



Agenda Item Details

Meeting	Jun 20, 2012 - Board of Trustees Regular Meeting, 6:00 P.M.
Category	7. BUSINESS SERVICES
Subject	7.9 Resolution No. 15378: 2012-13 Tax Revenue Anticipation Notes (TRANS) \$20,000,000
Access	Public
Type	Action
Fiscal Impact	Yes
Dollar Amount	\$ 400,000.00
Budgeted	No
Budget Source	Up to \$400,000 in interest expense (\$150,000 budgeted. the remainder would be paid from Reserve)

Public Content

RESOLUTION OF THE BOARD OF TRUSTEES OF THE IMPERIAL COMMUNITY COLLEGE DISTRICT REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF IMPERIAL TO ISSUE NOT TO EXCEED \$20,000,000 PRINCIPAL AMOUNT OF TAX AND REVENUE ANTICIPATION NOTES FOR FISCAL YEAR 2012-13, APPROVING DISTRIBUTION OF OFFICIAL STATEMENT AND PURCHASE CONTRACT AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

WHEREAS, community college districts organized and existing under the laws of the State of California are authorized by Article 7.6 (commencing with Section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code of the State (the "Act") to borrow money by the issuance of temporary notes, the proceeds of which may be used and expended for any purpose for which the community college district is authorized to spend moneys; and

WHEREAS, pursuant to the Act, such notes shall be issued in the name of such community college districts by the board of supervisors of the county, the county superintendent of which has jurisdiction over such community college district, as soon as possible following receipt of a resolution of the governing board of such community college district requesting such borrowing; and

WHEREAS, the Board of Trustees (the "District Board") of the Imperial Community College District (the "District") has determined that it is desirable that the District borrow funds in an amount not to exceed \$20,000,000 with respect to fiscal year 2012-13 for authorized purposes of the District, and to issue notes (the "Notes") under the Act for that purpose; and

WHEREAS, such Notes are expected to mature no later than thirteen months after their date of delivery, but as required by Section 53854 of the Act, such maturity shall not be later than fifteen months after the date of issue, and such Notes shall be payable only from revenue received or accrued during the fiscal year 2012-13 in which issued; and

WHEREAS, such Notes may not bear interest to exceed twelve percent (12%) per annum, as permitted by Section 53531 of the Act, notwithstanding Section 53854 of the Act; and

WHEREAS, pursuant to Section 53856 of the Act, the District may pledge any taxes, income, revenue, cash receipts, or other moneys of the District deposited in inactive or term deposits (but excepting certain moneys encumbered for a special purpose); and this Resolution specifies that certain Unrestricted Revenues, as hereinafter defined, which will be received or accrued by the District for the General Fund of the District during or allocable to fiscal year 2012-13 are pledged for the payment of the Notes; and

WHEREAS, the Notes shall be a general obligation of the District, and to the extent not paid from the taxes, income, revenue, cash receipts, and other moneys of the District pledged for the payment thereof, shall be paid with interest thereon from any other moneys of the District lawfully available therefor, as required by Section 53857 of the Act; and

WHEREAS, the Notes shall be in denominations of \$5,000 or integral multiples thereof, as permitted by Section 53854 of the Act; shall be sold on the date provided in the Purchase Contract, as permitted by Section 53853 of the Act; and shall be in the form and executed in the manner prescribed in this Resolution, as required by Section 53853 of the Act; and

WHEREAS, the District Board has found and determined that said \$20,000,000 maximum principal amount of Notes to be issued by the Board of Supervisors of Imperial County (the "Board of Supervisors") in the name of the District in fiscal year 2012-13, when added to the interest payable thereon, does not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue (including, but not limited to, revenues from state and federal governments), cash receipts and other moneys of the District which will be available for the payment of the Notes and interest thereon, as required by Section 53858 of the Act; and

WHEREAS, the District Board has found and determined that the Notes will not be outstanding after a period ending thirteen months after the date on which such Notes are issued, will not be issued to finance a working capital reserve and will be expended within the time period required as provided in the Income Tax Regulations of the United States Treasury; and

NOW, THEREFORE, BE IT RESOLVED by the District Board as follows:

Section 1. Recitals True and Correct. All of the recitals herein set forth are true and correct, and the District so finds and determines.

