



**California Special
Districts Association**
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COUNTYWIDE RDA OVERSIGHT BOARD SPECIAL DISTRICT APPOINTMENTS

CALIFORNIA SPECIAL DISTRICTS ASSOCIATION
CALIFORNIA ASSOCIATION OF LOCAL AGENCY FORMATION COMMISSIONS
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On July 1, 2018, more than 400 redevelopment agency (RDA) oversight boards will be consolidated into just one oversight board per county (and five oversight boards in Los Angeles County). When this occurs, each county's Independent Special Districts Selection Committee will be granted the authority to appoint one special district representative to that county's respective oversight board.

If the Independent Special District Selection Committee in a county fails to act by July 15, 2018, the governor will make the appointment on its behalf. Therefore, it is important that the special districts in each affected county, and the Local Agency Formation Commissions (LAFCo) that administer the operations of the Independent Special Districts Selection Committees, take proactive steps to ensure a successful locally-controlled appointment process.

Much is at stake in the decisions that go before oversight boards. In fiscal years 2015-16 and 2016-17 combined, the governor's 2016 May Revise estimated special districts will receive \$316 million in property tax restoration due to the continued wind down of RDAs. Oversight board actions could affect the amount and speed of future property tax restorations to special districts and other local agencies.

Due to the newness and uniqueness of the statute providing for countywide oversight boards, the many cross-references within the statute, and the lack of familiarity most LAFCos and special districts have with the Health and Safety Code in which the statute is included, the authorizing language for special district appointments may be challenging to some local officials.

For these reasons, the California Special Districts Association (CSDA) and California Local Agency Formation Commission (CALAFCO) convened a working group to outline the process for appointing special district representatives to countywide oversight boards, and to provide guidance on potential questions related to that process.

COUNTIES REQUIRING A COUNTYWIDE OVERSIGHT BOARD

The following thirty-seven counties have two or more oversight boards that will be consolidated into one countywide oversight board on July 1, 2018 (except for Los Angeles County, which will be consolidated into five oversight boards):

- Alameda
- Butte
- Contra Costa
- Fresno
- Humboldt
- Imperial
- Kern
- Kings
- Lake
- Los Angeles (five oversight boards)
- Madera
- Marin
- Monterey
- Mendocino
- Merced
- Nevada
- Orange
- Placer
- Riverside
- Sacramento
- San Bernardino
- San Diego
- San Joaquin
- San Luis Obispo
- San Mateo
- Santa Barbara
- Santa Clara
- Santa Cruz
- Shasta
- Solano
- Sonoma
- Stanislaus
- Sutter
- Tulare
- Ventura
- Yolo
- Yuba

Of the counties noted above, the following eleven counties do not currently have an Independent Special Districts Selection Committee in place. Therefore, the special districts and LAFCo in each of these counties will need to form an Independent Special Districts Selection Committee in order to facilitate the appointment of a special district representative to the new countywide RDA oversight board:

- Fresno
- Imperial
- Kings
- Madera
- Merced
- San Joaquin
- Solano
- Stanislaus
- Tulare
- Yolo
- Yuba



SPECIAL DISTRICT REPRESENTATIVE APPOINTMENT PROCESS

The statutory authorization for appointing the special district representative to a countywide oversight board is found in Health and Safety Code 34179, which can be found in the appendix. This publication overviews the application of this authority in conjunction with the relevant code sections cross-referenced to the Cortese-Knox-Hertzberg Act or “LAFCo Law” in the Government Code.

On July 1, 2018, counties with 2 – 39 individual RDA oversight boards will be consolidated into one countywide oversight board. Upon consolidation, the county’s Independent Special District Selection Committee is responsible for appointing the special district representative to the new countywide oversight board. The Independent Special District Selection Committee consists of the presiding officer of the legislative body of each independent special district or district-appointed alternate (Government Code Section 56332(a)).

Procedures

The LAFCo Executive Officer/Designee is responsible for calling and giving written notice of meetings of the Independent Special District Selection Committee, at which a representative may be appointed to the countywide RDA oversight board. (Government Code Section 56332(b)).

- A majority of the Independent Special District Selection Committee may determine to conduct the committee’s business by mail, including holding all elections by mailed ballot (Government Code Section 56332(e)).

