



# County of El Dorado

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## Legislation Text

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Chief Administrative Office recommending adoption of Resolution approving and authorizing the Chairman to execute and deliver a purchase and sale agreement and all related documents with respect to the securitization of County of El Dorado County Service Area (CSA) No. 5 Proposition 1A receivable from the State of California. (Est. Time: 5 min.)

**FUNDING:** CSA No. 5, \$3,291.68.

**Resolution 245-2009**

**Background:** Proposition 1A was passed by California voters in 2004 to ensure local property tax and sales tax revenues remain with local government thereby safeguarding funding for public safety, health, libraries, parks, and other local services. Provisions can only be suspended if the Governor declares a fiscal necessity and two-thirds of the Legislature concurs.

The emergency suspension of Proposition 1A was passed by the Legislature and signed by the Governor as ABX4 14 and ABX4 15 as part of the 2009-10 budget package on July 28, 2009. Under the provision, the State will borrow 8% of the amount of property tax revenue apportioned to cities, counties and special districts. The state will be required to repay those obligations plus interest by June 30, 2013. The County has two primary options: hold the receivable until June 30, 2013 or participate in the Proposition 1A Securitization Program. The State has set the interest rate for counties that hold their receivable at 2%. Under the Proposition 1A Securitization Program the County would receive 8%.

**Recommendation:** El Dorado County CSA # 5 should place all eligible receivables under the Proposition 1A suspension in the Proposition 1A Securitization Program. This agenda item covers the securitization of CSA # 5 (\$3,291.68).

**Proposition 1A Securitization Program:** Authorized under ABX4 14 and ABX4 15, the Proposition 1A Securitization Program was instituted by California Communities to enable Local Agencies to sell their respective Proposition 1A Receivables to California Communities. The legislature on October 14, 2009 passed clean-up bill SB67 which provides for a few critical changes to the Proposition 1A Securitization Program legislation, including but not limited to providing for: financing to occur in November; county auditor certification of amount of Prop 1A receivable; tax-exempt structure; California Communities as the only issuer; more flexibility on bond structure (interest payments, state payment date and redemption features); sales among local agencies; and revision to the hardship mechanism. If for any reason bonds cannot be sold by December 31, 2009, all approved documents placed in escrow with Transaction counsel will be of no force and effect and will be destroyed.

Under the Securitization Program, California Communities will simultaneously purchase the Proposition 1A Receivables, issue bonds ("Prop 1A Bonds") and provide each local agency with the cash proceeds 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 purchase price paid to the local agencies will equal 100% of the amount of the property tax reduction. All transaction costs of issuance and interest 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.

If the County of El Dorado CSA # 5 sells its Proposition 1A Receivable under the Proposition 1A Securitization Program, California Communities will pledge the County of El Dorado CSA # 5 Proposition 1A Receivable to secure the repayment of a corresponding amount of the Prop 1A Bonds. The County of El Dorado CSA # 5 sale of its Proposition 1A Receivable will be irrevocable. Bondholders will have no recourse to the County of El Dorado CSA # 5 if the State does not make the Proposition 1A Repayment.

Proposition 1A Program Sponsor: California Statewide Communities Development Authority ("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 benefits to the County of El Dorado CSA # 5 participation in the Proposition 1A Securitization Program includes:*

Immediate cash relief - The sale of the County of El Dorado CSA # 5 Proposition 1A Receivable will provide the County of El Dorado CSA # 5 with 100% of its Proposition 1A Receivable in two equal installments, on January 15, 2010 and May 3, 2010.

Mitigates impact of 8% property tax withholding in January and May - Per ABX4 14 and ABX4 15 and the proposed clean-up legislation SB 67, the State will withhold 8% of property tax receivables due to Cities, Counties, and Special Districts under Proposition 1A. The financing outlines bond proceeds to be distributed to coincide with the dates that the State will be shifting property tax from local agencies.

All costs of financing are paid by the State of California - The County of El Dorado CSA # 5 will not have to pay any interest cost or costs of issuance in connection with its participation.

No obligation on Bonds - The County of El Dorado CSA # 5 has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.

Proceeds of the Sale of the County of El Dorado CSA # 5 Proposition 1A Receivable:

Upon delivery of the Proposition 1A Bonds, California Communities will make available to the County of El Dorado CSA # 5 its fixed purchase price, which will equal 100% of the local agency's Proposition 1A Receivable. These funds may be used for any lawful purpose of the County of El Dorado CSA # 5 and are not restricted by the program.

*The documents to be executed as part of this agenda item are:*

Proposition 1A Receivables Sale Resolution:

- (1) Authorizes the sale of the County of El Dorado CSA # 5'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, or to cause to be sent, 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 County of El Dorado CSA # 5 officers and officials as Authorized Officers for purposes of signing documents; and
- (5) Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

Purchase and Sale Agreement:

- (1) Provides for the sale of the Proposition 1A Receivable to California Communities;
- (2) Contains representations and warranties of the County of El Dorado CSA # 5 to assure California Communities that the 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
- (4) Contains other miscellaneous provisions.

Purchase and Sale Agreement Exhibits:

- (B1) 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).
- (B2) Bringdown Opinion: This simply "brings down" the opinions to the closing date (currently expected to be November 19, 2009).
- (C1) Certificate of the Clerk of the Local Agency: A certificate of the Clerk confirming that the resolution was duly adopted and is in full force and effect.
- (C2) 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.
- (C3) Bill of Sale and Bringdown Certificate: Certificate that brings the certifications of C2 down to the Closing Date and confirms the sale of the Proposition 1A Receivable as of the Closing Date.
- (D) Irrevocable Instructions to the 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.

(E) 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.

**Action to be taken following Board approval:** Chairman to execute and staff to deliver a purchase and sales agreement and all related documents to California Communities by November 6, 2009.

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