SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive, P. O. Box 12688, Oakland, CA 94604-2688

Special Meeting of the Board of Directors
November 4, 2009
9:30 a.m.

AGENDA

MEMBERS OF THE PUBLIC MAY ADDRESS THE BOARD OF DIRECTORS REGARDING ANY MATTER ON THIS AGENDA. PLEASE COMPLETE A "REQUEST TO ADDRESS THE BOARD" FORM (AVAILABLE AT THE ENTRANCE TO THE BOARD ROOM) AND HAND IT TO THE SECRETARY BEFORE THE ITEM IS CONSIDERED BY THE BOARD. IF YOU WISH TO DISCUSS A MATTER THAT IS NOT ON THE AGENDA DURING A REGULAR MEETING, YOU MAY DO SO UNDER GENERAL DISCUSSION AND PUBLIC COMMENT.

ANY ACTION REQUIRING MORE THAN A MAJORITY VOTE FOR PASSAGE WILL BE SO NOTED.

1. Roll Call and Pledge of Allegiance. (Board Room, Third Floor; and Asian Week, 809 Sacramento Street San Francisco, CA 94108)

2. Public Comment on Item 3 Only.

3. Participation in California Communities Joint Powers Authority Proposition 1A Securitization Program. Board requested to authorize.

Please refrain from wearing scented products (perfume, cologne, after-shave, etc.) to this meeting, as there may be people in attendance susceptible to environmental illnesses.

BART provides service/accommodations upon request to persons with disabilities and individuals who are limited English proficient who wish to address BART Board matters. A request must be made within one and five days in advance of Board/Committee meetings, depending on the service requested. Please contact the Office of the District Secretary at (510) 464-6083 for information.

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EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		GENERAL MANAGER ACTION REQ'D: Approve and forward to the Board of Directors		
DATE: 11/3/09		BOARD INITIATED ITEM: NO		
Originator/Prepared by: Greg Marrama Dept: Capital Development and Control Signature/Date: 10/27/09	General Counsel 11/3/09 [ ]	Controller/Treasurer [ ] 11/2/09	District Secretary [ ]	BARC 10-30-09 [ ]
Status: Routed		Date Created: 10/27/2009		

TITLE:

A RESOLUTION APPROVING PARTICIPATION IN PROPOSITION 1A SECURITIZATION PROGRAM AND DIRECTING AND AUTHORIZING ACTIONS NECESSARY THERETO

NARRATIVE:

Purpose

To have the Board adopt a resolution to participate in the California Statewide Communities Development Authority ("California Communities") Proposition 1A Securitization Program and to direct and authorize actions necessary thereto.

Discussion

Proposition 1A Suspension

In 2004, California voters passed Proposition 1A requiring that local property tax and sales tax revenues remain with local governments to safeguard funding for critical public services. Proposition 1A may be suspended, but only if the Governor declares a fiscal necessity and two-thirds of the Legislature concur. An emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as part of the 2009-10 budget package on July 28, 2009. Accordingly, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. This means that approximately $2.4 million of the District's property tax revenue for FY10 will be diverted to the state, to be repaid with interest (2%) by June 30, 2013. The law suspending Proposition 1A also provided for a Proposition 1A Securitization program ("Prop 1A Program"), authorizing California Communities to purchase the receivables due to the District and other affected local agencies to minimize the fiscal impact of the revenue diversion.

Proposition 1A Securitization Program

Under the Prop 1A Program, the District and other participating local agencies will sell, and California Communities will buy the agencies' Proposition 1A Receivables, issue bonds secured by those receivables ("Prop 1A Bonds") and provide each local agency with the cash value of its receivable in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates that the State will be shifting property tax from Local Agencies). The cash proceeds to the District and other participating local agencies will equal 100% of the amount of the property tax reduction. All transaction costs associated with issuing the Prop 1A Bonds and interest thereon will be paid by the State of California. Participating local agencies will have no obligation on the bonds and no credit exposure to the State. Likewise, bondholders will have no recourse to the District. The District's sale of its Proposition 1A Receivable is irrevocable.

Proposition 1A Securitization Program Sponsor

California Communities is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The member agencies of California Communities include approximately 230 cities and 54 counties throughout California. The District is not a member of this organization, but is eligible to participate in this program because a percentage of the District's property tax revenue will be diverted to the state under the emergency legislation suspending Proposition 1A. As of this writing, approximately 1,325 Local Agencies in the State have enrolled in the Securitization Program. Details of the program are as follows-

The benefits to the District of participation in the Prop 1A Program include:

Mitigates impact of 8% property tax diversion in January and May – As part of the FY10 State budget, the State will divert and withhold 8% of property tax receivables due to cities, counties, and special districts under Proposition 1A. The financing will provide us with 100% of the diverted amount from bond proceeds to be distributed coincident with the dates that the State will be shifting property tax from Local Agencies.

All costs of financing borne by the State of California. The District will not have to pay any interest cost or costs of issuance in connection with it participation.

No obligation on Bonds. The District has no obligation with respect to the bonds issued by California Communities including disclosure or tax compliance obligations associated with the bonds.

Proceeds. Upon issuance of the Proposition 1A Bonds, California Communities will make two equal payments to the District for the total amount of the property taxes diverted and withheld by the state . These funds may be used for any lawful purpose and are not restricted by the program.

