

California Fiscal Recovery Financing Authority

December 5, 2003
10:00 am Room 4203

Minutes

PRESENT:

Mr. Peter Siggins, Legal Affairs Secretary, for the Governor of the State of California
Ms. Barbara Lloyd, Deputy Treasurer, State Treasurer's Office
Mr. Rick Chivaro, Chief Counsel, State Controller's Office
Mr. Michael Genest, Chief Deputy Director, Department of Finance (Chairperson)
Mr. Chris Janzen, Principal Fiscal Officer, Secretary of the Business, Transportation and Housing Agency
Dr. William Jefferds, Ed.D., Director, Department of General Services
Mr. Bob Garcia, Chief Financial Officer, Department of Transportation

STAFF PRESENT:

Veronica Chung-Ng, Program Budget Manager
Greg Rogers, Assistant Program Budget Manager
Lajunta Inman, Principal Program Budget Analyst
Madelynn McClain, Budget Analyst

CALL TO ORDER AND ROLL CALL:

Mr. Genest, Chairperson, Chief Deputy Director, Department of Finance called the meeting to order at 10:00 am. Ms. McClain, Budget Analyst, Department of Finance, called the roll. A quorum was established. Ms. Chung-Ng, Program Budget Manager, Department of Finance, introduced the other members at the table. "Our bond counsel, Robert Feyer and Lisa Quateman; Attorney General's Office representative Cathy VanAken; State Treasurer's Office representative Juan Fernandez, and from our underwriting firm, Peter Taylor. "

Mr. Genest made a brief statement before the proceedings began. "Our purpose here today is to implement a fiscal strategy that was adopted last summer as a part of the budget solution. We are all aware that even as we meet today, the Fifth Extraordinary Session of the Legislature is considering alternative strategies for the State's fiscal crisis. We cannot afford ourselves to be distracted by those discussions, so I hope we can just focus on the job that this Authority has been given and move diligently towards that end."

Mr. Genest stated that our first item was confirmation of the distribution of the Bagley Keene Open Meeting Act. All members acknowledged that they had received a copy.

Mr. Genest noted that the second item on the agenda is Resolution 2003-1.

Ms. Chung-Ng stated that Resolution 2003-1 adopts certain organizational matters for the Authority. Specifically, it establishes procedures for meetings, approves the appointment of counsels and other advisors, delegates authority to the Chair and State Treasurer's Office to contract with all of the appointed counsels and advisors, and ratifies the initial steps staff has already taken on behalf of the Authority. Staff recommends approval of Resolution 2003-1.

Mr. Genest asked if there were any public comments on this item. Hearing none, Mr. Genest called for a motion and second on Resolution 2003-1.

A motion was made by Mr. Janzen, and seconded by Mr. Garcia, to approve Resolution 2003-1.

Resolution 2003-1 was passed with a 7-0 vote.

Mr. Genest stated that the next item was Resolution 2003-2. He also noted that the members received a copy of a letter from the Director of the Department of Finance that requests the Authority to authorize the issuance of the Fiscal Recovery Bonds in accordance with Title 17 of the Government Code, Section 99000 *et seq.* Mr. Genest noted that a copy of this letter was included in member's supplemental binders.

Ms. Chung-Ng noted that Resolution 2003-2 authorizes the sale of the Fiscal Recovery Bonds and covers the following points:

The sale of one or more series of Fiscal Recovery Bonds to net bond proceeds in the amount of \$10,675,400,000. This amount is to finance the accumulated State budget deficit as of June 30, 2003. The maximum allowable par value of the bond that could be sold will not exceed \$12,709,000,000.

This resolution will authorize certain future actions by the Chair and the State Treasurer's Office and approve the authorization and execution and delivery of a Trust Agreement, various agreements related to Ancillary Obligations and other agreements.

This resolution will approve the form of the Trust Agreement, which provides the general terms of the bonds. A copy of the Trust Agreement was included in the member's binder.

The resolution approves the form of the Fund Implementation Agreement. A copy of the Fund Implementation Agreement was included in the member's binder.

The Resolution also approves the use of ancillary obligations that may include:

- Credit Provider Agreements,
- Guaranty or Reimbursement Agreements,
- Swap Agreements, and
- Any other form of credit enhancement or support containing a reimbursement obligation on the part of the Authority.

Mr. Peter Taylor, Lehman Brothers, introduced himself. Mr. Taylor noted that the \$12.7 billion number is an extreme worst-case scenario number. He stated that Lehman Brothers had arrived at that number by taking net proceeds of \$10.675 billion and adding to it possible requirements from rating agencies and other participants in the transaction. He stated that should the rating agencies require a "standard" size debt service reserve fund, the transaction might have to be sized up to 10 percent of par, which would be \$1.2 billion, which when added to the \$10.675 billion, established a bond size of up to \$11.9 billion. He went on to say that Lehman Brothers had also decided that, even though in the current market bonds would not be sold at a discount, building in some flexibility would anticipate market conditions change. In addition, because it was not known when funds from the tax collection would be available, some cushion to allow for capitalized interest was added. He expressed that if the bonds were being sold in today's market, these numbers would be significantly less.

