

Senate Bill No. 67

CHAPTER 634

An act to amend Sections 6585, 6588, 6588.6, and 6591 of, to add Section 53610 to, and to add Chapter 4.5 (commencing with Section 53998) to Part 1 of Division 2 of Title 3 of, the Government Code, to amend Section 33681.12 of the Health and Safety Code, and to amend Section 100.06 of the Revenue and Taxation Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 19, 2009. Filed with
Secretary of State October 19, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 67, Committee on Budget and Fiscal Review. Property tax revenues: Proposition 1A receivables.

(1) Existing property tax law requires the county auditor, in each fiscal year, to allocate property tax revenue among local jurisdictions in accordance with specified formulas and procedures. The California Constitution allows for a specified suspension of the prohibition on the Legislature from modifying the manner of apportioning ad valorem property tax revenues. Existing law requires the auditor of each county to reduce the amount of ad valorem property tax revenue apportionments to each local agency for the 2009–10 fiscal year by 8% of the total amount of ad valorem property tax revenue apportioned to that local agency in the 2008–09 fiscal year.

The Marks-Roos Local Bond Pooling Act of 1985 defines the term “authority” and authorizes joint powers authorities to, among other things, purchase, with the proceeds of bonds or its revenue, a local agency’s right to receive moneys in repayment of its revenue losses (Proposition 1A receivables) resulting from this modification of ad valorem property tax revenue allocations. Existing law authorizes a local agency subject to this reduction to sell its Proposition 1A receivables to the authority.

This bill would revise the definition of the term “authority,” in the case of an authority issuing bonds in which Proposition 1A receivables are pledged to the payment of the bonds, to require it to consist of not less than 250 local agencies.

The bill would require a county auditor to prepare, by September 15, 2009, a list of each taxing agency within the county and the amount of the Proposition 1A receivables, to prepare a certified list by October 30, 2009, and to make this information available, as specified. The bill would also revise provisions regarding the sale of bonds for which the indebtedness is serviced by Proposition 1A receivables.

By imposing new duties upon county auditors, this bill would impose a state-mandated local program.

(2) Existing law specifies authorized investments for local agencies.

This bill would additionally authorize a local agency to purchase, with its revenue, Proposition 1A receivables sold pursuant to the requirements that would be imposed by this bill.

(3) Existing law allows the Director of Finance, upon the written request by a local agency no later than October 15, 2009, to decrease the amount by which ad valorem property taxes are required to be reduced for the 2009–10 fiscal year, on the basis of extreme hardship. Existing law also requires the state to fully reimburse these revenue reductions in specified amounts.

This bill would instead allow this request to be made 30 days after the issuance of bonds or December 1, 2009, whichever date is earlier, and would authorize the Director of Finance to make this decrease only to the extent that the agency did not receive bond proceeds for the full amount of Proposition 1A receivables that it offered for sale. The bill would also revise provisions regarding the reimbursement of the revenue reductions.

(4) The bill would provide a court ruling that any portion of the revenues that are subject to the ad valorem property tax reduction may not be loaned to the state would not affect any remaining revenues or the implementation of any other portion of this bill or Chapter 14 of the Statutes of the 2009–10 Fourth Extraordinary Session.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 6585 of the Government Code is amended to read: 6585. The definitions in this section shall govern the construction and interpretation of this article.

(a) (1) Except as provided in paragraphs (2) and (3), “authority” means an entity created pursuant to Article 1 (commencing with Section 6500).

(2) In the case of an authority issuing bonds pursuant to this chapter in which VLF receivables, as defined in subdivision (j), are pledged to the payment of the bonds, other than VLF receivables so pledged for a county of the first class, an authority shall consist of not less than 100 local agencies.

(3) In the case of an authority issuing bonds pursuant to this chapter in which Proposition 1A receivables, as defined in subdivision (g), are pledged to the payment of the bonds, an authority shall consist of not less than 250 local agencies.

(b) "Bond purchase agreement" means a contractual agreement executed between the authority and the local agency whereby the authority agrees to purchase bonds of the local agency.

(c) "Bonds" means all of the following:

(1) Bonds, including, but not limited to, assessment bonds, redevelopment agency bonds, government issued mortgage bonds, and industrial development bonds.

(2) Notes, including bond, revenue, tax, or grant anticipation notes.

(3) Commercial paper, floating rate and variable maturity securities, and any other evidences of indebtedness.

(4) Certificates of participation or lease-purchase agreements.

(d) "Cost," as applied to a public capital improvement or portion thereof financed under this part, means all of the following:

(1) All or any part of the cost of construction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a public capital improvement.

(2) The cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved; the cost of all machinery and equipment.

(3) Finance charges.

(4) Interest prior to, during, and for a period after, completion of that construction, as determined by the authority.

(5) Provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements.

(6) The cost of architectural, engineering, financial and legal services, plans, specifications, estimates, and administrative expenses.

(7) Other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing of any public capital improvement.

(e) "Legislative body" means the governing body of a local agency.

(f) "Local agency" means a party to the agreement creating the authority, or an agency or subdivision of that party, sponsoring a project of public capital improvements, or any city, county, city and county, authority, district, or public corporation of this state.