Steps necessary to participate in Program:

All of the documents necessary to participate in the Prop 1A Program have been prepared and conformed by bond counsel and must be used by participating agencies. These form documents include:

Resolution Approving Participation in Proposition 1A Securitization Program:

The form resolution to be adopted by the governing body of a participating agency:

(1) Authorizes the sale of the agency's Proposition 1A Receivable to California Communities for 100% of its receivable;

(2) Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with California Communities and related documents;

(3) Authorizes and directs any Authorized Officer to send an irrevocable written instruction required by statute to the State Controller notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement of the Proposition 1A Receivable to the Proposition 1A Bond Trustee;

(4) Appoints certain officers and officials as Authorized Officers for purposes of executing necessary documents; and

(5) Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

Purchase and Sale Agreement

The form Purchase and Sale Agreement:

(1) Provides for the sale of the Proposition 1A Receivable to California Communities;

(2) Contains representations and warranties of the participating agency that its Proposition 1A Receivable has not been previously sold, is not encumbered, that no litigation or other actions is pending or threatened to disrupt the transaction and that this is an arm's length "true sale" of the Proposition 1A Receivable;

(3) Provides mechanics for payment of the Purchase Price; and

(4) Contains other miscellaneous provisions.

Proposed Purchase and Sale Agreement Exhibits:

The form Proposition 1A Purchase and Sale Agreement Exhibits consist of:

(1) Opinion of Counsel: This is an opinion of the counsel to the local agency (which may be an in-house counsel or an outside counsel) covering basic approval of the documents, litigation, and enforceability of the document against the Seller. It will be dated as of the Pricing date of the bonds (currently expected to be November 10, 2009).

(2) Bringdown Opinion: This simply "brings down" the opinions to the closing date (currently expected to be November 19, 2009).

(3) Certificate of resolution: A certificate confirming that the resolution was duly adopted and is in full force and effect.

(4) Seller Certificate: A certification of the Seller dated as of the Pricing Date confirming that the representations and warranties of the Seller are true as of the Pricing Date, confirming authority to sign, confirming due approval of the resolution and providing payment instructions.

(5) Bill of Sale and Bringdown Certificate: Certificate that brings the certifications of Seller Certificate down to the Closing Date and confirms the sale of the Proposition 1A Receivable as of the Closing Date.

(6) Irrevocable Instructions to the State Controller: Required in order to let the State Controller know that the Proposition 1A Receivable has been sold and directing the State to make payment of the receivable to the Trustee on behalf of the Purchaser.

(7) Escrow Instruction Letter: Instructs Transaction Counsel (Orrick) to hold all documents in escrow until closing, and if closing does not occur by December 31, 2009 for any reason, to destroy all documents.

Fiscal Impact

If the District participates in the Prop 1A Program, bond proceeds will make available in FY10 100% of the property tax that will be diverted for State use in FY10 (approximately $2.4 million). If we do not participate, the amount of diverted tax revenue will not be available to our operating budget until the scheduled repayment (plus 2% annual interest) in June 2013. Participation in the program may result in nominal costs for staff time and counsel review.

Alternative

Do not participate in the Prop 1A Program and delay receipt of FY10 diverted property tax revenue (plus 2% annual interest) until June 2013.

Recommended Action:

Adopt the following motion:

That the Board of Directors approves the District's participation in the Prop 1A Program by adopting the attached "Resolution Approving the Form Of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents With Respect to the Sale of the Sellers's Proposition 1A Receivable from the State: and Directing and Authorizing Certain Other Actions in Connection Therewith" and authorize the General Manager or her designee to execute all necessary documents and to take other actions necessary to and associated with this transaction.

RESOLUTION NO. ______________

**BOARD OF DIRECTORS
OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Section 25.5 of Article XIII of the California Constitution and Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended (the "Act"), certain local agencies within the State of California (the "State") are entitled to receive certain payments to be made by the State on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year (the "Reimbursement Payments"), which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code;

WHEREAS, the San Francisco Bay Area Rapid Transit District, a local agency within the meaning of Section 6585(f) of the California Government Code (the "Seller"), is entitled to and has determined to sell all right, title and interest of the Seller in and to its "Proposition 1A receivable", as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund public capital improvements or working capital;

WHEREAS, the Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require;

WHEREAS, the California Statewide Communities Development Authority, a joint exercise of powers authority organized and existing under the laws of the State (the "Purchaser"), has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable;

WHEREAS, the Purchaser desires to purchase the Proposition 1A Receivable and the Seller desires to sell the Proposition 1A Receivable pursuant to a purchase and sale agreement by and between the Seller and the Purchaser in the form presented to this Board of Directors (the "Sale Agreement") for the purposes set forth herein;

WHEREAS, in order to finance the purchase price of the Proposition 1A Receivable from the Seller and the purchase price of other Proposition 1A Receivables from other local agencies, the Purchaser will issue its bonds (the "Bonds") pursuant to Section 6590 of the California Government Code and an Indenture (the "Indenture"), by and between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), which Bonds will be payable solely from the proceeds of the Seller's Proposition 1A Receivable and other Proposition 1A Receivables sold to the Purchaser by local agencies in connection with the issuance of the Bonds;

WHEREAS, the Seller acknowledges that (i) any transfer of its Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement shall be treated as an absolute sale and transfer of the property so transferred and not as a pledge or grant of a security interest by San Francisco Bay Area Rapid Transit District to secure a borrowing, (ii) any such sale of its Proposition 1A Receivable to the Purchaser shall automatically be perfected without the need for physical delivery, recordation, filing or further act, (iii) the provisions of Division 9 (commencing with Section 9101) of the California Commercial Code and Sections 954.5 to 955.1 of the California Civil Code, inclusive, shall not apply to the sale of its Proposition 1A Receivable, and (iv) after such transfer, the Seller shall have no right, title, or interest in or to the Proposition 1A Receivable sold to the Purchaser and the Proposition 1A Receivable will thereafter be owned, received, held and disbursed only by the Purchaser or a trustee or agent appointed by the Purchaser;

WHEREAS, the Seller acknowledges that the Purchaser will grant a security interest in the Proposition 1A Receivable to the Trustee and any credit enhancer to secure payment of the Bonds;

WHEREAS, a portion of the proceeds of the Bonds will be used by the Purchaser to, among other things, pay the purchase price of the Proposition 1A Receivable;

WHEREAS, the Seller will use the proceeds received from the sale of the Proposition 1A Receivable for any lawful purpose as permitted under the applicable laws of the State;

NOW THEREFORE, the Board of Directors of the San Francisco Bay Area Rapid Transit District hereby resolves as follows:

Section 1. All of the recitals set forth above are true and correct, and this Board of Directors hereby so finds and determines.