Section 2. Authorization of Issuance of Notes; Terms Thereof; Paying Agent. The District Board hereby requests the Board of Supervisors to issue in the name of the District, an amount not to exceed \$20,000,000 principal amount of Notes under Sections 53850, et seq., of the Act, designated "Imperial Community College District, Imperial County, State of California, 2012-13 Tax and Revenue Anticipation Notes" (the "Notes"); to be numbered from 1 consecutively upward in order of issuance; to be in the denominations of \$5,000, or integral multiples thereof, to be dated the date of delivery thereof; to mature (without option of prior redemption) within thirteen months after said date of delivery, or if such date is not a day on which banks in New York or California are open for business, on the last day prior to such date; and to bear interest, payable at maturity and computed on a 30-day month/360-day year basis, at the rate or rates determined at the time of sale thereof, but not in excess of twelve percent (12%) per annum. Subject to Section 4 hereof, both the principal of and interest on the Notes shall be payable, only upon surrender thereof, in lawful money of the United States of America at the principal office of U.S. Bank National Association, which is hereby designated by this District Board as the paying agent for the Notes (the "Paying Agent").

Section 3. Deposit of Note Proceeds; No Arbitrage. The moneys so borrowed shall be deposited in the Treasury of the County of Imperial (the "County") in a proceeds fund to the credit of the District to be withdrawn, used or expended by the District for any purpose for which it is authorized to invest or expend funds from the general fund of the District, including, but not limited to, current expenses, capital expenditures or the discharge of any obligation of indebtedness of the District. The District hereby covenants that it will make no use of the proceeds of the Notes that would cause the Notes to be "arbitrage bonds" under Section 148 of the Code; and, to that end, so long as any of the Notes are outstanding, the District, and all of its officers having custody or control of such proceeds, shall comply with all requirements of (a) said section, including restrictions on the use and investment of proceeds of the Notes and the rebate of a portion of investment earnings on certain amounts, including proceeds of the Notes, if required, to the Federal government, and (b) of the Income Tax Regulations of the United States Treasury promulgated thereunder or any predecessor provisions, to the extent that such regulations are, at the time, applicable and in effect, so that the Notes will not be "arbitrage bonds."

Section 4. Payment of Notes.

(a) **Pledge.** The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts, and other moneys which are received or accrued by the District during fiscal year 2012-13 and which are available for the payment of expenses and other obligations of the District attributable to such fiscal year (the "Pledged Revenues"). The Notes shall be a general obligation of the District, and, to the extent the Notes are not paid from the Pledged Revenues, the Notes shall be paid with interest thereon from any other moneys of the District lawfully available therefor, as provided herein and by law.

(b) **Deposits to the Repayment Fund.** As security for the payment of the principal of and interest on the Notes, the District hereby pledges and covenants to deposit into the "Repayment Fund" (as hereinafter defined) amounts equal to the principal amount of the Notes, from the first "Unrestricted Revenues" (as hereinafter defined) to be received in the months so designated in the Purchase Contract, plus an amount equal to all interest due on the Notes at maturity, from the first Unrestricted Revenues to be received on the date so designated in the Purchase Contract (such pledged amounts being hereinafter called the "Pledged Revenues"). The term "Unrestricted Revenues" shall mean taxes, income, revenue, cash receipts and other money of the District as provided in Section 53856 of the Act, which are intended as receipts for the general fund of the District and which are generally available for the payment of current expenses and other obligations of the District.

The principal of the Notes and the interest thereon shall be a first lien and charge against and shall be payable from the first moneys received by the District from such Pledged Revenues, as provided by law.

In the event that there are insufficient Unrestricted Revenues received by the District to permit the deposit into the Repayment Fund, as hereinafter defined, of the full amount of Pledged Revenues to be deposited as scheduled, then the amount of any deficiency shall be satisfied and made up by the District from any other moneys of the District lawfully available for the repayment of the Notes and the interest thereon.

(c) **Repayment Fund.** The Auditor-Controller of the County (the "Auditor-Controller") is hereby authorized to create a special fund on behalf of the District separate and distinct from all other County and District funds and accounts designated the "Imperial Community College District

2012-13 Tax and Revenue Anticipation Notes Repayment Fund" (the "Repayment Fund") and applied as directed in this Resolution. Any money placed in the Repayment Fund shall be for the benefit of the holders of the Notes, and until the Notes and all interest thereon are paid by the District or until provision has been made for the payment by the District of the Notes at maturity with interest to maturity, the moneys in the Repayment Fund shall be applied solely for the purposes for which the Repayment Fund has been created.