(g) "Proposition 1A receivable" means the right to payment of moneys due or to become due to a local agency, pursuant to clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the Revenue and Taxation Code.

(h) "Public capital improvements" means one or more projects specified in Section 6546.

(i) "Revenue" means income and receipts of the authority from any of the following:

(1) A bond purchase agreement.

- (2) Bonds acquired by the authority.
- (3) Loans installment sale agreements, and other revenue-producing agreements entered into by the authority.
- (4) Projects financed by the authority.
- (5) Grants and other sources of income.
- (6) VLF receivables purchased pursuant to Section 6588.5.
- (7) Proposition 1A receivables purchased pursuant to Section 6588.6.
- (8) Interest or other income from any investment of any money in any fund or account established for the payment of principal or interest or premiums on bonds.

(j) “VLF receivable” means the right to payment of moneys due or to become due to a local agency out of funds payable in connection with vehicle license fees to a local agency pursuant to Section 10754.11 of the Revenue and Taxation Code.

(k) “Working capital” means money to be used by, or on behalf of, a local agency for any purpose for which a local agency may borrow money pursuant to Section 53852, or for any purpose for which a VLF receivable or a Proposition 1A receivable sold to an authority could have been used by the local agency.

SEC. 2. Section 6588 of the Government Code is amended to read:

6588. In addition to other powers specified in an agreement pursuant to Article 1 (commencing with Section 6500) and Article 2 (commencing with Section 6540), the authority may do any or all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Sue and be sued in its own name.

(c) Issue bonds, including, at the option of the authority, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program. In addition, for any purpose for which an authority may execute and deliver or cause to be executed and delivered certificates of participation in a lease or installment sale agreement with any public or private entity, the authority, at its option, may issue or cause to be issued bonds, rather than certificates of participation, and enter into a loan agreement with the public or private entity.

(d) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this article.

(e) As provided by applicable law, employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the authority in connection with the issuance and sale of any bonds.

(f) Contract for engineering, architectural, accounting, or other services determined necessary by the authority for the successful development of a public capital improvement.

(g) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land-use, recreation, and environmental experts employed by any sponsor or participant if the authority determines those services are necessary for the successful development of public capital improvements.

(h) Take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state that the authority determines are necessary or convenient for the financing of public capital improvements, or any portion thereof.

(i) Receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the construction financing, or refinancing of public capital improvement, or any portion thereof or for the financing of working capital or insurance programs, or for the payment of the principal of and interest on bonds if the proceeds of those bonds are used for one or more of the purposes specified in this section.

(j) Make secured or unsecured loans to any local agency in connection with the financing of capital improvement projects, working capital or insurance programs in accordance with an agreement between the authority and the local agency. However, no loan shall exceed the total cost of the public capital improvements, working capital or insurance needs of the local agency as determined by the local agency and by the authority.

(k) Make secured or unsecured loans to any local agency in accordance with an agreement between the authority and the local agency to refinance indebtedness incurred by the local agency in connection with public capital improvements undertaken and completed.

(l) Mortgage all or any portion of its interest in public capital improvements and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(m) Assign or pledge all or any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible, of a local agency to which the authority has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the authority, for the benefit of the holders of bonds issued to finance public capital improvements. The pledge of moneys, revenues, accounts, contract rights, or rights to payment of any kind made by or to the authority pursuant to the authority granted in this part shall be valid and binding from the time the pledge is made for the benefit of the pledgees and successors thereto, against all parties irrespective of whether the parties have notice of the claim.

(n) Lease the public capital improvements being financed to a local agency, upon terms and conditions that the authority deems proper; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease; include in any lease provisions that the lessee shall have options to renew the lease for a period or periods, and at rents as determined by the authority; purchase or sell by an installment agreement or otherwise any or all of the public capital improvements; or, upon payment of all the indebtedness incurred by the authority for the financing or refinancing of the public capital improvements, the authority may convey any or all of the project to the lessee or lessees.

(o) Charge and apportion to local agencies that benefit from its services the administrative costs and expenses incurred in the exercise of the powers authorized by this article. These fees shall be set at a rate sufficient to recover, but not exceed, the authority's costs of issuance and administration. The fee charged to each local obligation acquired by the pool shall not exceed that obligation's proportionate share of those costs. The level of these fees shall be disclosed to the California Debt and Investment Advisory Commission pursuant to Section 6599.1.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States or of the state, or any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this article.

(q) Notwithstanding any other provision of this article, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a local agency; and assign any insurance or guarantee that acts as security for the authority's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by this article.

(s) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds.

(t) At the request of affected local agencies, combine and pledge revenues to public capital improvements for repayment of one or more series of bonds issued pursuant to this article.

(u) Delegate to any of its individual parties or other responsible individuals the power to act on its behalf subject to its general direction, guidelines, and oversight.

(v) Purchase, with the proceeds of its bonds or its revenue, bonds issued by any local agency at public or negotiated sale. Bonds purchased pursuant to this subdivision may be held by the authority or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the authority.

(w) Purchase, with the proceeds of its bonds or its revenue, VLF receivables sold to the authority pursuant to Section 6588.5. VLF receivables so purchased may be pledged to the payment of bonds issued by the authority or may be resold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other VLF receivables purchased by the authority.