Section 2. The Seller hereby authorizes the sale of the Proposition 1A Receivable to the Purchaser for a price equal to the amount certified as the Initial Amount (as defined in the Sale Agreement) by the County auditor pursuant to the Act. The form of Sale Agreement presented to the Board of Directors is hereby approved. An Authorized Officer (as set forth in Appendix A of this Resolution, attached hereto and by this reference incorporated herein) is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the Seller, which shall be in the form presented at this meeting.

Section 3. Any Authorized Officer is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Controller (the "Irrevocable Written Instruction") notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement pursuant to Section 6588.6(c) of California Government Code of the Proposition 1A Receivable to the Trustee, on behalf of the Purchaser, which Irrevocable Written Instruction shall be in the form presented at this meeting.

Section 4. The Authorized Officers and such other Seller officers, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents, including but not limited to, if required, appropriate escrow instructions relating to the delivery into escrow of executed documents prior to the closing of the Bonds, and such other documents mentioned in the Sale Agreement or the Indenture, which any of them may deem necessary or desirable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale of the Proposition 1A Receivable or the issuance of the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection with any default under or amendment of such documents, may be given or taken by an Authorized Officer without further authorization by this Board of Directors, and each Authorized Officer is hereby authorized and directed to give any such consent, approval, notice, order or request, to execute any necessary or appropriate documents or amendments, and to take any such action that such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The Board of Directors acknowledges that, upon execution and delivery of the Sale Agreement, the Seller is contractually obligated to sell the Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement and the Seller shall not have any option to revoke its approval of the Sale Agreement or to determine not to perform its obligations thereunder.

Section 7. This Resolution shall take effect from and after its adoption and approval.

PASSED AND ADOPTED by the Board of Directors of the San Francisco Bay Area Rapid Transit District, State of California, this ______ day of ________________, 2009, by the following vote:

AYES:

NOES:

ABSENT:

____
President

Attest:

____
District Secretary

Approved as to form :

SELLER'S COUNSEL

By Andrew Lavas, Assoc. General Counsel

Dated: 11/3/09

APPENDIX A

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Authorized Officers: Dorothy Dugger, General Manager

Marci de Vaughn, Assistant General Manager

Carter Mau, Executive Manager, Office of Planning and Budget

any designee of any of them, as appointed in a written certificate of such Authorized Officer delivered to the Trustee.

CALIFORNIA
COMMUNITIES
JOINT POWERS AUTHORITY

Building Communities,
Investing in Local Government Since 1988

I
PROPOSITION 1A SECURITIZATION FREQUENTLY ASKED QUESTIONS

Q: What is Proposition 1A securitization?

A: On July 28, 2009, the California legislature and Governor Arnold Schwarzenegger passed the state budget and approved a provision allowing the state to borrow 8 percent of the amount of property tax revenue apportioned to cities, counties and special districts. Under the provision, the state will be required to repay those obligations by June 30, 2013.

The provision also created an option for California local public agencies to relieve the burden of loaning the state property tax revenues. The provision, called Proposition 1A Securitization, authorizes the California Statewide Communities Development Authority ("California Communities") to purchase the receivable due to local agencies from the State.

Q: Who is the California Statewide Communities Development Authority?

A: The California Statewide Communities Development Authority is a joint powers authority ("JPA") sponsored by the California State Association of Counties ("CSAC") and the League of California Cities ("League"). California Communities was created by CSAC and the League in 1988 to enable local government and eligible private entities access to low-cost, financing through a variety of pooled and stand-alone finance programs.

Q: How does the Proposition 1A securitization work?

A: The legislation for the Proposition 1A securitization authorizes cities, counties, and special districts to sell their state repayment obligations to California Communities. In a simultaneous transaction, California Communities will issue bonds and remit the cash proceeds to the participating local public agencies. Bondholders will receive their repayment from the state at a later date. The legislation provides that local agencies participating in the securitization program will receive 100% of their respective Proposition 1A receivables.

Q: Do I need to become a member of California Communities to participate in the program?

A: No. All public agencies that are subject to the property tax diversion under Proposition 1A are eligible to participate in the program without having to join the California Communities JPA.

Q: Is securitization voluntary? What if our local agency chooses not to securitize?

A: Yes, this is a voluntary program. Public agencies that do not participate in the Proposition 1A Securitization Program can expect to receive repayment plus interest from the state for its obligations by June 30, 2013. The interest rate to be paid by the state to those local public agencies that do not securitize has been set by the Director of Finance at 2.0%.

Q: How much will it cost our local agency to participate in the Proposition 1A Securitization Program?

A: All costs of issuance and interest expense will be paid by the state. This allows agencies to receive 100% of their receivables. Some agencies may incur legal costs if they use an outside attorney for normal legal services.