If the independent special district selection committee has determined to conduct the committee’s business by mail or if the executive officer/designee determines that a meeting of the special district selection committee, for the purpose of selecting the special district members or filling vacancies, is not feasible, the executive officer/designee shall conduct the business of the committee by mail. Elections by mail shall be conducted as follows (Government Code Section 56332(f)):

- 1) The executive officer/designee shall prepare and deliver a call for nominations to each eligible district. The presiding officer, or his or her alternate as designated by the governing body, may respond in writing by the date specified in the call for nominations, which date shall be at least 30 days from the date on which the executive officer mailed the call for nominations to the eligible district.
- 2) At the end of the nominating period, if only one candidate is nominated for a vacant seat, that candidate shall be deemed appointed. If two or more candidates are nominated, the executive officer/designee shall prepare and deliver one ballot and voting instructions to each eligible district. The ballot shall include the names of all nominees and the office for which each was nominated. Each presiding officer, or his or her alternate as designated by the governing body, shall return the ballot to the executive officer/designee by the date specified in the voting instructions, which date shall be at least 30 days from the date on which the executive officer/designee mailed the ballot to the eligible district.
- 3) The call for nominations, ballot, and voting instructions shall be delivered by certified mail to each eligible district. As an alternative to the delivery by certified mail, the executive officer/designee, with prior concurrence of the presiding officer or his or her alternate as designated by the governing body, may transmit materials by electronic mail.
- 4) If the executive officer/designee has transmitted the call for nominations or ballot by electronic mail, the presiding officer, or his or her alternate as designated by the governing body, may respond to the executive officer/designee by electronic mail.



- 5) Each returned nomination and ballot shall be signed by the presiding officer or his or her alternate as designated by the governing body of the eligible district.
- 6) For an election to be valid, at least a quorum of the special districts must submit valid ballots. The candidate receiving the most votes shall be elected, unless another procedure has been adopted by the selection committee. Any nomination and ballot received by the executive officer/designee after the date specified is invalid, provided, however, that if a quorum of ballots is not received by that date, the executive officer/designee shall extend the date to submit ballots by 60 days and notify all districts of the extension. The executive officer/designee shall announce the results of the election within seven days of the date specified.
 - o A quorum is the majority of members representing eligible districts (Government Code Section 56332(a))
- 7) All election materials shall be retained by the executive officer/designee for a period of at least six months after the announcement of the election results

Eligibility Requirements

Members appointed by the independent special district selection committee shall be elected or appointed members of the legislative body of an independent special district residing within the county but shall not be members of the legislative body of a city or county (Government Code Section 56332(c)).

- Special district appointees to current individual oversight boards (pre consolidation into countywide oversight boards) are not restricted to members of the legislative body of the district.

There is no clear indication that the members appointed by the selection committee must be located in a former RDA. However, it could be implied by Health and Safety Code Section 34179(j)(3).

- Current individual oversight boards (prior to consolidation into countywide oversight boards) limit eligibility to special districts that have territory in the territorial jurisdiction of the former RDA and are eligible to receive property tax residual from the RPTTF: "One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188" (Health and Safety Code Section 34179(a)(3)(A)).

Based on Health and Safety Code Section 34179(j)(3), the committee should appoint a representative from a special district that receives property tax residual from the Redevelopment Property Tax Trust Fund (RPTTF).

- Health and Safety Code Section 34179(j)(3) reads in full: "One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188."

Deadlines and Vacancies

If no one is appointed by July 15, 2018, the governor may appoint an individual on behalf of the Independent Special District Selection Committee. The governor may also appoint individuals for any member position that remains vacant for more than 60 days (Health and Safety Code Section 34179(k)).



Notification Requirements

Health and Safety Code Section 34179(j) does not include notification requirements of the selected special district appointee. However, the current individual oversight boards (prior to consolidation into countywide oversight boards) were required to elect one of their members as the chairperson and report the name of the chairperson and other members to the Department of Finance (Health and Safety Code Section 34179(a)). Additionally, the LAFCo Executive Officer/Designee must announce the results of an Independent Special District Selection Committee election within seven days (Government Code Section 56332(f)(6)).