(x) (1) Purchase, with the proceeds of its bonds or its revenue, Proposition 1A receivables pursuant to Section 6588.6. Proposition 1A receivables so purchased may be pledged to the payment of bonds issued by the authority or may be resold to public or private purchasers at public or negotiated sales, in whole or in part, separately or together with other Proposition 1A receivables purchased by the authority.

(2) (A) All entities subject to a reduction of ad valorem property tax revenues required under Section 100.06 of the Revenue and Taxation Code pursuant to the suspension set forth in Section 100.05 of the Revenue and Taxation Code shall be afforded the opportunity to sell their Proposition 1A receivables to the authority.

(B) If these entities offer Proposition 1A receivables to the authority for purchase and duly authorize the sale of the Proposition 1A receivable pursuant to documentation approved by the authority, the authority shall purchase all Proposition 1A receivables so offered to the extent it can sell bonds therefor. If the authority does not purchase all Proposition 1A receivables offered, it shall purchase a pro rata share of each entity's offered Proposition 1A receivables.

(C) The authority may establish a deadline, no earlier than November 3, 2009, by which these entities shall offer their Proposition 1A receivables for sale to the authority and complete the application required by the authority.

(3) For purposes of meeting costs incurred in performing its duties relative to the purchase and sale of Proposition 1A receivables, the authority shall be authorized to charge a fee to each entity from which it purchases a Proposition 1A receivable. The fee shall be computed based on the percentage value of the Proposition 1A receivable purchased from each entity, in relation to the value of all Proposition 1A receivables purchased by the authority. The amount of the fee shall be paid from the proceeds of the bonds and shall be included in the principal amount of the bonds.

(4) Terms and conditions of any and all fees and expenses charged by the authority, or those it contracts with, and the terms and conditions of sales of Proposition 1A receivables and bonds issued pursuant to this subdivision, including the terms of optional early redemption provisions, if any, shall be approved by the Treasurer and the Director of Finance, who shall not unreasonably withhold their approval. The aggregate principal amount of all bonds issued pursuant to this subdivision shall not exceed two billion two hundred fifty million dollars (\$2,250,000,000), and the rate of interest paid on those bonds shall not exceed 8 percent per annum. The authority shall exercise its best efforts to obtain the lowest cost financing possible. Any and all premium obtained shall be used for either of the following:

(A) Applied to pay the costs of issuance of the bonds.

(B) Deposited in a trust account that is pledged to bondholders and used solely for the payment of interest on, or for repayment of, the bonds.

(5) (A) In connection with any financing backed by Proposition 1A receivables, the Treasurer may retain financial advisors, legal counsel, and other consultants to assist in performing the duties required by this chapter and related to that financing.

(B) Notwithstanding any other provision of law, none of the following shall apply to any agreements entered into by the Treasurer pursuant to subparagraph (A) in connection with any Proposition 1A financing:

(i) Section 11040 of the Government Code.

(ii) Section 10295 of the Public Contract Code.

(iii) Article 3 (commencing with Section 10300) and Article 4 (commencing with Section 10335) of, Chapter 2 of Part 2 of Division 2 of the Public Contract Code, except for the authority of the Department of Finance under Section 10336 of the Public Contract Code to direct a state agency to transmit to it a contract for review, and except for Section 10348.5 of the Public Contract Code.

(C) Any costs incurred by the Treasurer in connection with any Proposition 1A financing shall be reimbursed out of the proceeds of the financing.

(y) Set any other terms and conditions on any purchase or sale pursuant to this section as it deems by resolution to be necessary, appropriate, and in the public interest, in furtherance of the purposes of this article.

SEC. 3. Section 6588.6 of the Government Code is amended to read:

6588.6. (a) An authority that was in existence on July 28, 2009, may purchase, with the proceeds of its bonds or its revenue, Proposition 1A receivables from one or more local agencies. The authority may pledge, assign, resell, or otherwise transfer or hypothecate any Proposition 1A receivables for the purpose of securing bonds issued to finance the purchase price of the Proposition 1A receivables.

(b) Notwithstanding any other law, local agencies may sell Proposition 1A receivables to the authority and enter into one or more sales agreements with an authority as, and on the terms, the local agency deems appropriate. The sales agreement may include covenants of, and binding on, the local agency as necessary to establish and maintain the security of bonds issued by the authority for the purpose of purchasing the Proposition 1A receivables and, if applicable, the exclusion from gross income of interest on the bonds for federal income tax purposes. Any transfer of some or all of a Proposition 1A receivable by a local agency to the authority under this article that the governing documents state is a sale shall be treated as an absolute sale and transfer of the property so transferred to the authority and not as a pledge or grant of a security interest by the local agency to secure a borrowing. The characterization of the transfer of any Proposition 1A receivable as an absolute sale by the local agency shall not be negated or adversely affected by any of the following:

(1) The fact that only a portion of the Proposition 1A receivable is transferred.

(2) By the local agency's acquisition of an ownership interest in any residual interest or a subordinate interest in the Proposition 1A receivable.

(3) By any characterization of the authority or its bonds for purposes of accounting, taxation, or securities regulation.

(4) By any other factor.