Q: If our local agency securitizes, will we still get the repayment interest from the state?

A: No. In the case of securitization, the state will pay the interest due to bondholders and issuance costs associated with the transaction. Only agencies that do not securitize will receive interest from the state in 2013.

Q: If my local agency participates in the securitization program, when can my agency expect to receive payment?

A: Depending upon timing of enactment of cleanup legislation in the California legislature, California Communities is targeting completion of the securitization transaction to occur in November or early December, 2009, which would result in 50% of the payment to participating local public agencies on January 15, 2010 and 50% on May 3, 2010. Should the legislature not pass the anticipated legislative amendments, California Communities' next opportunity to securitize will likely be March, 2010.

Q: Will our local agency incur any liability by participating in the program?

A: No. The bonds issued by California Communities are not obligations of any of the local agencies that participate in the securitization program. The California Communities joint powers agreement expressly provides that California Communities is an entity separate and apart from the participating public agencies, and "its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any party to the joint powers agreement." Participating public agencies are not responsible for any repayment of debt, nor are they named in any of the bond documents. Participating public agencies also will not have any obligations related to compliance with tax or disclosure obligations on the bonds.

Q: Are there any restrictions to joining?

A: No. California Communities is required to accept any local entity affected by the suspension, regardless of the amount of property tax revenue lost.

Q: Can redevelopment agencies participate?

A. No. The diversion of tax increment revenues from redevelopment agencies that was a part of the State budget is not a "loan" and was not done under Proposition 1A and therefore redevelopment agencies cannot participate.

Q: Has California Communities conducted a program like this before?

A: Yes. In 2005, California Communities conducted a similar bond securitization program for local agencies when the state borrowed Vehicle License Fee ("VLF") revenues from cities and counties. California Communities securitized $455 million in VLF payments due from the state to provide advance repayment to 146 participating cities and counties.

Q: How is the Proposition 1A securitization different from the VLF "gap loan" securitization?

A: Under the VLF financing program in 2005, local agencies in California were required to cover the costs of issuance and pay the interest cost. As a result, local agencies only received on average about 93 cents on the dollar from their loans to the state. Under the proposed Proposition 1A Securitization Program, the state will pay for the borrowing interest incurred and the costs of issuance required for each agency to participate, allowing local agencies the ability to receive 100% of their receivables.

Q: Who is the financing team for the Proposition 1A Securitization Program?

A: **Bond Counsel**: Orrick, Herrington & Sutcliffe, LLP
Underwriters: Goldman Sachs,

	JP Morgan, Morgan Stanley, De La Rosa, and Stone & Youngberg
Program Consultant:	Greencoast Capital Partners LLC
Trustee:	Wells Fargo Bank, NA

Q: What is required from our local agency to participate?

A: Participating agencies must enroll in the program by going to the online Enrollment Form hosted on the California Communities website www.cacommunities.org/prop1A. Enrolled agencies will received the required documentation from transaction counsel (Orrick, Herrington & Sutcliffe) including a resolution that must be adopted by their governing board. The resolution authorizes the sale of the Proposition 1A receivables to California Communities. This resolution together with other signature documents and local agency legal opinions must be submitted no later than November 6, 2009.

Q: What is the deadline to participate in the Proposition 1A Securitization Program?

A: Completed applications including resolutions passed by the board/council, participant documents signed by the authorized parties and legal opinions must be submitted by November 6, 2009.

Q: When should I begin the application process?

A: It is best to begin the application process as soon as possible. Each local agency is not committed to the program until all executed documentation is returned to bond counsel prior to November 6, 2009. So, it is best to begin the process early and have all the relevant documentation prepared.

Q: What if I start the process and decide I don't want to participate? Can I pull out of the process half-way through?

A: Each local agency is not committed until they return executed documents to bond counsel on or prior to November 6, 2009. Signed documents will be held in escrow by bond counsel and can be withdrawn prior to November 6, 2009. After November 6, 2009, agencies that have submitted the required signed documentation are committed to the transaction.

Q: Will our local agency have to go through a credit rating process? How will the credit rating for these bonds be assessed?

A: No. The bonds are secured by the State of California's constitutional and statutory obligation to repay the loan within the three-year time period. The ratings on the bonds will be determined by the rating agencies based upon their assessment of the credit worthiness of the transaction and the state's ability to pay.

Q: Are there other ways to securitize aside from the California Communities program?

A: California Communities offers the only pooled Proposition 1A securitization program and is the only statutorily-authorized option that allows local agencies to securitize and have bond issuance and interest costs paid by the state.

Q: Where can I get more information?

A: For more information on the Proposition 1A securitization program, go to www.cacommunities.org/prop1A.

Q: How can I sign up for the Program?

A: To enroll in the program, submit the online Enrollment Form hosted on the California Communities website www.cacommunities.org/prop1A. There is no obligation on behalf of an enrolled local agency to actually participate. Each enrolled local agency must submit a complete set of signed documents with legal opinions by November 6, 2009 in order to be committed to the securitization program.

Q: There are several special districts in our County with board members that are the same as the County Board of Supervisors. Does each special district need to enroll in the program, adopt the Sale Resolution and sign documentation?

A: Yes. Each local agency must adopt the Sale Resolution, sign the Purchase and Sale Agreement and provide the required signature documents and legal opinions to participate in the Program.

Q: Can the Resolution approving the form of Purchase and Sale Agreement be placed on the consent calendar or does it need to be a separate item on the board's agenda?

A: The Resolution may be approved on the consent calendar.

Q: Does participation in the Proposition 1A Securitization Program qualify as a "repayment" by the State? Does this then allow the State to withhold property taxes next year?