Counties with Only One Individual Oversight Board

In each county where only one individual RDA oversight board exists, as of July 1, 2018, there will be no consolidation into a countywide oversight board and no change to the composition of the existing oversight board (Health and Safety Code Section 34179(l)).

Counties with 40 or More Individual Oversight Boards

In each county where 40 or more individual oversight boards exist (Los Angeles County), as of July 1, 2018, there will be a consolidation into five oversight boards. The special district membership of each oversight board shall be selected as outlined in Health and Safety Code Section 34179(j)(3) via the Independent Special District Selection Committee process (Health and Safety Code Section 34179(q)(1)).

The consolidated oversight boards in this county shall be numbered one through five, and their respective jurisdictions shall encompass the territory located within the respective borders of the first through fifth county board of supervisors districts, as those borders existed on July 1, 2018. Each oversight board shall have jurisdiction over each successor agency located within its borders (Health and Safety Code Section 34179(q)(2)).

- If a successor agency has territory located within more than one county board of supervisors' district, the county board of supervisors shall, no later than July 15, 2018, determine which oversight board shall have jurisdiction over that successor agency. The county board of supervisors or their designee shall report this information to the successor agency and the department by the aforementioned date (Health and Safety Code Section 34179(q)(3)).

Health and Safety Code Section 34179(q) does not specify if the city and special district appointees must be from an agency located in the respective supervisorial seat.

POTENTIAL QUESTIONS

What if my county does not currently have an Independent Special District Selection Committee?

In the case where more than one successor agency exists within the county, an Independent Special District Selection Committee shall be created pursuant to Government Code Section 56332. Each independent special district shall appoint a member representative to the committee and notify the LAFCo of the appointed member. The LAFCo shall then call and conduct a meeting of the committee, pursuant to Section 56332, for purposes of appointing a representative to the countywide RDA oversight board.



Does the Independent Special District Selection Committee also select an alternate, as it does with LAFCo commissioners? How should a vacancy be addressed?

The strictest interpretation of the statute only authorizes the appointment of one person, but a reasonable argument can be made for the appointment of an alternate. The Legislature expressly incorporated Government Code Section 56332 without elaboration, and that section allows for alternates.

Health and Safety Code Section 34179 does not mention alternates for the countywide oversight boards, but does allow each appointing authority to appoint an alternate for the current individual oversight boards (prior to the consolidation into a countywide oversight board) (Health and Safety Code Section 34179(a)(11)). The selection process outlined in Government Code Section 56332(c) includes the selection of an alternate for the commission.

To resolve any ambiguity, the Independent Special District Selection Committee may choose to adopt local policies, pursuant to its authority in Government Code section 56332, expressly authorizing the appointment of an alternate.

If the LAFCo Executive Officer/Designee anticipates a vacancy will occur – or if an actual vacancy occurs – an election may be held for a representative to the countywide oversight board (Government Code section 56332(b)).

What is the term of an appointment to the countywide RDA oversight board?

Nothing in Health and Safety Code Section 34179 describes terms for members of the oversight board. Rather, Section 34179(g) provides that “Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.”

Can an appointee be replaced mid-term?

Yes; nothing in Health and Safety Code Section 34179 describes terms for members of the oversight board. Rather, Section 34179(g) provides that “Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.”

Can the Independent Special District Selection Committee replace a special district representative appointed by the governor due to a vacancy?

While not clearly outlined within the relevant statutes, the intent of having locally appointed representatives on the oversight board is undermined if the law is interpreted such that seats could become, essentially, permanent representatives of the governor.

That being said, Independent Special District Selection Committees are strongly encouraged to appoint a representative no later than July 15, 2018, and within 60 days of any vacancy thereafter, in order to avoid this potential question.

What should a LAFCo do where the law is not explicit as to the process for appointments to the countywide RDA oversight board?

LAFCOs should adopt local commission policies. Government Code Section 56300 allows LAFCOs to adopt local policies either to clarify requirements or specify how a LAFCo will implement State law taking into account the local conditions. Case law has also indicated that these policies are allowed so long as they are not in conflict with State law.