(c) On and after the effective date of each transfer of a Proposition 1A receivable under this article that the governing documents state is a sale, the local agency shall have no right, title, or interest in or to the Proposition 1A receivable transferred, and the Proposition 1A receivable so transferred shall be the property of the authority and not of the local agency, and shall

be owned, received, held, and disbursed only by the authority or any trustee or agent of the authority appointed by the authority. Any sale of some or all of any Proposition 1A receivable shall automatically be perfected without the need for physical delivery, recordation, filing, or further act, and the provisions of Division 9 (commencing with Section 9101) of the Commercial Code and Sections 954.5 to 955.1, inclusive, of the Civil Code shall not apply to the sale. None of the Proposition 1A receivables sold by the local agency pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the local agency. On or before the effective date of any sale of a Proposition 1A receivable, the local agency shall notify the Controller that the Proposition 1A receivable has been sold to the authority and irrevocably instruct the payer that, as of the effective date, payments on the Proposition 1A receivable so sold are to be made directly to the authority or any trustee or agent appointed by the authority.

(d) The state hereby covenants, for the benefit of the holders of any bonds issued by the authority pursuant to this article payable from Proposition 1A receivables purchased by the authority, that it will not take any action that would materially adversely affect the interest of the holders of these bonds or otherwise impair the security of these bonds, so long as any of these bonds remain outstanding.

(e) (1) On or before September 15, 2009, each county auditor shall prepare a list of each taxing agency within the county containing the name of the taxing agency and the estimated amount of the Proposition 1A receivable for each taxing agency.

(2) On or before October 30, 2009, each county auditor shall prepare a list of each taxing agency within the county containing the name of the taxing agency and the final certified amount of the Proposition 1A receivable for each taxing agency.

(3) A list prepared pursuant to paragraph (1) or (2) shall be made available to the authority, the Department of Finance, or any taxing agency upon request.

(4) The authority and the holders of the authority's bonds issued to finance Proposition 1A receivables shall be entitled to rely on the certified list prepared pursuant to paragraph (2).

SEC. 4. Section 6591 of the Government Code is amended to read:

6591. (a) The authority is authorized from time to time to issue bonds to provide funds to achieve its purposes.

(b) Bonds may be authorized to finance any of the following:

(1) A single public capital improvement, working capital, purchase of VLF receivables, purchase of Proposition 1A receivables, or insurance program for a single local agency.

(2) A series of public capital improvements, working capital, purchases of VLF receivables, purchase of Proposition 1A receivables, or insurance program for a single local agency.

(3) A single public capital improvement, working capital, purchases of Proposition 1A receivables, or purchases of VLF receivables or insurance program for two or more local agencies.

(4) A series of public capital improvements, working capital, purchases of VLF receivables or purchases of Proposition 1A receivables or insurance programs for two or more local agencies.

(c) Bonds issued for the purpose of financing working capital shall be used to make loans to local agencies for any of the purposes for which a local agency may borrow money pursuant to Section 53852. The loans shall be repaid in accordance with the terms of Section 53854.

(d) Except as otherwise expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable from any revenues or moneys of the authority available therefor and not otherwise pledged. These revenues or moneys may include the proceeds of additional bonds, subject only to any agreements with the holders of particular bonds pledging any particular revenues or moneys. Notwithstanding that the bonds may be payable from a special fund, these bonds shall be deemed to be negotiable instruments for all purposes, subject only to the bond registration provisions.

(e) (1) The bonds may be issued as serial bonds or as term bonds, or the authority may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall, as provided by the resolution or indenture pursuant to which the bonds are issued, meet all of the following conditions:

(A) Bear the date of issuance.

(B) Bear the time of maturity, not exceeding 50 years from their date of issuance.

(C) Bear the rate of interest, either fixed or variable, and, if variable, not in excess of the maximum rate of interest specified therein.

(D) Be payable as to principal and interest at the time or times provided.

(E) Be in the denominations and in the form provided.

(F) Carry the registration privileges provided.

(G) Be executed in the manner provided.

(H) Be payable in lawful money of the United States at the place or places provided within or without the state.

(I) Be subject to the terms of redemption provided.

(2) Notwithstanding paragraph (1), the bonds backed by Proposition 1A receivables shall have a maturity date no later than August 1, 2013.

(3) For bonds backed by Proposition 1A receivables, both of the following shall apply:

(A) The option to call shall be exercised upon receipt by the authority of a timely written notification from the Director of Finance, but no earlier than 30 days after delivery by the director of a written notice of the intent to do so to the Joint Legislative Budget Committee.

(B) The bonds may bear interest payable on periodic interest payment dates or may accrue interest to their maturity date or any combination thereof,

subject to the approval of the Department of Finance and the State Treasurer pursuant to subdivision (x) of Section 6588.

(f) The bonds shall be sold by the authority at the time and in the manner set out in the authority's resolution. The sale may be a public or private sale, and for price or prices, and on terms and conditions as the authority determines proper, after giving due consideration to the recommendations of any local agency to be assisted from the proceeds of the bonds. Pending preparation of the definitive bonds, the authority may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds. For bonds backed by Proposition 1A receivables, the authority shall use its best efforts to obtain the lowest overall cost of the bonds, and shall certify that it so used its best efforts. The authority shall, in consultation with the Treasurer and Department of Finance, structure the sale of the bonds backed by Proposition 1A receivables and shall include those terms and conditions approved by the Treasurer and the Department of Finance.

