



## Legislation Details (With Text)

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### Changes to Composition of Community Redevelopment Agency Board (B)

At the August 2017 Community Redevelopment Agency Board meeting, the Chairman asked if the composition of the current CRA Board, consisting of the seven City Commissioners, could be reconstructed to include some Alachua County Commissioners. The Florida Attorney General, Pam Bondi, has previously answered the question in the negative in response to the City of Lauderdale Lakes, Attorney General Opinion 2015-05 (2015).

The Community Redevelopment Act, Part III, Chapter 163, Florida Statutes, authorizes local governments to create a community redevelopment area and authorizes the local government to exercise the powers set out in the act for the purpose of eliminating slum and blight within the community redevelopment area. The act sets forth the procedure for establishing the community redevelopment area and then creating the community redevelopment agency. There are two distinct statutory sections that a local government may use in creating the community redevelopment agency. Each of these statutes has distinctive requirements as to the number of board members, the composition of the board, and the timing of the creation of the board.

### Number of Members

Section 163.356, Florida Statutes, allows the local government to create an agency with no fewer than five and no greater than nine members. Section 163.357(1), provides that “as an alternative to appointing no fewer than five or more than seven members” the governing body may appoint itself as the community redevelopment agency. If the governing body has five members, it may add two additional members, Section 163.357(3)(c), Florida Statutes.

### Composition of the Board

Section 163.356(2), Florida Statutes provides that the governing body creating the agency may enter into an interlocal agreement with taxing authorities to include one or more members of the taxing authority’s governing body. Additionally, 163.356(3)(b) permits the governing board to appoint any person as a commissioner if:

he or she resides or is engaged in business, which means owning a business, practicing a

profession, or performing a service for compensation, or serving as an officer or director of a corporation or other business entity so engaged, within the area of operation of the agency, which shall be coterminous with the area of operation of the county or municipality, and is otherwise eligible for such appointment under this part.

Thus, if the community redevelopment agency board is created under Section 163.356, Florida Statutes, the agency board could consist of any composition of city and county commissioners and non-elected persons living in or owning a business within the community redevelopment area.

Section 163.357, Florida Statutes is the method the City of Gainesville utilized to create the Gainesville Community Redevelopment Agency. Subsection (1)(a) permits the governing body to declare itself to be the community redevelopment agency. If the governing body declares itself to be the community redevelopment agency, subsection (1)(b) requires the members of the governing body to serve as members of the community redevelopment agency. The attorney general has opined that once the governing board has elected to serve as the community redevelopment agency, the individual members of the community redevelopment agency may not resign his or her membership in the community redevelopment agency, unless he or she also resigns the city commission membership, see AGO 89-60 (1989).

Therefore, all seven members of the Gainesville city commission must serve as members of the community redevelopment agency. Section 163.357(1)(c), Florida Statutes only permits the city commission to appoint two additional members if the city commission consists of five members. Because there are currently seven city commission members, the city commission may not add county commissioners to the community redevelopment agency under Section 163.357, Florida Statutes. Accordingly, the only method for having both city and county commissioners serving on the community redevelopment agency is to utilize the method set forth in Section 163.356, Florida Statutes.

### **Timing of Creation of the Board**

Section 163.356(2), Florida Statutes sets forth the timing for creating an agency composed of city and county commissioners and other qualified individuals as follows:

*When* the governing body adopts a resolution declaring the need for a community redevelopment agency, that body shall, by ordinance, appoint a board of commissioners of the community redevelopment agency, which shall consist of not fewer than five or more than nine commissioners. . . . As provided in an interlocal agreement between the governing body that created the agency and one or more taxing authorities, one or more members of the board of commissioners of the agency may be representatives of a taxing authority, including members of that taxing authority's governing body, whose membership on the board of commissioners of the agency would be considered an additional duty of office as a member of the taxing authority governing body.

[emphasis supplied]

Compare the timing of the above section to Section 163.357(1)(a), Florida Statutes which provides:

. . . the governing body may, *at the time of the adoption of a resolution under s.163.355 [finding of necessity], or at any time thereafter* by adoption of a resolution, declare itself to be an agency, in which case all the rights, powers, duties, privileges, and immunities vested by this part in an agency will be vested in the governing body of the county or municipality, subject to all responsibilities and liabilities imposed or incurred.

[emphasis supplied]

A community redevelopment agency created pursuant to Section 163.356, Florida Statutes may only be created at the time of adoption of the resolution declaring a need for a community redevelopment agency. A community redevelopment agency created pursuant to Section 163.357, Florida Statutes may be created permits the governing board to name itself the community redevelopment agency at the original determination of need for the agency or at any time thereafter.

An additional distinguishing provision between the two sections is found in Section 163.357(2)(b), Florida Statutes which provides that

If the governing body declares itself to be an agency which already exists, the new agency is subject to all of the responsibilities and liabilities imposed or incurred by the existing agency.

There is no corresponding provision in Section 163.356, Florida Statutes.

According to Attorney General Opinion 84-74, once a governing board declares itself to be the community redevelopment agency pursuant to section 163.357(1), Florida Statute, the governing body may not change the composition between citizens and the governing body. Additionally, according to Attorney General Opinion 89-60, a city councilmember who serves as a member of the community redevelopment agency established pursuant to section 163.357, Florida Statute, may not resign from the community redevelopment agency while retaining his position as a city councilmember. And finally, in AGO 2015-05, the Attorney General opined that once a governing body declared itself to be the community redevelopment agency, it could not change the composition of the agency utilizing Section 163.356, Florida Statutes.

### **Conclusion**

In conclusion, the current composition of the Gainesville Community Redevelopment Agency Board may not be altered to include Alachua County Commissioners. There may be alternatives to allow the Alachua County Commissioners to provide input into the Community Redevelopment Agency decisions.

CRA Attorney to the CRA Board: Hear report