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For example, Government Code 56325(d) indicates that, notwithstanding any other provision of the Cortese-Knox-Hertzberg Act, each LAFCo can appoint one member and one alternate member who represents the public at large. The same section goes on to specify that the appointment of the public and alternate members must be subject to an affirmative vote of at least one of the members from the other appointed authorities; and it also specifies the noticing requirements to announce the vacancy in this position. Section 56325(d) does not contain any direction for the process of appointing public members, nor does it have an indication of the vetting process for candidates eligible to be appointed to this position. With this unclear in the law, some LAFCos have adopted policies to clarify and indicate the basic appointment process.

LAFCos may establish local polices for appointing special district representatives to the countywide RDA oversight board, so long as they are not in conflict with State law.

DEFINITIONS

Taxing entities

Cities, counties, a city and county, special districts, and school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part (Health and Safety Code Section 34171(k)).

Executive officer

The executive officer or designee as authorized by the Local Agency Formation Commission (Government Code Section 56332(g)).



APPENDIX

HEALTH AND SAFETY CODE

DIVISION 24. COMMUNITY DEVELOPMENT AND HOUSING [33000 - 37964] (*Heading of Division 24 amended by Stats. 1975, Ch. 1137.*)

PART 1.85. DISSOLUTION OF REDEVELOPMENT AGENCIES AND DESIGNATION OF SUCCESSOR AGENCIES [34170 - 34191.6] (*Part 1.85 added by Stats. 2011, 1st Ex. Sess., Ch. 5, Sec. 7.*)

CHAPTER 4. Oversight Boards [34179 - 34181] (*Chapter 4 added by Stats. 2011, 1st Ex. Sess., Ch. 5, Sec. 7.*)

34179. (a) Each successor agency shall have an oversight board composed of seven members. The members shall elect one of their members as the chairperson and shall report the name of the chairperson and other members to the Department of Finance on or before May 1, 2012. Members shall be selected as follows:

- (1) One member appointed by the county board of supervisors.
- (2) One member appointed by the mayor for the city that formed the redevelopment agency.
- (3) (A) One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188.
(B) On or after the effective date of this subparagraph, the county auditor-controller may determine which is the largest special district for purposes of this section.
- (4) One member appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.
- (5) One member appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.
- (6) One member of the public appointed by the county board of supervisors.
- (7) One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board of supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time. In the case where city or county employees performed administrative duties of the former redevelopment agency, the appointment shall be made from the recognized employee organization representing those employees. If a recognized employee organization does not exist for either the employees of the former redevelopment agency or the city or county employees performing administrative duties of the former redevelopment agency, the appointment shall be made from among the employees of the successor agency. In voting to approve a contract as an enforceable obligation, a member appointed pursuant to this paragraph shall not be deemed to be interested in the contract by virtue of being an employee of the successor agency or community for purposes of Section 1090 of the Government Code.
- (8) If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in a project area of the redevelopment agency, the county superintendent of education may appoint an additional member to represent the public.
- (9) If there are no special districts of the type that are eligible to receive property tax pursuant to Section 34188, within the territorial jurisdiction of the former redevelopment agency, then the county may appoint one member to represent the public.



(10) If a redevelopment agency was formed by an entity that is both a charter city and a county, the oversight board shall be composed of seven members selected as follows: three members appointed by the mayor of the city, if that appointment is subject to confirmation by the county board of supervisors, one member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is the type of special district that is eligible to receive property tax revenues pursuant to Section 34188, one member appointed by the county superintendent of education to represent schools, one member appointed by the Chancellor of the California Community Colleges to represent community college districts, and one member representing employees of the former redevelopment agency appointed by the mayor of the city if that appointment is subject to confirmation by the county board of supervisors, to represent the largest number of former redevelopment agency employees employed by the successor agency at that time.

(11) Each appointing authority identified in this subdivision may, but is not required to, appoint alternate representatives to serve on the oversight board as may be necessary to attend any meeting of the oversight board in the event that the appointing authority's primary representative is unable to attend any meeting for any reason. If an alternate representative attends any meeting in place of the primary representative, the alternate representative shall have the same participatory and voting rights as all other attending members of the oversight board.

(b) The governor may appoint individuals to fill any oversight board member position described in subdivision (a) that has not been filled by May 15, 2012, or any member position that remains vacant for more than 60 days.

(c) The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's and the successor agency's duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.