(g) In the case of bonds issued by an authority, on or after January 1, 1995, for the purpose of purchasing bonds of a local agency, all of the bonds of the local agency shall be purchased by the authority from the proceeds of the authority bonds within 90 days of the date of issuance of the authority bonds. Nothing in this subdivision shall be construed to preclude an authority from issuing parity bonds at any time.

SEC. 5. Section 53610 is added to the Government Code, to read:

53610. (a) For purposes of this section, "Proposition 1A receivable" means the right to payment of moneys due or to become due to a local agency, pursuant to clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the Revenue and Taxation Code.

(b) Notwithstanding any other law, a local agency may purchase, with its revenue, Proposition 1A receivables sold pursuant to Section 53999.

(c) A purchaser of Proposition 1A receivables pursuant to this section shall not offer them for sale pursuant to Section 6588.

SEC. 6. Chapter 4.5 (commencing with Section 53998) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 4.5. SALE OF PROPOSITION 1A RECEIVABLES

53998. For purposes of this chapter, "Proposition 1A receivable" means the right to payment of moneys due or to become due to a local agency pursuant to clause (iii) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the Revenue and Taxation Code.

53999. (a) (1) Notwithstanding any other law, a local agency may sell Proposition 1A receivables that have not been sold pursuant to subdivision (b) of Section 6588.6 to a special fund of the local agency or another local agency, and enter into one or more sales agreements with the purchaser of

the Proposition 1A receivable on the terms the local agency deems appropriate.

(2) Except for Proposition 1A receivables created as a result of reallocations pursuant to paragraph (2) of subdivision (b) of Section 100.06 of the Revenue and Taxation Code, a local agency shall complete a sale made pursuant to this section on or before November 2, 2009.

(b) (1) A local agency may make no more than five sales of its Proposition 1A receivables pursuant to this section.

(2) A transfer of some or all of a Proposition 1A receivable by a local agency to a purchaser of the receivable under this section is a sale and 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 the local agency to secure a borrowing.

(3) The characterization of the transfer of a Proposition 1A receivable as an absolute sale by a local agency shall not be negated or adversely affected by any of the following:

(A) The fact that only a portion of the Proposition 1A receivable is transferred.

(B) By the local agency's acquisition of an ownership interest in any residual interest or a subordinate interest in the Proposition 1A receivable.

(C) By any characterization of the purchaser for purposes of accounting, taxation, or securities regulation.

(D) By any other factor.

(c) (1) On and after the effective date of each transfer of a Proposition 1A receivable pursuant to this section that the governing documents state is a sale, the local agency shall have no right, title, or interest in or to the Proposition 1A receivable so transferred.

(2) A Proposition 1A receivable transferred pursuant to this subdivision shall be the property of the purchaser and not of the local agency, and shall be owned, received, held, and disbursed only by the purchaser or any trustee or agent of the purchaser.

(3) A sale of some or all of any Proposition 1A receivable shall automatically be perfected without the need for physical delivery, recordation, filing, or further act, and the provisions of Division 9 (commencing with Section 9101) of the Commercial Code and Sections 954.5 to 955.1, inclusive, of the Civil Code shall not apply to the sale.

(4) A Proposition 1A receivable sold by the local agency pursuant to this chapter shall not be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the local agency.

(d) On or before the effective date of any sale of a Proposition 1A receivable, the local agency shall notify the Controller that the Proposition 1A receivable has been sold to the purchaser and irrevocably instruct the Controller that, as of the effective date, payments on the Proposition 1A receivable so sold are to be made directly to the purchaser or any trustee or agent appointed by the purchaser.

SEC. 7. Section 33681.12 of the Health and Safety Code is amended to read:

33681.12. (a) (1) During the 2004–05 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county’s Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. During the 2005–06 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county’s Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) For the 2004–05 and 2005–06 fiscal years, on or before November 15, the Director of Finance shall do all of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676.

(C) Determine a percentage factor by dividing one hundred twenty-five million dollars (\$125,000,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Determine the total amount of property tax revenue apportioned to each agency pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676.

(F) Determine the total amount of property tax revenue apportioned to all agencies pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676.

(G) Determine a percentage factor by dividing one hundred twenty-five million dollars (\$125,000,000) by the amount determined pursuant to subparagraph (F).

(H) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (E) by the percentage factor determined pursuant to subparagraph (G).

(I) Add the amount determined pursuant to subparagraph (D) to the amount determined pursuant to subparagraph (H).

(J) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (I).

(K) Notify each county auditor of the amounts determined pursuant to subparagraph (I) for each agency in his or her county.

(3) The obligation of any agency to make the payments required pursuant to this subdivision shall be subordinate to the lien of any pledge of collateral securing, directly or indirectly, the payment of the principal, or interest on any bonds of the agency including, without limitation, bonds secured by a pledge of taxes allocated to the agency pursuant to Section 33670.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 2004–05 fiscal year and, if applicable, the 2005–06 fiscal year, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund pursuant to the authority of this subdivision.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full within 10 years following the date on which moneys are remitted to the county auditor for deposit in the county's Educational Revenue Augmentation Fund pursuant to subdivision (a).

