

Agenda Date: August 16, 2018
Agenda Placement: Admin.
Estimated Time: N/A
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Aeron Arlin Genet, Air Pollution Control Officer

CONTACT: Kristina Aguilar, Administrative Division Manager
William M. Dillon, Senior Deputy County Counsel

SUBJECT: Authorization of reimbursement of necessary expenses incurred by Board members.

RECOMMENDATION:

Adopt a Resolution authorizing reimbursement of necessary expenses incurred by Board members.

BACKGROUND and DISCUSSION:

Currently, Santa Barbara County Air Pollution Control District Board members do not receive compensation or expenses for serving on the Board. The general rule in California is that a public agency's payment of compensation or expenses to any person must be expressly authorized by law. (*Irwin v. County of Yolo* (1898) 119 Cal. 686, 690; 50 Ops. Cal. Atty. Gen. 87 (1967); and see 50 Ops. Cal. Atty. Gen. 87 (1967).) As discussed below, there is no statutory authorization to compensate county district board members; however, reimbursement for necessary expenses is allowed. The attached resolution, if adopted by the Board, will authorize reimbursement to Board members for necessary expenses related to travel to Board and other necessary meetings.

No Compensation Authorized for "County District" Board Members.

In California, there are several types of air pollution control and air quality management districts created by statute for the administration of local and regional air pollution control programs. (See Health & Safety Code § 39002.)¹ The Santa Barbara County District is a "county district"

¹ All section references are to the Health and Safety Code unless otherwise indicated.

(§40100) and, unlike several of other types of air quality districts, there is no specific statutory authorization to pay compensation to county district board members.

The law regarding county districts is in contrast to other types of air districts, where compensation is specifically authorized. (See § 40227 re Bay Area air district (Stats 1975, ch. 957, p. 2158, § 12); § 40154 re unified air districts, (*id.*, at p. 2156); § 40328 re regional air districts (*id.*); § 40426 re south coast air district (formerly § 40226, added by Stats 1976, ch. 324, p. 896, § 5); and § 40982 re Sacramento air district (Stats 2006, ch. 425, § 1).)

County districts may have been treated differently than other districts because since 1947 the board of supervisors was the *ex officio* board of any county district. (See former § 24220 (Stats 1947, ch. 632, p. 1642) recodified with amendments in 1975 as former §40100 (Stats 1975, ch. 957, § 12).) In effect, the board of supervisors' role as county district board members was just another duty of the supervisors and did not warrant additional compensation beyond. Indeed, all District Board business items were heard as part of the Board of Supervisors' regular board meetings until 1994 when city representation was added to county district air boards.

The composition of the county district boards remained unchanged until 1994 when city representation on county district boards was authorized by the Legislature. (See §§ 40100 & 40100.5, Stats 1994, ch. 3, § 12.) However, the Legislature never took any steps to authorize payment of compensation for county air district board members.

Expenses May be Paid to County District Board Members.

Payment of “necessary expenses” to county air district board members is authorized. Government Code section 11009 allows payment of necessary expenses to “members of State boards”. Under California law, county district air boards are a “State board”. Generally, California law provides that boards that otherwise appear to be local in nature may still fulfill a state function. (See e.g., *Town of Atherton v. Superior Court In and For San Mateo County* (1958) 159 Cal.App.2d. 417, a local school district is a “state agency;” and see 50 Cal.Ops.Atty.Gen. 87, 90 (1967) local agency formation commission performs state not local functions.)

The state statutory scheme for controlling air pollution makes clear that this is a “state function or interest”. The Legislature has declared the air districts were created pursuant to Division 26 of the Health and Safety Code as part of “an intensive, coordinated state, regional, and local effort to protect and enhance the ambient air quality of the state.” (§ 39001.) The Legislature has declared that “[l]ocal and regional authorities have the primary responsibility for control of air pollution from all sources other than vehicular sources.” (§39002.) This state wide role for air districts was recognized in *Orange County Air Pollution Control District v. Public Utilities Commission* (1971) 4 Cal.3d 945, when the California Supreme Court held that air district “rules are . . . enforceable against ‘any state or local governmental agency or public district, or any officer or employee thereof . . .’ ” (*Ibid.*, at p. 948.)

In light of this law, air district board members qualify as members of a state board eligible for payment of necessary expenses under Government Code section 11009.

BASIS FOR PAYMENT OF EXPENSES

Payment of Board member expenses for mileage to and from District Board meetings is proposed. Such payment is proposed only for Board members who do not otherwise receive such payments for the same trips from other agencies (e.g., if a Board member receives mileage reimbursement from Santa Barbara County Association of Governments (“SBCAG”), then no payment would be authorized by the District for the same trip).

Not paying Board member travel expenses can represent a personal financial cost in some instances. When District Board meetings are in Santa Maria, a south county District Board member who is not a member of SBCAG (which often meets the same day as the District Board) has the option of participating in board meetings remotely at Santa Barbara via teleconferencing or driving approximately 90 miles to Santa Maria. A north county board member has a similar situation regarding Board meetings held in Santa Barbara, as they would have the option of participating remotely from Santa Maria for the teleconference or drive approximately 90 miles to Santa Barbara. In both cases, the board members have to drive approximately 10 miles one way to the teleconferencing location, which is an expense that is also be eligible for reimbursement.