(d) Oversight board members are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.

(e) A majority of the total membership of the oversight board shall constitute a quorum for the transaction of business. A majority vote of the total membership of the oversight board is required for the oversight board to take action. The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. All actions taken by the oversight board shall be adopted by resolution.

(f) All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet Web site or the oversight board's Internet Web site.

(g) Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.

(h) (1) The department may review an oversight board action taken pursuant to this part. Written notice and information about all actions taken by an oversight board shall be provided to the department as an approved resolution by electronic means and in a manner of the department's choosing. Without abrogating the department's authority to review all matters related to the Recognized Obligation Payment Schedule pursuant to Section 34177, oversight boards are not required to submit the following oversight board actions for department approval:

(A) Meeting minutes and agendas.

(B) Administrative budgets.

(C) Changes in oversight board members, or the selection of an oversight board chair or vice chair.

(D) Transfers of governmental property pursuant to an approved long-range property management plan.



(E) Transfers of property to be retained by the sponsoring entity for future development pursuant to an approved long-range property management plan.

(2) An oversight board action submitted in a manner specified by the department shall become effective five business days after submission, unless the department requests a review of the action. Each oversight board shall designate an official to whom the department may make those requests and who shall provide the department with the telephone number and e-mail contact information for the purpose of communicating with the department pursuant to this subdivision. Except as otherwise provided in this part, in the event that the department requests a review of a given oversight board action, it shall have 40 days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and the oversight board action shall not be effective until approved by the department. In the event that the department returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for department approval and the modified oversight board action shall not become effective until approved by the department. If the department reviews a Recognized Obligation Payment Schedule, the department may eliminate or modify any item on that schedule prior to its approval. The county auditor-controller shall reflect the actions of the department in determining the amount of property tax revenues to allocate to the successor agency. The department shall provide notice to the successor agency and the county auditor-controller as to the reasons for its actions. To the extent that an oversight board continues to dispute a determination with the department, one or more future Recognized Obligation Payment Schedules may reflect any resolution of that dispute. The department may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item; however, this shall not affect a past allocation of property tax or create a liability for any affected taxing entity.

(i) Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. Further, the provisions of Division 4 (commencing with Section 1000) of the Government Code shall apply to oversight boards. Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city, county, city and county, special district, school district, or community college district.

(j) Except as specified in subdivision (q), commencing on and after July 1, 2018, in each county where more than one oversight board was created by operation of the act adding this part, there shall be only one oversight board, which shall be staffed by the county auditor-controller, by another county entity selected by the county auditor-controller, or by a city within the county that the county auditor-controller may select after consulting with the department. Pursuant to Section 34183, the county auditor-controller may recover directly from the Redevelopment Property Tax Trust Fund, and distribute to the appropriate city or county entity, reimbursement for all costs incurred by it or by the city or county pursuant to this subdivision, which shall include any associated startup costs. However, if only one successor agency exists within the county, the county auditor-controller may designate the successor agency to staff the oversight board. The oversight board is appointed as follows:

(1) One member may be appointed by the county board of supervisors.

(2) One member may be appointed by the city selection committee established pursuant to Section 50270 of the Government Code. In a city and county, the mayor may appoint one member.

(3) One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.

(4) One member may be appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.

(5) One member may be appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.

(6) One member of the public may be appointed by the county board of supervisors.