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of the applicable fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section, or that the legislative body intends to remit the amount in lieu of the agency pursuant to Section 33681.14.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment project pursuant to Section 16 of Article XVI of the California Constitution.

(g) In making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the "Tax Increment Retained by Agency" for all agencies and for each agency in the most recent published edition of the Controller's Community Redevelopment Agencies Annual Report made pursuant to Section 12463.3 of the Government Code.

(h) If revised reports have been accepted by the Controller on or before September 1, 2005, the Director of Finance shall use appropriate data that

has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

(i) (1) Notwithstanding any other provision of law, a city, city and county, or county redevelopment agency may enter into a loan agreement with the legislative body to have the agency remit to the county's Educational Revenue Augmentation Fund for each of the 2004–05 and 2005–06 fiscal years an amount greater than that determined pursuant to subparagraph (1) of paragraph (2) of subdivision (a) or, for the 2009–10 fiscal year, to have the agency remit to the county auditor on the city's, city and county's, or county's behalf all or a portion of the reduction amount determined for the county under Section 100.06 of the Revenue and Taxation Code, if, in either instance, all of the following conditions are met:

(A) The agency does not exercise its authority under subdivision (b) to borrow from its Low and Moderate Income Housing Fund to finance its payments to the county's Educational Revenue Augmentation Fund or to the county auditor.

(B) The agency does not have any outstanding loans from its Low and Moderate Income Housing Fund that were made under subdivision (b) of Section 33681.7, or subdivision (b) of Section 33681.9.

(C) The loan agreement requires the city, city and county, or county to repay any excess remitted amounts or amounts paid to the city, city and county, or county auditor on the county's behalf in the 2009–10 fiscal year, including interest, to the agency within three fiscal years subsequent to the fiscal year in which the loan is made.

(D) The agency making the loan does not participate in pooled borrowing under Section 33681.15.

(2) A loan agreement described in paragraph (1) shall be transmitted to the county auditor not later than December 1 of the fiscal year in which the loan is made. Any amount remitted by the agency to the county Educational Revenue Augmentation Fund for the 2004–05 or 2005–06 fiscal year in excess of the amount determined pursuant to paragraph (1) of subdivision (a) shall be credited to the amount that would otherwise be subtracted by the county auditor pursuant to subdivision (a) of Section 97.71 of the Revenue and Taxation Code for, as applicable, the 2004–05 and 2005–06 fiscal years.

(3) Notwithstanding subparagraph (C) of paragraph (1), a county redevelopment agency and a legislative body that have entered into a loan agreement for the 2004–05 or 2005–06 fiscal year under paragraph (1) may, by mutual consent, adopt either or both of the following modifications to that agreement:

(A) The repayment period may be extended, but the full repayment shall be completed no later than June 30, 2021.

(B) The repayment obligation may be offset by the amount of any expenditures by the county for capital improvements or deferred maintenance that substantially benefit any or all of the redevelopment project areas of the redevelopment agency if the agency approves the expenditure and the

agency adopts a finding that the expenditure furthers the goals and objectives of the agency's redevelopment plan or plans.

SEC. 8. Section 100.06 of the Revenue and Taxation Code is amended to read:

100.06. (a) In accordance with the suspension under Section 100.05 of the Revenue and Taxation Code of subparagraph (A) of paragraph (1) of subdivision (a) of Section 25.5 of Article XIII of the California Constitution, the county auditor shall, for the 2009–10 fiscal year, do both of the following:

(1) (A) Except as otherwise provided in subparagraph (B) and subdivision (b), reduce the total amount of ad valorem property tax revenue otherwise required to be apportioned to a city, county, city and county, or a special district by 8 percent of the total amount of ad valorem property tax revenue apportioned to that local agency for the 2008–09 fiscal year.

(B) For purposes of calculating the amount of an 8-percent reduction required by subparagraph (A), any amount required to be paid or allocated to a city, county, or city and county under Section 97.68 or 97.70 for the 2008–09 fiscal year is included in determining the total amount of property tax revenue apportioned to that local agency for that fiscal year. A reduction made pursuant to this paragraph shall not, however, be made from any amount that is to be apportioned to a city, county, or city and county as a result of Section 97.68.

(2) Transfer to the Supplemental Revenue Augmentation Fund, hereby established in the county treasury for administration by the county office of education as provided in subdivision (c), an amount equal in the aggregate to that portion of the total amount of reductions required by paragraph (1). The aggregate amount of transfers required by this paragraph shall be made in two equal shares, with the first share being transferred on January 15, 2010, and the second share being transferred on May 3, 2010.

(b) (1) Upon written request by a local agency that is received no later than 30 days after the issuance on bonds under Section 6590 of the Government Code or December 1, 2009, whichever date is earlier, the Director of Finance may, on the basis of extreme hardship and only to the extent that the agency did not receive bond proceeds for the full amount of Proposition 1A receivables that it offered for sale under Section 6588.6, decrease the reduction amount that would otherwise be applied to that local agency under subdivision (a). In evaluating a written request for a decrease, the Director of Finance may consider factors including, but not limited to, all of the following:

(A) Whether the requesting local agency is the subject of a current bankruptcy proceeding, or whether incurring the full reduction amount otherwise required by subdivision (a) would likely cause the local agency to seek bankruptcy protection.