A: Participation in the Proposition 1A Securitization Program does not qualify as a repayment by the State. Local Agencies will receive bond proceeds equal to the 8% withholding amount, but the State's receivable is still outstanding until they repay the bonds. The property tax protection provisions of Proposition 1A provide that property taxes cannot be suspended more than twice in a 10-year period (the first year begins with the first suspension). Further, the State cannot suspend Proposition 1A until all previous loans are paid in full, consisting of outstanding receivables and the Proposition 1A bonds.

II
OPTIONS TO THE PROPOSITION 1A SECURITIZATION FREQUENTLY ASKED QUESTIONS

Q: What are my local agency's options other than participating in the Prop 1A loan securitization program?

A: There are a few options to securitization.

1. If a local agency can absorb the loss in property tax revenue this year, it can decide to wait for the State to repay the obligation by June 30, 2013.
2. Two or more local agencies are able to reallocate or sell the obligation to another local agency.
3. Local agencies can apply for a hardship exemption.

Q: What is a hardship exemption?

A: For those local agencies experiencing extreme fiscal hardship, upon written request, the Director of Finance may decrease the reduction amount. Extreme fiscal hardship may include a local agency that:

- is in bankruptcy proceedings;
- may be required to seek bankruptcy protection as a result of the reduction in property tax revenue;
- does not have sufficient reserves to continue to provide a basic level of core services.

If the Director of Finance decreases a local agency's reduction as a result of hardship, the amount of the decrease will be allocated proportionately among other local agencies within the county, not to exceed more than 10 percent of the total reduction amounts for all local agencies within the county.

Q: How does my local agency apply for a hardship exemption?

A: The final hardship application procedures have not been established. The California Department of Finance is, however, requiring that all hardship applicants must first participate in the California Communities Proposition 1A Securitization Program. The State Director of Finance may permit a reallocation of the property tax reduction amount only to the extent that the agency did not receive bond proceeds.

Q: What can I expect to happen if my local agency does not participate in the California Communities Proposition 1A Securitization Program?

A: If your local agency can sustain an 8 percent property tax shift this year, and your local agency chooses not to participate in California Communities' loan securitization program, then the local agency can expect to be repaid directly from the state by June 30, 2013, with interest.

Q: What is the interest rate for those entities that choose not to participate in the Prop 1A loan securitization program?

A: The interest rate has been determined by the State Director of Finance to be 2.0%.

Q: Are there other options?

A: If the cleanup legislation passes, a local agency may be able to sell the receivable to another local agency.

Q. How would a local agency sell its Prop 1A Receivable to another local agency?

A: The cleanup legislation is expected to provide procedures for local agencies to sell Proposition 1A receivables to another local agency. The cleanup legislation is currently pending approval by the State Senate.

III
PROPOSITION 1A SUSPENSION FREQUENTLY ASKED QUESTIONS

Q: When will we see the reduction in our property tax revenues?

A: You will see a reduction in your property tax revenues when you receive your property taxes as dispersed by the county auditor. The county auditor is required to shift the 8 percent property tax revenue in two installments, once before January 15, 2010, and again after the first transfer but no later than May 3, 2010.

Q: When is the state required to repay the "loan"?

A: ABX4 15 indicates the state's deadline to repay the loan is June 30, 2013.

Q: And at what interest rate on the "loan"?

A: The interest rate for those agencies that do not sell the receivable to the joint powers authority has been set by the Director of Finance at 2.0%.

Q: Are there any guarantees that the state will repay us?

A: The State Constitution requires that the state provide repayment within a three-year period. ABX4 15 sets the repayment deadline at June 30, 2013.

The repayment is also continuously appropriated in the General Fund and authorizes the State Controller to make the repayment. The repayment is a priority payment behind General Fund obligations to schools and general obligation bonds. If the state has not fully repaid local agencies by June 30, 2013, local agencies or the bond issuer may seek a writ of mandamus to compel the Controller to fully pay the amounts the state is obligated to pay. The petition for writ of mandamus has priority and preference in setting and review and may be filed in the California Supreme Court.

Q: Will next year's property taxes (2010-11) be affected by this year's Prop 1A suspension?

A: It is highly unlikely that the Prop 1A protection of 2010-11 property taxes could be suspended. The State Constitution indicates that the property tax protection provisions of Proposition 1A cannot be suspended more than twice in a 10-year period (the first year begins with the first suspension).

Further, the state cannot suspend Proposition 1A until all previous loans are paid in full.

PROPOSITION

1A STATE BUDGET. CHANGES CALIFORNIA BUDGET PROCESS. LIMITS STATE SPENDING. INCREASES "RAINY DAY" BUDGET STABILIZATION FUND.

OFFICIAL TITLE AND SUMMARY

STATE BUDGET. CHANGES CALIFORNIA BUDGET PROCESS. LIMITS STATE SPENDING. INCREASES "RAINY DAY" BUDGET STABILIZATION FUND.

- Increases size of state "rainy day" fund from 5% to 12.5% of the General Fund.
- A portion of the annual deposits into that fund would be dedicated to savings for future economic downturns, and the remainder would be available to fund education, infrastructure, and debt repayment, or for use in a declared emergency.
- Requires additional revenue above historic trends to be deposited into state "rainy day" fund, limiting spending.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Higher state tax revenues of roughly $16 billion from 2010–11 through 2012–13 to help balance the state budget.
- In many years, increased amounts of money in state "rainy day" reserve fund.
- Potentially less ups and downs in state spending over time.
- Possible greater state spending on repaying budgetary borrowing and debt, infrastructure projects, and temporary tax relief. In some cases, this would mean less money available for ongoing spending.

