

Jonathan B. Ford

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Treasurer-Tax Collector

BOARD AGENDA # *B-9

Urgent

Routine

AGENDA DATE September 30, 2014

CEO Concurs with Recommendation YES NO

(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Adopt the Sixth Amendment to the Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency Relating to the Creation of the Bond Issue Standing Committee

STAFF RECOMMENDATIONS:

1. Approve the Sixth Amendment of the Joint Exercise of Powers Agreement relating to the creation of the Bond Issue Standing Committee.
2. Authorize the Chief Executive Officer to sign the Sixth Amendment to the Joint Exercise of Powers Agreement.

FISCAL IMPACT:

There is no fiscal impact to Stanislaus County.

BOARD ACTION AS FOLLOWS:

No. 2014-502

On motion of Supervisor Monteith, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

The Joint Powers Agreement (the "JPA Agreement") of the California County Tobacco Securitization Agency (the "Agency") provides that the Agency's Commission shall hold its annual meeting on or about September 1 of each year, on a date and at a place selected by the Agency's President.

Section 7.5 of the Agreement ("Section 7.5") allows the use of a Bond Issuance Subgroup in place of the Commission for purposes of approving bond issuances. This procedure was designed to give primary responsibility for decision-making for the issuance to the related County Member.

Historically, the Agency has approved bonds issuances at special meetings held at the request of the Affected Member. However, in 2009, Government Code Section 6592.1 ("Section 6592.1") was enacted, requiring that joint powers agencies adopt bond authorizing resolutions at regular (as versus special) meetings held pursuant to Government Code Section 54954 ("Section 54954").

To avoid meeting as the entire commission to approve Tobacco Bonds, the JPA's counsel has drafted a proposed Sixth Amendment to the Agreement (the "Amendment"). The Amendment eliminates the Bond Issuance Subgroup and substitutes in its place an identically composed group called the Bond Issuance Standing Committee, with continuing subject matter jurisdiction over issuance and sale of Tobacco Bonds. Per Section 54954, meetings of a standing committee for which an agenda is posted at least 72 hours in advance of the meeting pursuant to Government Code Section 54954.2(a) are considered regular meetings of the legislative body (here, the Commission). Also, per Government Code Section 54952, standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, fixed by formal action of a legislative body, are legislative bodies for purposes of Section 54954. There is no statutory requirement that the whole Commission, rather than a standing committee, vote to authorize the issuance of bonds by the Agency.

Thus, going forward, the procedure for approval of Tobacco Bonds will not change from the procedure used before, but the three-commissioner subgroup of the Commission approving the Tobacco Bond resolution and the related forms of documents will be named the Tobacco Bonds Standing Committee rather than the Bond Issuance Subgroup. The Commission will continue to hold its annual meeting on or about September 1 of each year, on a date and at a place selected by the Agency's President for purposes of conducting other business of the Agency.

Approval to Adopt the Sixth Amendment to the Joint Exercise of Powers Agreement of the California County Tobacco Securitization Agency Relating to the Creation of the Bond Issue Standing Committee
Page 3

Staff recommends approval of the Sixth Amendment to the Joint Exercise of Powers Agreement.

POLICY ISSUES:

Approval of this agenda item will support the Board's priority of Efficient Delivery of Public Services.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Gordon B. Ford, Treasurer-Tax Collector. Telephone: (209) 525-4463

SIXTH AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT
OF
THE CALIFORNIA COUNTY TOBACCO SECURITIZATION AGENCY
BY AND AMONG
THE COUNTY OF STANISLAUS, THE COUNTY OF MERCED,
THE COUNTY OF SONOMA, THE COUNTY OF KERN, THE COUNTY OF MARIN,
THE COUNTY OF PLACER, THE COUNTY OF FRESNO, THE COUNTY OF ALAMEDA
AND
THE COUNTY OF LOS ANGELES

DATED AS OF SEPTEMBER 1, 2014

THIS SIXTH AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT, dated as of September 1, 2014 (the "Sixth Amendment"), is made and entered into by and among the COUNTY OF STANISLAUS, the COUNTY OF MERCED, the COUNTY OF SONOMA, the COUNTY OF KERN, the COUNTY OF MARIN, the COUNTY OF PLACER, the COUNTY OF FRESNO, the COUNTY OF ALAMEDA, and the COUNTY OF LOS ANGELES.

W I T N E S S E T H:

WHEREAS, the County of Stanislaus, the County of Merced, the County of Sonoma, and the County of Kern have heretofore entered into an agreement entitled, "Joint Exercise of Powers Agreement," dated November 15, 2000 (the "Original Agreement"), creating The California County Tobacco Securitization Agency (the "Agency");

WHEREAS, the County of Marin, the County of Placer, and the County of Fresno were admitted as Members of the Agency pursuant to an agreement entitled, "First Amendment to Joint Exercise of Powers Agreement," dated May 1, 2002, as amended (the "First Amendment");

WHEREAS, the County of Alameda was admitted as a Member of the Agency pursuant to an agreement entitled, "Second Amendment to Joint Exercise of Powers Agreement," dated August 15, 2002, as amended (the "Second Amendment");

WHEREAS, the County of Los Angeles was admitted as a Member of the Agency pursuant to an agreement entitled, "Third Amendment to Joint Exercise of Powers Agreement," dated January 24, 2006, as amended (the "Third Amendment");

WHEREAS, the Members of the Agency have in an agreement entitled, "Fourth Amendment to Joint Exercise of Powers Agreement," dated September 6, 2006, as amended (the "Fourth Amendment") and an agreement entitled, "Fifth Amendment to Joint Exercise of Powers Agreement," dated April 1, 2012, as amended (the "Fifth Amendment") amended the Original Agreement (the Original Agreement, collectively with the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment is hereinafter referred to as the "Agreement");

WHEREAS, pursuant to Section 13 of the Agreement, each Member desires to further amend the provisions thereof to identify an existing bond issuance approval committee as a standing committee and to delegate certain powers of the Commission to such standing committee;

NOW, THEREFORE, the Agreement is amended as follows:

SECTION 1. Amendment of Section 6 of the Agreement. Section 6 of the Agreement is amended to read in its entirety as follows:

SECTION 6. Commission and Bond Issuance Standing Committee.