(B) Whether the requesting local agency has any financial reserves, and whether incurring the full reduction amount otherwise required by subdivision (a) would impair the ability of the local agency to provide a basic level of core public services.

(2) (A) If the Director of Finance approves a request made pursuant to paragraph (1), he or she shall, by December 10, 2009, certify to the auditor of the county in which the requesting local agency is located, the amount of a decrease in the reduction otherwise to be incurred by the requesting local agency pursuant to subdivision (a). The amount of that decrease shall be applied in proportionate shares to increase the reduction amounts under subdivision (a) of all other local agencies in the county, so that there is no decrease in the aggregate amount of reductions to be incurred by local agencies located in the county. The Director of Finance may determine that the reduction amount that would otherwise be incurred by the requesting local agency under subdivision (a) should be decreased to zero. The amount of any certified decrease, in whole or in part, of a reduction amount shall be based upon the director's evaluation of the factors considered with respect to the requesting local agency under paragraph (1) and the extent to which those factors indicate that the requesting local agency should be given relief.

(B) The Director of Finance may not grant decreases to local agencies within a single county that, in the aggregate, total more than 10 percent of the combined total of the reduction amounts under subdivision (a) for all local agencies in that county.

(3) (A) Two or more local agencies in a county may agree to reallocate exclusively among themselves all or part of their reduction amounts otherwise required by this section. Any local agencies entering into an agreement to so reallocate their reduction amounts shall, no later than November 2, 2009, notify the county auditor of that agreement and the reallocations specified in that agreement, except that these agreements may be entered into after November 2, 2009, with respect to any Proposition 1A receivable created pursuant to paragraph (2). The auditor shall thereafter implement subdivision (a) with respect to those local agencies in accordance with that agreement.

(B) A redevelopment agency that will, on behalf of the city, city and county, or county under Section 33681.12 of the Health and Safety Code, pay all or a portion of a reduction amount under subdivision (a) shall so notify the county auditor by November 2, 2009. The auditor shall thereafter decrease the city's, city and county's, or county's reduction amount by the amount of the payment from the city, city and county, or county redevelopment agency to the extent that the payment is received prior to a date by which a transfer is required by paragraph (2) of subdivision (a).

(c) (1) Except for those moneys subject to paragraph (3), the moneys in the Supplemental Revenue Augmentation Fund shall be transferred by the county office of education to the Controller, in amounts and for those purposes as directed by the Director of Finance, exclusively to reimburse the state for the costs of providing health care, trial court, correctional, or other state-funded services and costs, until those moneys are exhausted. Moneys in a Supplemental Revenue Augmentation Fund shall be transferred to reimburse only those costs incurred, and the costs of services provided, in the county in which those moneys are collected.

(2) (A) Entities of state government, including the Administrative Office of the Courts, that are responsible for the functions funded with moneys transferred pursuant to paragraph (1) shall keep records, as required by the Department of Finance, of expenditures made in the county pursuant to that paragraph, and shall provide to the Department of Finance any information required by the department with respect to those expenditures.

(B) Moneys transferred pursuant to paragraph (1) for the funding of trial courts shall reimburse transfers from the state General Fund to the Trial Court Trust Fund.

(C) The county office of education shall make a transfer under paragraph (1) within five days of that transfer being directed by the Department of Finance, and shall provide to the Controller, with that transfer, information specifying the purpose of that transfer.

(D) Moneys in the Supplemental Revenue Augmentation Fund that are not transferred in a fiscal year and are not subject to paragraph (3) shall be retained in the fund for transfer pursuant to paragraph (1) in a subsequent fiscal year.

(3) Any moneys in the Supplemental Revenue Augmentation Fund that are determined by the Director of Finance not to be necessary to fund the provision of state-funded services and costs shall be transferred to the county's Educational Revenue Augmentation Fund, no later than June 1, 2010. Funds transferred to the county's Educational Revenue Augmentation Fund pursuant to this paragraph shall not be apportioned to community college districts. This paragraph shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of, the Revenue and Taxation Code had this section not been enacted.

(4) (A) Each county auditor shall report to the Department of Finance the amount of property tax revenue that was transferred from each local agency located in the county to the county's Supplemental Revenue Augmentation Fund. The county auditor first shall report this information on or before January 15, 2010, and then on or before May 15, 2010, and shall provide a copy of each report to each local agency located in the county.

(B) When transferring the amounts required by paragraph (1), each county auditor shall also provide the Department of Finance, the Legislative Analyst's Office, and each local agency located in the county with information detailing how each local agency's reduction amount under subdivision (a) was calculated. This information shall first be reported on or before January 15, 2010, and then on or before May 15, 2010.

(d) For the 2010–11 fiscal year and each fiscal year thereafter, the county auditor shall apportion ad valorem property tax to cities, counties, cities and counties and special districts without regard to the changes in property tax revenue apportionments required by this section.

