



**California Special  
Districts Association**  
*Districts Stronger Together*



## **COUNTYWIDE RDA OVERSIGHT BOARD SPECIAL DISTRICT APPOINTMENT FREQUENTLY ASKED QUESTIONS**

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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.