Ms. Chung-Ng stated that staff recommends approval on Resolution 2003-2.

Mr. Genest asked if there were any comments from the members.

Ms. Barbara Lloyd, Deputy Treasurer, State Treasurer's Office had a comment. Ms. Lloyd noted that the Treasurer would like to indicate that he is not going to vote in favor of the authorization of this bond, because it has been his position that the use of long term borrowing capacity for deficit financing is not a policy that he supports. "If we are going to do that, he suggests that it be done to a lesser degree and since this package does not allow the bond to be reduced, he does not want to vote in favor of this resolution. However, that does not reflect any lack of confidence that he has in the legality of this transaction as proposed. We have been advised by counsel that it is fully legal and our office agrees. Should this matter

pass, the Treasurer's Office and the Treasurer himself will do everything within our power as agent of sale for the bond to bring this to the market quickly and cost effectively. "

Mr. Genest asked if the public had any comments on this resolution.

Mr. Arthur Mark, an attorney for the Pacific Legal Foundation introduced himself, and made the following statement:

"Pacific Legal Foundation (PLF) appreciates the opportunity to comment regarding the proposed authorizing resolution of the California Fiscal Recovery Financing Authority pursuant to the California Fiscal Recovery Financing Act. PLF, as counsel for the Fullerton Association of Concerned Taxpayers, has filed suit against the deficit bond plan enacted by the Legislature and Governor Davis this past summer. The constitutional principals that triggered that lawsuit must be borne in mind by the State officials now, as they consider any new deficit bond, if they wish to avoid having the new plan stricken by the courts.

The framers of the California Constitution, the Forty-Niners, were people of hard-earned common sense who scoffed at the idea of government paying its bills by saddling their children and future generations with debt. Therefore, they enshrined in the Constitution a demand that the Governor submit a budget that is in balance and does not gush red ink.

They enforced this balanced-budget decree by prohibiting the Legislature from entering into major borrowing or floating bonds as a form of deficit spending to put off until tomorrow the bills that run up today.

Article XVI, Section 1, of the Constitution requires that, except in case of war or insurrection, borrowing of more than \$300,000 must be approved by the voters at the polls.

Article XVI, Section 1, also does not permit the State to use major borrowing as a way to pay for government's general operating expenses. Article XVI, Section 1, allows borrowing of more than \$300,000 only to fund a "single object or work", in other words, a specific, discrete capital works project, such as construction or land purchase, or "internal improvement", in the words of the California Supreme Court.

As the California Supreme Court has put it in interpreting the California Constitution's debt limit, the Constitution's framers knew that it was not the practice of governments, well conducted, to borrow money for ordinary expenses of government.

Pay as you go, that is the rule of the California Constitution. It is a good rule; it is a common sense rule. As of now, no action has been taken to change the constitution to exempt any bond scheme from this rule. Unless and until such change is made in the Constitution, allowing borrowing for the general costs of government, at least for this one emergency occasion, a bond plan would be legally vulnerable. Thank you for your time."

Mr. Peter Siggins, Legal Secretary for the Governor of the State of California, asked Mr. Mark if PLF had undertaken efforts to publish summons in the case that was filed. Mr. Mark stated that PLF would be taking efforts to publish summons if this Authority authorizes the resolution. Mr. Siggins asked if PLF anticipated doing that quickly, as it is in everyone's best interests to have solved quickly. Mr. Mark replied that they would do so as quickly as possible.

Mr. Genest asked if there were any other comments from the members or public. There were no other comments.

Mr. Genest called for a motion and a second on Resolution 2003-2.

A motion was made by Mr. Janzen, and seconded by Mr. Siggins, to approve Resolution 2003-2.

Resolution 2003-2 was passed with a 6-1 vote. The State Treasurer's Office did not vote to adopt the resolution.

Mr. Genest stated that before the Authority adjourned into closed session, Madelynn McClain was appointed as clerk for the purpose of keeping record of the topics discussed and decisions made in closed session.

Mr. Genest noted that the Authority would be adjourning to a closed session pursuant to Government Code Section 11126(e)(2)(A) regarding *Fullerton Association of Concerned Taxpayers, an unincorporated association, v. California Fiscal Recovery Financing Authority, et al.* He asked all of the members of the public to please step outside, and explained that as soon as the Authority finished with the closed session, the public would be called back into the room.