(d) Covenant Regarding Additional Short-Term Borrowing. It is hereby covenanted and warranted by the District pursuant to Article XVI, Section 6 of the Constitution of the State of California that it will not request the Treasurer-Tax Collector of the County (the "Treasurer-Tax Collector") to make temporary transfers of funds in the custody of the Treasurer-Tax Collector to meet any obligations of the District during the 2012-13 fiscal year, until the full amount of Pledged Revenues have been deposited into the Repayment Fund. In the event the full amount of Pledged Revenues have been deposited into the Repayment Fund, the District covenants that it will not request the Treasurer-Tax Collector to make temporary transfers of funds in excess of eighty-five percent (85%) of the anticipated revenues accruing to the District during the 2012-13 fiscal year.

Section 5. Approval of Board of Supervisors' Resolution. The resolution entitled "A Resolution of the Board of Supervisors of the County of Imperial Providing for the Borrowing of Funds for Imperial Community College District for Fiscal Year 2012-13 and the Issuance of Imperial Community College District 2012-13 Tax and Revenue Anticipation Notes Therefor In An Amount Not To Exceed \$20,000,000, and Authorizing and Directing Certain Actions With Respect Thereto" (the "Issuance Resolution") in substantially the form presented to the Board of Trustees at this meeting, together with any additions to or changes therein deemed necessary or advisable by the Board of Supervisors and the Superintendent of the District or the Superintendent's authorized designee, is hereby approved.

Section 6. Sale of the Notes. The District Board hereby approves the sale of the Notes by negotiation with Piper Jaffray & Co. (the "Underwriter"), under the Purchase Contract between the District and the Underwriter (the "Purchase Contract"), in substantially the form on file with the Clerk of the Board of Trustees together with any changes therein or additions thereto approved by the Superintendent, the Vice President/Chief Financial Officer or any other duly appointed officer of the Districted authorized by resolution of the District Board to act as a representative of the District hereunder (each, an "Authorized Officer"), whose execution thereof will be conclusive evidence of approval of any such additions and changes. The Authorized Officers are each separately authorized and directed to execute and deliver the Purchase Contract on behalf of the District. The Underwriter must purchase the Notes for a purchase price at least equal to 98% of the par amount thereof, and the rate of interest to be borne by the Notes may not exceed 12% per annum.

Section 7. Limitation on Maximum Amount. The principal amount of notes issued pursuant hereto, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, revenue and other moneys of the District for the General Fund of the District attributable to Fiscal Year 2012-13, and available for the payment of said notes and the interest thereon (as hereinafter provided).

Section 8. Official Statement. The District hereby authorizes each Authorized Officer to separately approve, and to deem final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 except for permitted omissions, a Preliminary Official Statement describing the Notes. The Underwriter is hereby authorized to distribute the approved form of the Preliminary Official Statement in connection with the sale of the Notes. Each Authorized Officer is hereby separately authorized and directed to (a) execute and deliver to the Underwriter a certificate deeming the Preliminary Official Statement to be nearly final prior to the distribution thereof by the Underwriter to prospective bidders, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the final Official Statement for and in the name and on behalf of the District.

The District hereby acknowledges that the County has not approved the District's Official Statement, and the County does not accept any responsibility for the accuracy or adequacy of the statements contained therein.

Section 9. Authorization to Make Corrections. The Authorized Officers are separately authorized to approve corrections and additions to the Purchase Contract and the Official Statement by supplement or amendment thereto, or otherwise as appropriate, provided that any such corrections or additions shall be necessary to cause the information contained therein to conform with facts material to the Notes or to the proceedings of the District and the District Board, or such corrections or additions are in form rather than substance.

Section 10. Further Authorization. The District Representatives are separately authorized and directed to execute said Official Statement and a statement that the facts contained in the Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Notes, true and correct in all material respects and that the Official Statement did not, on the date of sale of the Notes, and does not, as of the date of delivery of the Notes, contain any untrue statement of a material fact with respect to the District or omit to state material facts with respect to the District required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The District Representatives shall take such further actions prior to the signing of the Official Statement as are deemed necessary or appropriate to verify the accuracy thereof.

Section 11. Approval of Action Taken. All actions heretofore taken by the officers and agents of the District with respect to the sale and issuance of the Notes are hereby approved, and the Authorized Officers are hereby authorized and directed for and in the name and on behalf of the District, to do any and all things and take any and all actions relating to the execution and delivery of any and all certificates, requisitions, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Notes in accordance with the Issuance Resolution and this Resolution.