FINAL VOTES CAST BY THE LEGISLATURE ON ACA 1 (PROPOSITION 1A)

Senate:	Ayes 30	Noes 8
Assembly:	Ayes 74	Noes 6

FINAL VOTES CAST BY THE LEGISLATURE ON SCA 13 (PROPOSITION 1A)

Senate:	Ayes 39	Noes 0
Assembly:	Ayes 64	Noes 6

ANALYSIS BY THE LEGISLATIVE ANALYST

OVERVIEW OF THE PROPOSAL

Measure Changes the State's Budgeting. This measure would make major changes to the way in which the state sets aside money in one of its "rainy day" reserve accounts and how this money is spent. As a result, Proposition 1A could have significant impacts on the state's budgeting practices in the future. The measure would tend to increase the amount of money set aside in the state's rainy day account by increasing how much money is put into this account and restricting the withdrawal of these funds.

Measure Results in Tax Increases. If this measure is approved, several tax increases passed as part of the February 2009 budget package would be extended by one to two years. State tax revenues would increase by about $16 billion from 2010–11 through 2012–13.

BACKGROUND

Restrictions on Annual State Budget

Currently, the State Constitution has two main provisions related to the state's overall level of spending:

- ***Spending Limit.*** There is a limit on the amount of tax revenues that the state can spend each year. In recent years, however, the limit has been well above the state's level of spending and has not been a factor in budgeting decisions.
- ***Balanced Budget.*** In March 2004, the state's voters passed Proposition 58. Among other changes, the measure requires that the Legislature pass a balanced budget each year.

Outside of these requirements, the Legislature and Governor are generally able to decide how much General Fund money to spend in a given year.

Rainy Day Reserve Funds

When the state passes its annual budget, it estimates the amount of revenues that it expects to receive in the upcoming year. Typically, the state sets aside a portion of these revenues into one of two rainy day reserve funds. Money in these reserves is set aside to pay for unexpected expenses, cover any drops in tax receipts, or save for future years. The two funds are described below.

- ***Special Fund for Economic Uncertainties (SFEU).*** The SFEU is the state's traditional reserve fund. Funds can be spent for any purpose with approval by the Legislature. Any unexpected monies received during a year are automatically deposited into the SFEU.
- ***Budget Stabilization Account/Budget Stabilization Fund (BSA/BSF).*** The state's voters created the BSA/BSF through the passage of Proposition 58 in 2004. (Under current law, this reserve is known as the BSA. Proposition 1A would rename it the BSF. For simplicity, we refer to the reserve as the BSF throughout this analysis.) Each year, 3 percent of estimated General Fund state revenues are transferred into the BSF. The Governor, however, can stop the transfer in any year by issuing an executive order. For instance, the transfer this year was stopped due to the state's budget problems. Similarly, it is expected that the transfers will be suspended over the next few years as the state continues to face budget problems. In addition, the annual transfers are not made once the balance of the BSF reaches a specified "target"—the higher amount of $8 billion or 5 percent of revenues (currently about $5 billion). By passing a law, the state can transfer funds out of the BSF and use the funds for any purpose. (Currently, this is accomplished through the annual budget act, which allows transfers out of the BSF each year.)

Economic Recovery Bonds (ERBs). In 2004, the state's voters passed Proposition 57, which allowed the state to issue $15 billion in ERBs. These bonds were used to pay off budgetary debt that had accumulated in the early part of this decade. A portion of the sales and use tax (SUT) is the primary mechanism to pay off the ERBs. However, one-half of the funds deposited into the BSF—up to a total of $5 billion—are used to make extra payments on the ERBs to pay them off faster. To date, $1.5 billion in BSF funds have been used in this manner.

Authority to Reduce Spending

Once the annual budget has been approved by the Legislature and the Governor, the Governor has only limited authority to reduce spending during the year without legislative approval.

Recent Tax Increases

As discussed in the "Overview of the State Budget" section of this guide, the Legislature and Governor passed a plan in February 2009 to balance the state's 2008–09 and 2009–10 budgets. The plan included a number of tax increases that are scheduled to remain in effect for about two years (unless the voters approve this measure). Specifically:

- ***Sales and Use Tax.*** The SUT is charged on the purchase of goods. The budget package raised the tax by one cent for every dollar of goods purchased. This raised the average SUT rate in the state from about 8 percent to 9 percent through 2010–11.

- ***Vehicle License Fee (VLF).*** The VLF is based on the value of a vehicle and is paid annually as part of an owner's registration. The budget package raised the tax rate from 0.65 percent to 1.15 percent of a vehicle's value through 2010–11.
- ***Personal Income Tax (PIT).*** The PIT is based on an individual's income. Tax rates range from 1 percent to 10.3 percent depending on a taxpayer's income. Higher tax rates are charged as income increases. Numerous exemptions and credits may be applied to an individual's income to lower the amount of the tax owed. The budget package raises each tax rate by a 0.25 percentage point. (This rate increase will be reduced by one-half if it is determined by April 1, 2009 that the state will receive a certain level of federal funds to help balance the state budget.) For instance, the 9.3 percent tax rate was raised to 9.55 percent. The package also reduces the value of the credit for having a dependent (such as a child) by about $210. These changes would affect the 2009 and 2010 tax years.

PROPOSAL

This measure amends the Constitution to change the state's budgeting practices. Based on other components of the 2009–10 budget package, passage of this measure would also give the Governor more authority to cut spending and would extend recent tax increases by up to two years.