6.1 Commission Membership. Subject to the provisions of Section 6.4 hereof, the Agency shall be administered by a commission (the "Commission"), as permitted under

Section 6506 of the Act, whose commissioners shall be, at all times, designees (including members) of the Board of Supervisors of each Member. The Board of Supervisors of each Member shall designate two (2) commissioners of the Commission.

6.2 Term of Commission Service. Each commissioner of the Commission shall serve at the pleasure of the Board of Supervisors designating such commissioner.

6.3 Reimbursement of Expenses. Commissioners of the Commission shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a commissioner if the Commission shall so determine and there are unencumbered funds appropriated by the Agency for such purpose.

6.4 Bond Issuance Standing Committee. There shall be a standing committee of the Commission (the "Bond Issuance Standing Committee"), which shall have continuing subject matter jurisdiction on behalf of the Commission over all action relating to the issuance of Bonds secured by the MSA Payments of any Member (each an "Affected Member"), and which shall be composed, with respect to all action taken on behalf of the Commission in connection with such Bonds, of the commissioners then designated by the Board of Supervisors of the Affected Member pursuant to Section 6.1 hereof and one additional commissioner designated by resolution of the Commission, or, in the absence of such resolution, designated by the President. The Commission hereby delegates to the Bond Issuance Standing Committee on behalf of the Commission all power of the Commission relating to matters in connection with the issuance and sale of Bonds for any Affected Member. Whenever action is taken by the Bond Issuance Standing Committee, (i) the agenda for the meeting of the Bond Issuance Standing Committee at which such action is taken shall be posted at least 72 hours in advance of such meeting pursuant to Section 54954(a) of the California Government Code, and such meeting shall be considered a regular meeting held pursuant to Section 54954 of the California Government Code for purposes of Section 6592.1 of the Law, (ii) the County Counsel to the Affected Member shall serve as counsel to the Agency in connection with all matters relating to the issuance of such Bonds, and (iii) any commissioner representing the Affected Member is authorized to execute, on behalf of the Agency, any Bond Authorizing Document or any related document or certificate in connection with the issuance of such Bonds if so authorized in the resolution of the Bond Issuance Standing Committee approving such Bond issuance. The Bond Issuance Standing Committee may also appoint an interim Secretary of the Agency to serve as Secretary to the Agency in connection with any meeting held by the Bond Issuance Standing Committee as described above in connection with the issuance of Bonds for an Affected Member, and for such purposes the Secretary may be the County Clerk of the Affected Member.

SECTION 2. Amendments to Section 7 of the Agreement.

(a) Section 7.5 of the Agreement is hereby amended to read in its entirety as follows:

7.5 Actions by Commission. The Commission shall take no action except upon the affirmative vote of the majority of the commissioners present, which majority must include at least one commissioner representing each Member.

(b) Section 7.6 of the Agreement is hereby amended to read in its entirety as follows:

7.6 President, Secretary and Vice President. The Commission shall elect a President of the Agency from among its members and shall appoint a Secretary of the Agency, who need not be a commissioner of the Commission. The Commission may elect a Vice-President from among its members. The term of office shall be the Fiscal Year (i.e., July 1-June 30), or until a successor is elected.

SECTION 3. Filing of Notice of Amendment to Agreement.

Within 30 days after the effective date hereof, the Secretary shall cause a notice of this Sixth Amendment to be prepared and filed with the office of the Secretary of State in the manner set forth in Section 6503.5 of the California Government Code.

SECTION 4. Effectiveness; Counterparts.

This Sixth Amendment shall become effective upon execution hereof. This Sixth Amendment may be executed in counterpart as provided in Section 17 of the Agreement.

SECTION 5. Ratification.


All approvals given and actions taken by the Operating Committee or the Commission through the date of this Sixth Amendment are ratified and approved.

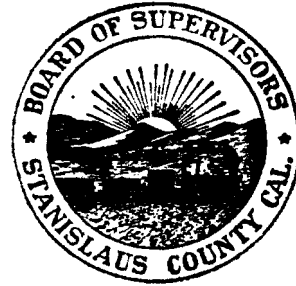
IN WITNESS WHEREOF, the parties hereto have caused this Sixth Amendment to be executed and attested by their duly authorized proper officers, and their official seals to be hereto affixed, as of the day and year first above written.

COUNTY OF STANISLAUS, CALIFORNIA

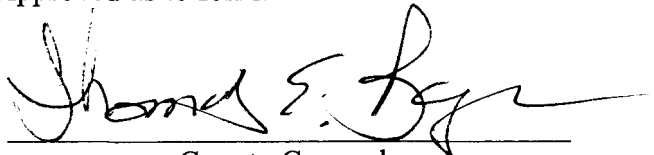
By  _____
Chief Executive Officer

[SEAL] Attest:


Clerk of the Board of Supervisors



Approved as to form:


County Counsel
THOMAS E. BOZE, Deputy County Counsel