

# Viewpoints: Public money flows to private firms via 'rogue' authorities



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California law allows cities and counties to band together as joint powers authorities to perform government functions. Sometimes when they do, it doesn't turn out well. Case in point: the rogue, "roving" JPAs the Legislature and law enforcement had to clean up a decade ago after they were caught abusing the law to build golf courses and the like.

Since 2007, my office has been fighting to reform another form of rogue JPAs: the California Statewide Communities Development Authority, or CSCDA, and the California Municipal Finance Authority, CMFA. We've achieved partial success. In 2009, we sponsored successful legislation that forced them to comply with rudimentary open-government requirements, such as providing the public adequate notice of their meetings and posting their agendas and minutes online.

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Unfortunately, CSCDA and CMFA remain afflicted with fundamental flaws that require legislative remedy. They're governmental entities operating with authority provided and limited by state law. But in practice, they're private businesses masquerading as governmental entities. Their business models provide fertile ground for conflicts of interests and virtually no oversight of how their public funds are spent.

CSCDA was formed in 1988 and is sponsored by the League of California Cities and the California State Association of Counties. Both are private, nonprofit organizations. CMFA was formed in 2004. It was the brainchild of Bank of America and Waste Management Inc., which was looking for tax-exempt financing for a variety of projects. Bank of America recommended forming a Joint Powers Authority, and CMFA was the ultimate result.

Both JPAs are "conduit" bond issuers, which issue *tax-exempt* bonds on behalf of businesses and other private entities to finance projects that benefit the private entities. Fees generated by this taxpayer-subsidized activity are *public* funds. So the JPAs should use their fee revenue to benefit the public, and manage these funds in the *public* interest. For example, conduit bond issuers administered by my office use revenue to increase access to health care, finance brownfield cleanup and help small businesses obtain loans. In contrast, CSCDA and CMFA divide revenue among the private enterprises that manage and staff both JPAs, the private organizations that sponsor CSCDA, and a nonprofit affiliate of CMFA.

CSCDA and CMFA enrich the private contractors who operate and staff their conduit bond programs in a way that flouts state laws designed to prevent conflicts of interest. These contractors have a direct financial stake in the volume of business the JPAs generate. Each receives a percentage of revenue generated by the transactions the JPAs approve. The more projects OK'd, the more money the contractors make. Here's the kicker: The contractors' employees make the recommendations to the JPAs' boards on whether to approve projects.

For years now, CSCDA has paid its primary contractor, HB Capital, as much as \$10 million per year. The contract HB Capital operates under has been in place for 25 years and has *never been competitively bid* in all that time. CMFA has only been in existence since 2004, but its contractor, Sierra Management, now receives in excess of \$1 million per year. Sierra Management's contract also has not been competitively bid.

As for lack of oversight, consider: Thousands of local agencies have reported employee salary information to the state controller. But CSCDA and CMFA, alone among all those entities, claim they have no salaried workers and have no information to report. Additionally, HB Capital has refused to provide CSCDA's board details on how it spends CSCDA's fee revenue on HB Capital's staff and partners. As a result, CSCDA has no idea what the fees paid to HB Capital actually purchase in terms of services, and no way to properly account to the public for the use of its public funds.

My office has not been alone in sounding the alarm about the way these authorities operate. In her August 2012 report, State Auditor Elaine Howle concluded that the JPAs' compensation models raise conflict-of-interest concerns. Los Angeles County withdrew from CSCDA after the county's chief executive officer called the authority "a shell entity operated solely by a private contractor."

This year, my office is sponsoring a new reform measure that, as suggested by the state auditor, addresses the conflict-of-interest issue. Assembly Bill 1059 by Assemblyman Bob Wieckowski

specifies that compensation arrangements such as those maintained by CSCDA and CMFA violate state law that prohibits government employees from having a financial interest in any contract they make in their official capacity.

Lobbyists for CSCDA and CMFA have falsely alleged that in pursuing reform legislation, my office has sought an "unfair competitive advantage." From my office's perspective, this ongoing dispute never has been about competition. It's been about ending a business model that violates well-established principles of accountable and transparent government uncorrupted by conflicts of interest, and ensuring that CSCDA and CMFA conduct the public's business like the government agencies they are.

*Bill Lockyer is the California state treasurer.*

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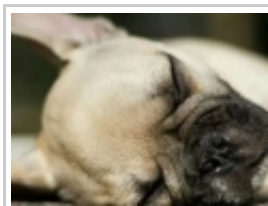
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