Use of Extra Revenues in Certain Years

Proposition 1A establishes a process to determine which revenues are "unanticipated." The measure generally defines unanticipated revenues to mean those that exceed the amount expected based on the revenues received by the state over the past ten years. The ten-year trend would be adjusted to exclude the impact of shorter-term tax changes. (In other cases, unanticipated revenues could be defined as any revenues above the amount needed to pay for spending equal to the prior year's level of spending grown for changes in population and inflation.) Beginning in 2010–11, any extra revenues would be directed to the following purposes (in priority order):

- Meet funding obligations under the Constitution for K–14 education not already paid. (An existing formula established by Proposition 98 determines how much of higher revenues go to education.)
- Transfer to the BSF to fill the reserve up to its target.
- Pay off any budgetary borrowing and debt, such as certain loans and ERBs.

Once all of these types of payments were made, any other extra revenues could be spent on a variety of purposes, including further building up of the BSF, paying for infrastructure (such as constructing roads, schools, or state buildings), providing one-time tax relief, or paying off unfunded health care liabilities for state employees.

Revenues Into the BSF

Increased Reserve Target. This measure increases the amount of the BSF reserve target to 12.5 percent of state revenues. This percentage is currently equal to about $12 billion, but would grow over time. This compares to the existing target of the higher of $8 billion or 5 percent of revenues.

Suspension of Transfers More Restricted. Under the measure, the circumstances in which the Governor may stop a transfer to the BSF would be limited. Beginning in the 2011–12 fiscal year, the Governor could only stop the BSF transfer in years when the state did not have enough revenues to pay for state spending equal to the prior year's level of spending grown for changes in population and inflation.

Extra Revenues to Reserve in Certain Years. As noted above, one of the priorities for extra revenues would be to build up the BSF.

Spending Out of the BSF

New Spending Requirements. As described above, funds in the BSF currently can be transferred out of the fund to the General Fund for spending for any purpose through the passage of a law. Under this measure, some revenues in the BSF would be spent on particular purposes:

- ***Increased Education Spending, if Proposition 1B Passes.*** If both Proposition 1A and Proposition 1B on this ballot pass, the state would be required to pay K–12 schools and community colleges $9.3 billion in supplemental funds to address recent funding reductions. This measure establishes the way in which these payments would be made. Each year beginning in 2011–12, 1.5 percent of state revenues (currently about $1.5 billion) would be taken from the BSF and paid to schools and colleges until the entire $9.3 billion was paid. Regardless of the state's financial situation, these payments could not be suspended by the Governor. As a result, at least 1.5 percent of General Fund revenues would be transferred into the BSF every year until the entire amount was paid.

- ***Spending on Infrastructure and State Bond Debt.*** After the $9.3 billion in educational payments were made (or if Proposition 1B does not pass), 1.5 percent of state revenues each year would be dedicated to paying for infrastructure or state bond debt. These payments could be used to reduce obligations that would otherwise fall on the General Fund.

Smaller Payments to Pay Off ERBs. Under current law, one-half of transfers into the BSF—up to $5 billion total—is used to make extra ERB payments. This measure excludes the supplemental education funding transfers from this calculation. In years when transfers are made into the BSF (assuming Proposition 1B passes), therefore, the extra ERB payments would be smaller than otherwise.

Limits on Other Withdrawals. The ability of the state to transfer funds out of the BSF for other purposes would be significantly limited under the measure. Specifically, transfers out of the BSF would be limited to the following two situations:

- Funds in the BSF could be used to cover any costs associated with an emergency, such as a fire, earthquake, or flood.
- If revenues were not high enough to cover state spending equal to the prior year's level of expenses (grown for population and inflation), then BSF funds could be used to meet that level of spending.

Governor's Authority to Reduce Spending

If Proposition 1A passes, the Governor would be given new authority to reduce certain types of spending during a fiscal year without additional legislative approval. (This authority is included in a part of a new law that will only go into effect if Proposition 1A passes.) Specifically, the Governor could reduce:

- Many types of spending for general state operations (such as equipment purchases) or capital outlay by up to 7 percent.
- Cost-of-living adjustments (COLAs)—provided to account for inflation—for any programs specified in the annual budget. This would not apply to any increases for most state employees' salaries.

Tax Increases Extended

If Proposition 1A passes, the tax increases included in the February 2009 budget package would be extended for one or two additional years. (The extensions of the tax increases are included in a part of a law that will only go into effect if Proposition 1A passes.) The SUT increase of 1 cent would be extended for one year through 2011–12. The VLF tax increase would be extended for two years through 2012–13. The PIT-related tax increases would also be extended for two more years, through the 2012 tax year.

FISCAL EFFECTS

Uncertainty About the Effect of the Measure

The fiscal effects of Proposition 1A are particularly difficult to assess. This is because the measure's effects would depend on a variety of factors that will change over time and cannot be accurately predicted. Consequently, the measure's effects may be very different from one year to the next. The key factors determining the impact of Proposition 1A in any given year are:

- ***Future Budget Decisions by the Legislature and Governor.*** Key decisions made on the annual budget include the total level of

For text of Proposition 1A, see page 46.

spending and the mix of spending between one-time and ongoing purposes. These decisions would affect the state's fiscal condition and how much money is deposited or withdrawn from the BSF in a given year.

- ***Revenue Trends and Volatility.*** The level of revenues available for spending in a given year would depend on the previous ten years of revenue growth. The state's revenues are very volatile and can have big swings from year to year. Using the trend from ten years of revenues would reduce—but not eliminate—year-to-year changes.

Despite this uncertainty, we describe the more likely outcomes of the measure below—focusing first on nearer-term effects and then on a longer-term outlook.