- (7) One member may be appointed by the recognized employee organization representing the largest number of successor agency employees in the county.
- (k) The governor may appoint individuals to fill any oversight board member position described in subdivision (j) that has not been filled by July 15, 2018, or any member position that remains vacant for more than 60 days.
- (l) Commencing on and after July 1, 2018, in each county where only one oversight board was created by operation of the act adding this part, then there will be no change to the composition of that oversight board as a result of the operation of subdivision (j).
- (m) Any oversight board for a given successor agency, with the exception of countywide oversight boards, shall cease to exist when the successor agency has been formally dissolved pursuant to Section 34187. A county oversight board shall cease to exist when all successor agencies subject to its oversight have been formally dissolved pursuant to Section 34187.
- (n) An oversight board may direct a successor agency to provide additional legal or financial advice than what was given by agency staff.
- (o) An oversight board is authorized to contract with the county or other public or private agencies for administrative support.
- (p) On matters within the purview of the oversight board, decisions made by the oversight board supersede those made by the successor agency or the staff of the successor agency.
- (q) (1) Commencing on and after July 1, 2018, in each county where more than 40 oversight boards were created by operation of the act adding this part, there shall be five oversight boards, which shall each be staffed in the same manner as specified in subdivision (j). The membership of each oversight board shall be as specified in paragraphs (1) through (7), inclusive, of subdivision (j).
- (2) The oversight boards shall be numbered one through five, and their respective jurisdictions shall encompass the territory located within the respective borders of the first through fifth county board of supervisors districts, as those borders existed on July 1, 2018. Except as specified in paragraph (3), each oversight board shall have jurisdiction over each successor agency located within its borders.
- (3) If a successor agency has territory located within more than one county board of supervisors' district, the county board of supervisors shall, no later than July 15, 2018, determine which oversight board shall have jurisdiction over that successor agency. The county board of supervisors or their designee shall report this information to the successor agency and the department by the aforementioned date.
- (4) The successor agency to the former redevelopment agency created by a county where more than 40 oversight boards were created by operation of the act adding this part, shall be under the jurisdiction of the oversight board with the fewest successor agencies under its jurisdiction.

(Amended by Stats. 2015, Ch. 325, Sec. 11. Effective September 22, 2015.)



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COUNTYWIDE RDA OVERSIGHT BOARD SPECIAL DISTRICT APPOINTMENT FREQUENTLY ASKED QUESTIONS

On September 27, 2016, the California Special Districts Association (CSDA) and California Association of Local Agency Formation Commissions (CALAFCO) published a joint white paper regarding the appointment of special district representatives to countywide redevelopment agency (RDA) oversight boards. This FAQ serves as an addendum to that white paper in response to questions arising in advance of the July 1, 2018 deadline for local agency formation commissions (LAFCOs) in 37 counties to administer the appointments.

This communication is provided for general information only and is not offered or intended as legal advice. Readers should seek the advice of an attorney when confronted with legal issues and attorneys should perform an independent evaluation of the issues raised in these communications.

Who is a “Presiding Officer” for Purposes of Participation on the Independent Special District Selection Committee?

The presiding officer of an independent special district is the district’s board president or board chair. However, according to Government Code Section 56332(a), “...if the presiding officer of an independent special district is unable to participate in a meeting or election of the independent special district selection committee, the legislative body of the district may appoint one of its members as an alternate to participate in the selection committee in the presiding officer’s place.”

Are “Multi-County” Districts with a different “Principal County” Allowed to Vote for the Special District Appointee to the Countywide RDA Oversight Board?

No. Only members of the independent special district selection committee may vote for the special district representative to the countywide RDA oversight board. Only independent special districts located wholly within the county and those containing territory within the county representing 50 percent or more of the assessed value of taxable property of the district, as shown on the last equalized county assessment roll, shall be included on the committee (Government Code Section 56332(a)).

Must the Special District Representative Appointed to a Countywide RDA Oversight Board be a Board Member of a Special District?

No. Page four of the September 27, 2016 joint white paper, “Countywide RDA Oversight Board Special District Appointments”, referenced the eligibility requirements outlined in Government Code Section 56332(c) for special district appointments to a LAFCO. However, special district appointees to current *individual* oversight boards (pre-consolidation into *countywide* RDA oversight boards) are explicitly not restricted to members of the legislative body of a special district, and nothing in law indicates the Legislature’s intent to reverse this precedent and apply

the eligibility requirements of LAFCO appointees to countywide RDA oversight board appointees.

Health and Safety Code Section 34179(j)(3) states, “One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.”

We presume Government Code Section 56332 is only cross-referenced to outline the process for establishing and administering the independent special district selection committee (which is the entity that is empowered to now appoint the special district representative to the countywide RDA oversight board). Government Code 56332(c) is specifically referencing the *election of LAFCO Commissioners*, which is separate and distinct from the appointment of a countywide RDA oversight board representative. The prior precedent under the Health and Safety Code allowing the appointment of anyone, regardless of whether or not they are a special district board member, to an RDA Oversight Board should prevail.