(e) (1) In accordance with Section 25.5 of Article XIII of the California Constitution, the state shall fully reimburse the revenue reductions incurred pursuant to subdivision (a) no earlier than June 6, 2013, except as allowed by paragraph (2), but not later than June 13, 2013, as provided in the terms and conditions of the sale of the bonds authorized by Section 6591 of the Government Code, in the following amounts determined by the Controller:

(A) (i) The amount due to the authority that issued bonds pursuant to Section 6590 of the Government Code to purchase Proposition 1A receivables pursuant to Section 6588.6 of the Government Code shall be paid and calculated as follows:

(I) The principal amount of the bonds on the date of the maturity or upon call.

(II) Periodic interest on the bonds as applicable, except that if the bonds sold pursuant to Section 6590 of the Government Code bear interest on periodic interest payment dates pursuant to subdivision (e) of Section 6591 of the Government Code, the state shall pay periodic interest payments on or before each interest payment date.

(III) The accrued interest on the bonds upon call, on the date of maturity, or a later date, if repayment does not occur prior to the date of maturity.

(ii) The repayment date shall be certified by the Treasurer and the Director of Finance at the time of approval of the terms of the bonds pursuant to paragraph (4) of subdivision (x) of Section 6588 of the Government Code and shall be specified in the documents pursuant to which the bonds are issued. Upon certification of that repayment date, as provided in this subdivision, the obligation of the state to make payment on that date shall be deemed an obligation imposed by law.

(iii) In the event the state fully repays the reduction amounts in accordance with paragraph (2) prior to the maturity date of the bonds, the payment amount shall be equal to the amount required, as shown in a report of an independent certified public accountant provided by the authority, to legally defease the bonds.

(B) The amount due to each local agency that does not sell all of its Proposition 1A receivables to an authority described in subparagraph (A) or to purchasers of Proposition 1A receivables pursuant to Section 53610 of the Government Code shall be the sum of both of the following:

(i) The unpaid principal amount of the revenue reduction incurred by each local agency pursuant to subdivision (a), less the amount of the revenue reduction that is attributable to Proposition 1A receivables that are sold to an authority described in subparagraph (A).

(ii) Interest on the amount described in clause (i) from the time of each revenue reduction pursuant to paragraph (2) of subdivision (a), at a rate, set by the Department of Finance no later than 60 days after the operative date of this section, that is higher than the rate of interest earned by the Pooled Money Investment Account but no greater than 6 percent.

(2) The state may repay the revenue reductions incurred pursuant to subdivision (a) before June 6, 2013, upon the order of the Director of Finance

issued no earlier than 30 days after delivery of a written notice of the intent to do so to the Joint Legislative Budget Committee.

(3) The payment of the amounts specified in this subdivision shall take priority over all other obligations of the state in any fiscal year in which those payments are due, excepting payments to schools under Article XVI of the California Constitution and debt service on general obligation bonds. The Controller shall take all prudent means within his or her legal discretion to assure that sufficient sums are available to pay these amounts and all other obligations of higher priority.

(4) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated to the Controller from the General Fund, without regard to fiscal year, those amounts sufficient to pay the amounts specified in this subdivision.

(f) (1) Notwithstanding any other law, if by June 30, 2013, the state has not fully reimbursed each local agency for its revenue reduction incurred pursuant subdivision (a) in the amounts as required by subdivision (e), the issuer of any bonds issued pursuant to subdivision (x) of Section 6588 of the Government Code, or any local agency that did not participate in the sale of Proposition 1A receivables pursuant to paragraph (2) of subdivision (x) of Section 6588 of the Government Code, may seek a writ of mandamus to compel the Controller to fully pay the amounts the state is obligated to pay under subdivision (e) and Section 25.5 of Article XIII of the California Constitution. A petition seeking a writ of mandamus pursuant to this subdivision, and any appellate proceedings arising from that action, shall have priority and preference in setting and review in furtherance of the repayment deadline mandated by Section 25.5 of Article XIII of the California Constitution. A petition for a writ of mandamus authorized by this subdivision may also be filed in the California Supreme Court pursuant to that court's original jurisdiction described in Section 10 of Article VI of the California Constitution.

(2) In authorizing an original mandamus petition to the California Supreme Court pursuant to this paragraph, the Legislature finds and declares all of the following:

(A) The Legislature is expressly required by Section 25.5 of Article XIII of the California Constitution to enact a statute mandating the full and timely repayment, as provided by subdivision (e), of any revenue reduction incurred by a local agency pursuant to subdivision (a) and all accrued interest thereon.

(B) Full and timely repayment of any revenue reduction incurred by a local agency pursuant to subdivision (a), with interest, is critical to every local agency from which those funds were diverted.

(C) The Legislature further finds and declares that conclusively determining, no later than the deadline mandated under Section 25.5 of Article XIII of the California Constitution, that the state's obligation under subdivision (e) to fully repay any revenue reduction incurred by a local agency pursuant to subdivision (a) and all accrued interest thereon is a matter of vital and urgent public importance.

SEC. 9. If a court rules that any portion of the revenues identified in Section 100.06 of the Revenue and Taxation Code may not be loaned to the state, that ruling shall not affect any of the following:

(a) Any remaining revenues.

(b) The implementation of this act or Chapter 14 of the Statutes of the 2009–10 Fourth Extraordinary Session.

SEC. 10. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the current, severe state fiscal hardships, it is necessary that this act go into effect immediately.

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