Nearer-Term Budgets

Proposition 1A would have major effects on the state budget over the next few years. Although Proposition 1A was passed as part of the package to balance the 2009–10 budget, it would not significantly affect this year's budget. Most of its provisions go into effect starting with the 2010–11 budget or later, as described below.

Increased Tax Revenues. If Proposition 1A is approved, tax increases adopted as part of the 2009–10 budget package would be extended by one to two years. In total, this extension of higher taxes is projected to increase revenues by a total of roughly $16 billion from 2010–11 through 2012–13. (This total would be about $2.5 billion lower if a certain level of federal stimulus funds is available to the state.)

Governor's Ability to Reduce Some Spending. Effective upon passage of this measure, the Governor would have new authority to unilaterally reduce some spending for state operations and capital outlay and eliminate some COLAs. This authority could potentially be used to reduce spending within a fiscal year if the budget goes out of balance after it is passed.

Higher Payments to Education. If Proposition 1B also passes, the state would divert 1.5 percent of annual General Fund revenues beginning in 2011–12 to make supplemental payments for education. These payments would be made until a total of $9.3 billion had been spent, likely in five or six years. These payments could not be suspended. The fiscal effect of these payments is discussed in more detail in the analysis of Proposition 1B.

Altered Pay Off of ERBs. As described above, this measure could alter the speed at which the state pays off its outstanding ERBs (bonds related to prior budgetary debt). In years when the only transfers made into the BSF were the base 3 percent of revenues (and assuming Proposition 1B also passes), the measure would reduce the amount of the extra ERB payments made from the BSF by one-half (reducing state costs in that year by more than $700 million). On the other hand, to the extent that additional transfers to the BSF were made related to unanticipated revenues, extra BSF payments to ERBs could be made compared to current law. These changes would affect the timing of the final payoff of the ERBs. Once the ERBs are paid off, the state would experience reduced General Fund costs on an annual basis.

Limited Ability to Suspend BSF Transfers. Under current law, the Governor may suspend BSF transfers in any year and, therefore, allow 3 percent of revenues to be available to help balance a budget immediately. In contrast, beginning in 2011–12 (if Proposition 1B also passes), this measure would eliminate the ability to suspend one-half of the transfer related to supplemental educational payments. For the remaining amount of the transfer, the transfer could only be suspended in more restricted cases.

Transfer of Extra Revenues to BSF. Beginning in 2010–11, this measure would require transfers of General Fund revenues into the BSF of amounts that exceed the ten-year revenue trend. It is difficult to predict what this calculation would require in future years. It is possible, however, that this provision would require billions of dollars in the next few years to be transferred to the BSF.

Net Result of These Factors. Some of these factors—such as the higher tax revenues—would make it easier to balance the state budget in the coming years. Other factors—such as the limited ability to suspend the annual transfers to the BSF—could make it more difficult. The net result of these factors is difficult to determine in any particular year. In 2011–12, the size of the tax increases connected to this measure would likely make that year's budget easier to balance. In other years, however, the effect of the measure on the ability of the state to balance the budget is unknown.

Longer-Term Outlook

As described above, this measure has a number of effects that would last for less than a decade—including higher taxes, supplemental payments to education, and altered payoff of the ERBs. Once these effects have run their course, Proposition 1A could continue to have a substantial effect on the state's budgeting practices. In this section, we describe the possible long-term effects of this measure.

Restrictions on Revenues and Spending. In any given year, Proposition 1A does not strictly limit the amount of revenues that could be collected by the state or the amount of spending that could occur. The measure does not restrict the ability of the Legislature and the Governor to approve tax increases to collect on top of existing revenues. Regarding spending, while the measure could make it harder to approve spending increases in some years by restricting the access to revenues, it would not cap the total level of spending that could be authorized in any year if alternative revenues were approved.

More Money in the BSF. In some years, the measure could lower the amount of money in the BSF rainy day reserve by allowing 1.5 percent of General Fund revenues to be spent on infrastructure. In many other cases, however, the measure would increase the amount of money in the state's BSF rainy day reserve by:

- Restricting the ability of the Governor to stop the annual transfer into the reserve.
- Restricting the purposes for which funds can be taken out.
- Requiring revenues above a decade-long trend to be deposited into the fund.
- Raising the target cap on funds in the BSF (from 5 percent or $8 billion) to 12.5 percent of revenues.

On net, we expect that the balance of the BSF would be greater than under current law in many future years. The net amount of additional money in the BSF would depend on a number of factors, including future budgeting decisions by the Legislature and Governor and the rate and volatility of revenue growth.

Effect on State Budgeting. The precise effect of having more rainy day funds is unknown. However, it could lead to the following primary types of results:

- ***Revenues Determined by Prior Ten Years.*** Currently, the state's revenues available for spending in a year is determined by the state's economic condition at that point in time. A poor economy means less revenues, and a booming economy means extra revenues. Under the measure, however, revenues available generally would be based on the past decade. As a result, the amount of revenues available may no longer reflect the state's economy at that time.
- ***Smoother State Spending.*** The level of state spending would be reduced to the extent the BSF was built up to a higher level than would exist under current law. These funds would then be available in later years when revenues fell short. This could help cushion the level of spending reductions in lower-revenue years. Over time, this measure could help limit the ups and downs of state spending and smooth out spending from year to year.
- ***Changes in Types of Spending.*** The state would spend money on different types of programs than otherwise would be the case. The measure, for example, could increase spending on a variety of one-time activities—such as repaying budgetary borrowing and debt, infrastructure projects, and temporary tax relief. In some cases, this would mean less money was available to spend on ongoing spending increases.

For text of Proposition 1A, see page 46.