Can LAFCOs Prohibit Members of the Independent Special District Selection Committee whose Districts do not Receive Property Taxes from Participating in the Appointment of the Special District Representative to the Countywide RDA Oversight Board?

This answer depends on how one interprets Health and Safety Code Section 34179(j)(3), which states that the special district representative to the countywide RDA oversight board is to be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, “for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.”

CSDA and CALAFCO have interpreted the property tax clause as applicable to those officials eligible to serve as an *appointee* to the countywide RDA oversight board. However, it is possible to interpret this clause differently. Alternative interpretations may include:

- A second interpretation could be that the property tax clause is instead applicable to those officials eligible to *vote* on the appointment to the countywide RDA oversight board. In other words, of the members of the independent special district selection committee, only those types of special districts that are eligible to receive property tax revenues may vote on the selection of the special district representative to the countywide RDA oversight board.
- A third interpretation would be that the property tax clause applies to *both* voters and appointees. Thus, the clause limits both who can vote on selecting the representative *and* who is eligible to serve as the representative.
- Finally, a fourth interpretation would be that the clause *does not* limit voters *nor* appointees, but simply clarifies the *purpose* for which the appointment is made.

The 11 LAFCOs without special district representatives on the LAFCO, who still must administer the appointment of a special district representative to the countywide RDA oversight board, should strongly consider the opportunity afforded under AB 979 (Lackey) of 2017. These LAFCOs may now combine the election process for appointing the special district representative

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to the countywide RDA oversight board with the process for special districts to acquire LAFCO representation. Both actions may be voted upon by the independent special district selection committee on the same ballot or at the same meeting. However, this is not possible if the LAFCO only includes special districts that receive property taxes in the countywide RDA oversight board appointment process. This is a unique opportunity for the LAFCO to facilitate special district representation on LAFCO while having already convened the independent special district selection committee.

Is it Appropriate to Appoint Alternate Special District Representatives to the Countywide RDA Oversight Board?

Each county may approach the appointment of alternates differently. While the statute does not specifically provide for alternates, one may be appointed.

According to Health and Safety Code Section 34179(a)(11), "Each appointing authority identified in this subdivision may, but is not required to, appoint alternate representatives to serve on the oversight board as may be necessary to attend any meeting of the oversight board in the event that the appointing authority's primary representative is unable to attend any meeting for any reason. If an alternate representative attends any meeting in place of the primary representative, the alternate representative shall have the same participatory and voting rights as all other attending members of the oversight board." Given its placement within the code, it could be argued that this provision only relates to *individual* oversight boards, rather than *countywide* RDA oversight boards.

Those with questions on this issue are encouraged to contact their county auditor-controller who can inform them whether other appointing authorities have appointed (or intend to appoint) alternates to the other seats on the countywide RDA oversight board.

To resolve any ambiguity, the Independent Special District Selection Committee may choose to adopt local policies, pursuant to its authority in Government Code Section 56332, expressly authorizing the appointment of an alternate.

Is the Process for Appointing the Special District Representative to the Countywide RDA Oversight Board a Reimbursable State Mandate?

Unfortunately, the State takes the position that LAFCOs are ineligible to file a reimbursement claim with the Commission on State Mandates. Whether this is a legal interpretation of the State Constitution would require a legal test in the Courts, following the exhaustion of administrative remedies. Some have suggested that, if a LAFCO were to "passthrough" the direct cost of administering the appointment process via a "surcharge" on its dues for the county, cities, and special districts (if represented on the LAFCO), then it may be possible for these entities to file a mandate claim with the State for the amount billed. However, this approach has not been tested. Moreover, the statutory language within Health and Safety Code Section 34179(j) is written in a permissive manner, using the term "may" not "shall" and it affords the alternative of relying on an appointment by the Governor should any of the appointing bodies not act.

Under Whose Authority is the Special District Appointment to the Countywide RDA Oversight Board Administered?

The process of appointing the special district representative to the countywide RDA oversight board is administered under the authority of State law, specifically Health and Safety Code Section 34179(j)(3), which cross-references Government Code Section 56332.

