303, and shall be printed preceding the arguments for and against the measure. The fiscal impact statement may not exceed 500 words in length."

The decision to include, or not to include, a fiscal analysis is always included in the resolution calling the election. The resolution calling the election for November 8, 2005 requires the preparation of a fiscal analysis. If the Board wishes a fiscal analysis not to be included in the Official Ballot materials, the portion of the resolution calling the election relating to the fiscal analysis needs to be modified.

If the Board wishes a fiscal analysis to be prepared that exceeds 500 words it would need to order the same as part of the Section 9111 report. However, the report would then not qualify as "official matter" and thus will not be included in the Official Ballot Pamphlet that is sent to all voters prior to the election. A fiscal analysis pursuant to Elections Code section 9160(c), on the other hand, is "official matter" and would be

included in the Official Ballot Pamphlet sent to all voters prior to the election.

SUPPORTING DOCUMENTS

A . Resolution Calling Election

CEO Recommendation: Approve

Reviewed By: Lorenzo Ziálcita