

CALIFORNIA ASSOCIATION OF RESOURCE CONSERVATION DISTRICTS ALERT

Assembly Bill 1234 enacted in 2005 imposes two new sets of requirements on districts, including resource conservation districts (RCD's) that reimburse director expenses. The bill becomes effective on January 1, 2006, and compliance is required after that time.

Under Division 9 of the Public Resources Code, RCD's do not pay compensation to their directors. Many RCD's however reimburse district directors and/or staff for expenses. If your district reimburses directors for expenses, then Assembly Bill 1234 imposes new requirements for such reimbursement and requires the directors to take prescribed ethics training. The following is a summary of the requirements of Assembly Bill 1234.

Policy and Procedures for Reimbursement of Director Expenses (Provided by CARCD as written by Pete Melnicoe)

Assembly Bill 1234 establishes guidelines for reimbursement of directors' actual and necessary expenses incurred in the performance of official duties, such as travel, meals, lodging, and other actual and necessary expenses. RCD's must have a written policy for reimbursing these director expenses on and after January 1, 2006. The RCD's Board of Directors must adopt that policy at a public board meeting. The policy must specify the types of events or other circumstances for which director expenses will be reimbursed. The policy must specify rates of reimbursement or must use IRS reimbursement rates set forth in IRS Publication 463 (or a successor publication). In general, the IRS currently allows up to 37 ½ cents per mile for personal vehicle use and permits full reimbursement for most other actual expenses for transportation, meals, and lodging expenses. However, any questions that might arise concerning the allowable IRS rates can be avoided by including reimbursement rates in the RCD's reimbursement policy.

Reimbursement is subject to the limitation that RCD directors must obtain government and group rates offered by providers of transportation and lodging when available.

A similar limitation applies to conferences and organized educational activities. When attending these functions, reimbursement for lodging costs for RCD directors is limited to the maximum group rate published by the conference or activity sponsor if that rate is available at the time of booking. If the group rate is not available at the time of booking, the RCD director can only be reimbursed for the cost of comparable lodging consistent with the RCD's reimbursement policy or IRS rates (whichever is applicable) and the requirement for utilizing available government and group rates. Note: because of Assembly Bill 1234's wording of the requirements described in this paragraph, it is unclear whether these requirements apply when less than a majority of the RCD's Board of Director's attend such a conference or educational activity. CARCD will seek clarification as to whether these requirements apply in that circumstance.

Any expenses that do not fall within the RCD's adopted reimbursement policy or

the IRS rates must be approved by the RCD board in a public meeting before the expense is incurred, in order to be eligible for reimbursement.

RCD's that provide reimbursement of director expenses must provide directors with expense report forms. In order to be eligible for reimbursement, directors must file their expense reports within a reasonable time after the expense is incurred. The RCD Board must determine what is a reasonable time.

Assembly Bill 1234 provides that the filed expense reports must document that expenses claimed are consistent with the existing RCD's reimbursement policy. This requirement is met if the reimbursement categories in the RCD's expense report form are sufficiently explicit, so that it can be determined that each claimed expense is consistent with the RCD's reimbursement policy. If consistency with the RCD reimbursement policy cannot be determined from use of the form alone, the director claiming the expense must supply a written description of the necessary additional detail to support the claim.

Receipts supporting each claimed expense must be filed with the expense report. The receipts and expense reports are public records.

There may be occasions when a director wishes to incur otherwise reimbursable expenses in excess of the amounts permitted by the RCD's reimbursement policy or IRS rates (whichever is applicable) and the statutory provisions added by Assembly Bill 1234. This might occur, for example, where a director elects to stay in lodgings with rates exceeding the maximum reimbursable under the RCD's reimbursement policy. In those cases, CARCD has been advised that the director may claim reimbursement, but for only the portion of the expense that does not exceed the amount for which reimbursement is permitted.

Assembly Bill 1234 requires that RCD directors provide brief reports on "meetings attended at the expense of the local agency" at the next regular meeting of the RCD board of directors. CARCD has been advised that this requirement should be interpreted to include any function or event for which a director files an expense report with the RCD.

Ethics Training

Directors of RCD's that reimburse director expenses are required to take training on laws pertaining to ethics of government officials. An RCD board of directors may require any or all district employees to take ethics training as well. Assembly Bill specifically lists covered types of ethics laws, as follows:

- (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 prerequisites 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.

RCD directors are required to attend ethics training for at least two hours every two years. Directors in office on January 1, 2006, are required to obtain initial ethics training by January 1, 2007. Directors whose initial terms of office begin after January 1, 2006, must obtain their first ethics training within one year after assuming office.

RCD's must maintain public records of each director's completion of ethics training for at least five years, including the date of training and the entity that provided the training. Providers of ethics training are required to provide proof of participation. The ethics training courses may be self-study with tests taken at home, in person, or online.

RCD's must annually provide directors with information concerning available ethics training. While RCD's may develop their own training courses (with content subject to approval by the Attorney General and Fair Political Practices Commission), CARCD will provide member RCD's with information concerning the availability of courses from other sources, as the information becomes available. CARCD is working with the Attorney General to determine if the Attorney General's Office can provide video tapes and online access to ethics training at no cost to districts.