Government Code 56332 empowers the LAFCO executive officer (or designee as authorized by the LAFCO) to:

- Call and give written notice of all meetings of the members of the Independent Special District Selection Committee.
- Receive written requests from members of the Independent Special District Selection Committee for the need to appoint a special district representative to the Countywide RDA Oversight Board.
- Determine whether an in-person meeting of the Independent Special District Selection Committee is feasible, and conduct the business of the committee by mail if an in-person meeting is not feasible.
- Prepare and deliver calls for nominations, receive nominations, and extend nomination period if necessary.
- Prepare and deliver ballots and voting instructions, and receive completed ballots.
- Transmit materials by electronic mail.
- Announce the results of elections.
- Retain election materials for at least six months.

Can the LAFCO Executive Officer Choose Not to Administer the Appointment of the Special District Representative to the Countywide RDA Oversight Board?

As the statute does not appear to give the executive officer much discretion (if any at all), we believe the answer is no. Government Code Section 56332(b) requires that, "The executive officer shall call and give written notice of all meetings of the members of the selection committee." Furthermore, under sub-paragraph (5) it requires the LAFCO executive officer to call and hold a meeting, "Upon receipt of a written request by one or more members of the selection committee notifying the executive officer of the need to appoint a member representing independent special districts on an oversight board pursuant to paragraph (3) of subdivision (j) of Section 34179 of the Health and Safety Code."

Who Administers the Countywide RDA Oversight Board Once it is Established?

The county auditor-controller, as per Health and Safety Code Section 34179(j): "Except as specified in subdivision (q), commencing on and after July 1, 2018, in each county where more than one oversight board was created by operation of the act adding this part, there shall be only one oversight board, which shall be staffed by the county auditor-controller, by another county entity selected by the county auditor-controller, or by a city within the county that the county auditor-controller may select after consulting with the department. Pursuant to Section 34183, the county auditor-controller may recover directly from the Redevelopment Property Tax Trust Fund, and distribute to the appropriate city or county entity, reimbursement for all costs

incurred by it or by the city or county pursuant to this subdivision, which shall include any associated startup costs. However, if only one successor agency exists within the county, the county auditor-controller may designate the successor agency to staff the oversight board.”

Will Countywide RDA Oversight Board Members Receive Compensation?

No; at least not from the countywide RDA oversight board or RDA successor agencies. According to Health and Safety Code Section 34179(c), “The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.”

Whether a member of the countywide RDA oversight board can receive compensation or reimbursement from the special district on which he or she serves as an elected official or staff member depends upon the board policies and personnel policies of his or her district and the enabling act that governs that district.

What is the Full Make-up of the Countywide RDA Oversight Board and Who Makes the Appointments?

Per Health and Safety Code Section 34179(j):

- One member may be appointed by the county board of supervisors.
- One member may be appointed by the city selection committee established pursuant to Section 50270 of the Government Code. In a city and county, the mayor may appoint one member.
- One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.
- One member may be appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.
- One member may be appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.
- One member of the public may be appointed by the county board of supervisors.
- One member may be appointed by the recognized employee organization representing the largest number of successor agency employees in the county.

The Governor may appoint individuals to fill any oversight board member position described in subdivision (j) that has not been filled by July 15, 2018, or any member position that remains vacant for more than 60 days.

What are Some Other Important Notes About the Operations of the Countywide RDA Oversight Board?

- *Board Member Immunity.* Oversight board members are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with

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Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code.

- *Quorum:* A majority of the total membership of the oversight board shall constitute a quorum for the transaction of business. A majority vote of the total membership of the oversight board is required for the oversight board to take action.
- *Brown Act:* The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. All actions taken by the oversight board shall be adopted by resolution.
- *Posting of Notices to the Internet:* All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet Web site or the oversight board's Internet Web site.
- *Length of Terms:* Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.
- *Fiduciary Responsibility:* Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. Further, the provisions of Division 4 (commencing with Section 1000) of the Government Code shall apply to oversight boards. Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city, county, city and county, special district, school district, or community college district.
- *Legal and Financial Advice:* An oversight board may direct a successor agency to provide additional legal or financial advice than what was given by agency staff.
- *Administrative Support:* An oversight board is authorized to contract with the county or other public or private agencies for administrative support.
- *Supremacy of the Oversight Board:* On matters within the purview of the oversight board, decisions made by the oversight board supersede those made by the successor agency or the staff of the successor agency.