Section 12. Tax Covenants.

(a) No Arbitrage. The District shall not take, nor permit nor suffer to be taken any action with respect to the proceeds of the Notes which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Notes (the "Closing Date") would have caused the Notes to be "arbitrage bonds" within the meaning of section 148 of the Internal Revenue Code of 1986 (the "Code").

(b) Rebate Requirement. The District shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government.

(c) Private Activity Bond Limitation. The District shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private business tests of section 141(b) of the Code.

(d) Federal Guarantee Prohibition. The District shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Notes to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(e) Maintenance of Tax-Exemption. The District shall take all actions necessary to assure the exclusion of interest on the Notes from the gross income of the owners of the Notes to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the Closing Date.

Section 13. Covenants and Warranties. It is hereby covenanted and warranted by the District Board that all representations and recitals contained in this Resolution are true and correct, and that the District Board has reviewed, or caused to be reviewed, all proceedings heretofore taken by the District Board relative to the authorization of the Notes and has found, as a result of such review, and hereby finds and determines that all acts, conditions and things required of the District Board by law to exist, happen and be performed by the District Board precedent to and in the issuance of the Notes have existed, happened and been performed in due time, form and manner as required by law, and the District Board is duly authorized to incur indebtedness in the manner and upon the terms provided in this Resolution.

Section 14. Indemnification. The District Board agrees to indemnify, defend and save the County (including its officers, agents and employees) harmless against any and all liabilities, costs, expenses, damages and claims which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its active negligence or bad faith.

[062012 - Business Services - TRANs Preliminary Official Statement.pdf \(246 KB\)](#)

[062012 - Business Services - TRANs Purchase Agreement.pdf \(40 KB\)](#)

[062012 - Business Services - TRANs Board of Supervisors Resolution.pdf \(46 KB\)](#)

Administrative Content

From: Brady, Diane <mailto:dbrady@CCCCO.EDU>

Sent: Friday, June 08, 2012 3:55 PM

To: SO2CBO@LISTSERV.CCCNEXT.NET

Subject: Cash flow challenges for 2012-13

Colleagues,

I thought it important to provide some preliminary information about potential 2012-13 cash flow challenges while awaiting the final outcome of the budget negotiations.

There are two areas discussed here which will affect your cash flow for 2012-13: the proposed monthly payment schedule with or without successful passage of the November ballot initiative, and a change to the intra-year deferral schedule.

Payment Schedule

Our office has seen an initial proposal from Finance as to how the monthly payments will be made depending on whether or not the ballot initiative passes. **You should be aware that the proposed payment schedule provides significantly lower monthly payments for the first 5 months of the year compared to what you received in 2011-12.** If the November ballot initiative passes, there will not be an immediate increase in funding to districts—rather, there will be a very large payment made in June - approximately 41% of the entire year's funding. The delay is based on the estimate of when the increased tax revenues will be realized by the state.

If the ballot initiative does not pass, you will not receive the large balloon payment in June, and the inter-year deferrals will be higher in the second half of the fiscal year than they would be if the outcome of the November vote was favorable.

Unfortunately, we cannot provide a precise schedule while the budget negotiations are ongoing. Negotiations may or may not result in a final budget that matches the Governor's proposal, so many details could change. We will attempt to provide an estimate to you as soon as possible after the budget passes.

Intra-Year Deferrals

AB 103, enacted May 23, 2012, continues the state's practice of deferring \$300 million within the fiscal year for the 2012-13 fiscal year, but alters the schedule, as follows: (1) \$150 million from the July payment is deferred to the December apportionment allocation; (2) \$50 million deferred from the September payment is deferred to the January apportionment allocation; and (3) \$100 million from the October payment is deferred to the January apportionment payment. (*Authority per Government Code 16326*)

Deferral		Repayment	
July	\$150 million	December	\$150 million
September	\$50 million	January	\$150 million
October	\$100 million		

We are rapidly approaching the June 15 constitutional deadline for the Legislature to pass a budget. Please continue your advocacy efforts.

Diane Brady

Administrator, Fiscal Policy
California Community Colleges
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Executive Content

Motion & Voting

(not specified)

Motion by Norma Sierra Galindo, second by Louis Wong.

Final Resolution: Motion Carries

Yes: Rudy Cardenas, Jerry Hart, Romualdo Medina, Norma Sierra Galindo, Karla Sigmond, Steve Taylor, Louis Wong

Last Modified by Vikki Carr on June 25, 2012