Reimbursement of mileage expenses is proposed for Board member attendance at meetings of the District Board meetings, Executive Committee, South Central Coast Basinwide Control Council, Board standing committees, special board meetings, board member attendance at District related conferences and business meetings outside of the County, and when specifically approved by the Board. Mileage would be calculated from the Board members’ office for miles actually traveled where the Board members uses his or her private vehicle and is not otherwise reimbursed for the expense. Mileage reimbursement rates will be set by the County Auditor-Controller in accordance with requirements of the Internal Revenue Service. For trips outside the County, authorized Board member travel may include a per diem for meals and other reasonable travel and hotel accommodations.

FISCAL IMPACT:

The fiscal impact to reimburse Board members for necessary expenses incurred is an amount not to exceed \$10,000, and was included in the Fiscal Year 2018-19 budget approved by your Board at the June 21, 2018 meeting.

ATTACHMENT:

- Resolution to Reimburse Board Members for Necessary Expenses

SPECIAL INSTRUCTIONS:

If adopted, the Chair is asked to execute the attached Resolution.

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT**

IN THE MATTER OF PAYMENT OF
NECESSARY BOARD MEMBER
EXPENSES

APCD RESOLUTION NO. _____

RECITALS

WHEREAS, members of the Santa Barbara County Air Pollution Control District Board are not currently authorized by District policies to receive reimbursement of necessary expenses incurred to attend Board meetings or other necessary travel expenses; and

WHEREAS, payment of necessary expenses to District Board members is authorized by Government Code section 11009; and

WHEREAS, not paying Board member expenses for mileage to attend District Board meetings can represent a hardship for Board members who use personal vehicles to attend such meetings and cannot otherwise claim reimbursement for such mileage; and

WHEREAS, occasionally, expenses for Board member travel outside the County is appropriate, provided such trips are approved by the Board.

NOW, THEREFORE, IT IS HEREBY RESOLVED, as follows:

1. The Board hereby authorizes payment to Board members for necessary expenses incurred, including mileage and parking, to attend District Board meetings, provided the following conditions are met:
 - a. The Board member trip is by use of a personal vehicle;
 - b. The Board member does not receive reimbursement from any other agency or source for the expense;
 - c. IRS Form W-9 and California Form 590 is on file with the District;
 - d. Current proof of automobile insurance is on file with the District;

APCD RESOLUTION PAYMENT OF NECESSARY BOARD MEMBER
EXPENSES

- e. Reimbursement shall be at the rate established from time to time by the Santa Barbara County Auditor-Controller and shall otherwise be subject to the procedures and tracking mechanisms of the Auditor's Office; and
 - f. Reimbursement shall be for actual miles travelled but shall not exceed the distance from the Board members' official office to the location where the Board member participated in the Board meeting.
2. The Board further authorizes payment to Board members for necessary expenses incurred, including mileage and parking, to attend meetings of the Board's Executive Committee, South Central Coast Basinwide Control Counsel, standing committees, and any special meetings of the Board.
 3. The Board further authorizes payment to Board members for necessary expenses incurred to travel outside the County for District business where such trips have been specifically

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APCD RESOLUTION PAYMENT OF NECESSARY BOARD MEMBER
EXPENSES

authorized by the Board. This includes mileage for use of a personal automobile, parking and reasonable air fare and hotel accommodations when necessary.

PASSED, APPROVED AND ADOPTED by the Air Pollution Control District Board of the Santa Barbara County, State of California, this 16 day of August, 2018, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

ATTEST:

AERON ARLIN GENET
Clerk of the Board

SANTA BARBARA COUNTY
AIR POLLUTION CONTROL DISTRICT

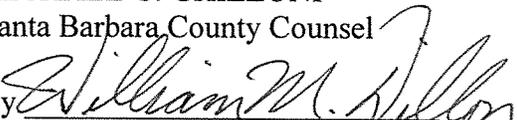
By _____
Deputy

By _____
Chair

Date _____

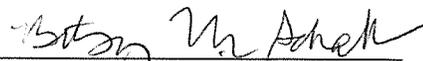
APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
Santa Barbara County Counsel

By 
Deputy

APPROVED AS TO FORM:

THEODORE A. FALLATI, CPA, CPFO
Auditor-Controller

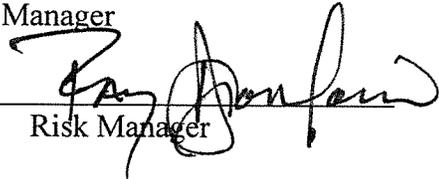
By 
Deputy

APCD RESOLUTION PAYMENT OF NECESSARY BOARD MEMBER
EXPENSES

APPROVED AS TO FORM:

RAY AROMATORIO, ARM, AIC
Risk Manager

By



Risk Manager