**Entered in to Closed Session at 10:25 am.
Returned to Open Session at 10:45 am.**

Mr. Genest welcomed the public back and stated that the Authority was in open session. He announced that in the closed session the Authority adopted a resolution to file a separate validation action, and that staff would explain to the members of the public how to get copies of the resolution and complaint. Ms. Lisa Quateman stated that the Meeting Notice held information on potential litigation, and that it directed the members of the public on how to obtain access to a copy of the summons and complaint that will be filed. She stated that in order to obtain a copy of the resolution that was adopted by the Authority, an interested party could go to the same two websites that were identified in the meeting notice. She further explained that the resolution of the Authority would be posted by close of business that day.

Mr. Genest asked if there was any further comment.

A student, Rasul Rago (sp?) from California State University, Sacramento, came forward and made the following comment:

"If there was a time for public service to unite, the time is now. We should rally with our Governor for the good of the State of California. We need to cooperate and make a good faith attempt, no matter how difficult the situation may be. As public servants, you have the responsibility to pursue our interests. Democrats and Republicans alike can feel a burden placed upon them in these difficult times. Our responsibility is to rally around our Governor. At the same token, it is the responsibility of the Governor to address our concerns. We need to come with a creative solution to pay back the bonds, for the sake of the Forty-Niners and Californians, and all the future generations to come. The Fiscal Recovery Act is a great idea, I personally really like it. We should support this Recovery Act, but at the same time, we need to find a solution to repay these bonds. According to my calculations, we can charge for every vehicle in the State of California, \$40-\$70. That will encompass the interest rate and we can also be paying back some of the loan. If we do this, we have credibility for paying back the bonds. Thank you very much."

Mr. Genest asked for any other public comment. Hearing none, he stated that the meeting was adjourned.

Having no further business, the meeting was adjourned at 11:00 am.

MEETING NOTICE And AGENDA

MEMBERS
of the
CALIFORNIA FISCAL RECOVERY FINANCING AUTHORITY
under
FISCAL RECOVERY FINANCING ACT
GOVERNMENT CODE SECTION 99000 *ET SEQ.*

State Capitol Building, Room 4203
Sacramento, California 95814
December 5, 2003; 10:00 a.m.

1. Call to Order **10:00 am**
2. Roll Call:
Governor of the State of California - **Peter Siggins, Legal Affairs Secretary**
State Treasurer - **Barbara Lloyd, Deputy Treasurer**
State Controller - **Rick Chivaro, Chief Counsel**
Director of Finance - **Michael Genest, Chief Deputy Director**
Secretary of Business, Transportation and Housing - **Chris Janzen, Principal Fiscal Officer**
Director of General Services - **William Jefferds, Ed.D., Director**
Director of Transportation - **Bob Garcia, Chief Financial Officer**
3. Distribution of a copy of the Bagley-Keene Open Meeting Act (Article 9 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Section 11120 *et seq.*) to Members of the Authority, pursuant to Section 11121.9 of the Government Code.

4. Consideration of proposed Organizational Resolution entitled: **APPROVED**

RESOLUTION OF THE CALIFORNIA FISCAL RECOVERY FINANCING
AUTHORITY PURSUANT TO THE CALIFORNIA FISCAL RECOVERY
FINANCING ACT, RELATING TO CERTAIN ORGANIZATIONAL MATTERS.

5. Consideration of proposed Authorizing Resolution entitled: **APPROVED**

A RESOLUTION OF THE CALIFORNIA FISCAL RECOVERY FINANCING
AUTHORITY PURSUANT TO THE CALIFORNIA FISCAL RECOVERY
FINANCING ACT, AUTHORIZING THE ISSUANCE AND SALE OF ONE OR
MORE SERIES OF CALIFORNIA FISCAL RECOVERY FINANCING
AUTHORITY FISCAL RECOVERY BONDS IN AN AMOUNT NOT TO
EXCEED \$12,709,000,000, AND/OR BOND ANTICIPATION NOTES
ISSUED IN ANTICIPATION OF SUCH BONDS, TO FINANCE THE
ACCUMULATED STATE BUDGET DEFICIT AS OF JUNE 30, 2003 AND
CERTAIN COSTS RELATED THERETO; DETERMINING AND
PRESCRIBING CERTAIN MATTERS; AUTHORIZING FUTURE ACTIONS
AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY
OF A TRUST AGREEMENT, VARIOUS AGREEMENTS RELATING TO

ANCILLARY OBLIGATIONS AND OTHER AGREEMENTS RELATED
THERE TO; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN AND
APPROVING RELATED MATTERS IN CONNECTION THEREWITH.

6. Appointment of clerk for the purpose of keeping a record of the topics discussed and decisions made in closed session. **Madelynn McClain was appointed clerk.**
7. Adjournment to a closed session to discuss, and possibly take action on the following items, pursuant to the statutory authorization identified below:

Conference with legal counsel, pursuant to Government Code Section 11126(e)(2)(A), regarding *Fullerton Association of Concerned Taxpayers, an unincorporated association, v. California Fiscal Recovery Financing Authority; Finance Director and Financing Authority Chairperson Steve Peace, in His Official Capacity; State Treasurer Phil Angelides, in His Official Capacity; and All Persons Interested in the Matter of the Validity of Assembly Bill 7 (1st Extraordinary Session 2003) (AB 7), Enacting the California Fiscal Recovery Financing Act, Government Code Section 99000, et seq.; Adding Sections 6051.5, 6051.6, 6201.5, 6201.6, and 7101.3, 7203.1 to the Revenue and Taxation Code, and Amending Sections 7202; 7203 of the Revenue and Taxation Code; and Deficit Bonds to Be Issued Pursuant Thereto* (Sacramento County Superior Court, Case No. 03AS05319), or other similar threatened litigation pursuant to Code of Civil Procedure Section 860 *et seq.* to determine the validity of any bonds it may determine to issue and contracts it may determine to authorize pursuant to Agenda Item 5 above.

Conference with legal counsel, pursuant to Government Code Section 11126(e)(2)(C), regarding the possibility of initiating litigation pursuant to Code of Civil Procedure Section 860 *et seq.* to determine the validity of any bonds it may determine to issue and contracts it may determine to authorize pursuant to Agenda Item 5 above.

8. Reconvene open meeting.

If authorized by the Authority, report regarding actions taken in closed session. Resolution 2003-3, authorizing the filing of a validation action, authorizing the issuance of a summons, and authorizing legal counsel to take all necessary actions in connection therewith, was approved by a 7-0 vote.

9. Public comment.

10. Adjournment. **11:00 am**

There will be an opportunity for public comment at the end of each item, prior to any action.

Note: Items designated for information are appropriate for Authority action if the Authority chooses to take action. Agenda items may be taken out of order.

The California Fiscal Recovery Financing Authority complies with the Americans with Disabilities Act (ADA) by ensuring that the meeting facilities are accessible to persons with disabilities, and providing this notice

and information given to the Members of the California Fiscal Recovery Financing Authority in appropriate alternative formats when requested. If you need further assistance, including disability-related modifications or accommodations, you may contact the Authority no later than the day prior to the meeting at (916) 445-5332, and Telecommunication Device for the Deaf (TDD) services at (916) 324-6547.

Questions or requests for additional information prior to the Authority meeting may be referred to Madelynn McClain, California Department of Finance, 915 L Street, Sacramento, California 95814, telephone: (916) 445-5332. This meeting agenda is also available on the Department of Finance website at www.dof.ca.gov and click on the tab marked California Fiscal Recovery Financing Authority, and on the State Treasurer's website at <http://www.treasurer.ca.gov/meetings.htm>.

NOTICE – REQUEST FOR FUTURE MEETING NOTICES AND AGENDAS

If you would like to receive a copy of Notice and Agendas for future meetings of the Authority, please submit your request in writing (by letter or e-mail) to Madelynn McClain, California Department of Finance, 915 L Street, Sacramento, California 95814, e-mail: Madelynn.McClain@dof.ca.gov. Please include in your written request your name and the address to which future Notice and Agendas should be sent. If you prefer to receive future Notice and Agendas via e-mail, please indicate this preference in your request and include your e-mail address as well as your mailing address for use in the event the Authority is notified that delivery via e-mail has not been successful.

NOTICE – REQUEST FOR FURTHER INFORMATION ABOUT POTENTIAL LITIGATION

As noted in Agenda Item 7(b), the Authority is meeting to discuss the possibility of instigating litigation pursuant to California Civil Procedure Code Section 860 *et seq.* to determine the validity of any bonds it may determine to issue and contracts it may determine to authorize pursuant to Agenda Item 5 above. In the event the Authority determines to instigate such litigation, and you would like to receive a copy of the Summons and Complaint in such action directly from the Authority, please submit your request in writing (by letter or e-mail) not later than December 12, 2003, to Madelynn McClain, California Department of Finance, 915 L Street, Sacramento, California 95814, e-mail: Madelynn.McClain@dof.ca.gov. If you do not request a copy of the Summons and Complaint, no further notice of such litigation may be provided other than by publication in accordance with Civil Procedure Code Section 861. Please include in your written request your name and the address to which the Summons and Complaint should be sent. NOTE: The court may allow these materials to be sent via e-mail. If you would prefer to receive the Summons and Complaint via e-mail, please indicate this preference in your request and include your e-mail address along with your mailing address.