



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: Housing & Community  
Development  
Department No.: 055  
For Agenda Of: April 13, 2010  
Placement: Departmental  
Estimated Time: 15 minutes  
Continued Item: No  
If Yes, date from:  
Vote Required: 4/5

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TO: Board of Supervisors

FROM: Department David Matson, Housing & Community Development,  
Director(s) Interim Director (568-2068)  
Contact Info: Chris Rich, County Executive Office  
Fiscal & Policy Analyst (568-2060)

SUBJECT: **emPowerSBC: Certificates of Participation**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Other Concurrence:** Treasurer Tax-Collector

**Recommended Actions:**

To preserve one of the available options for cost-effective emPowerSBC financing, it is recommended that the Board of Supervisors adopt the County of Santa Barbara Resolution Authorizing Delivery Certificates of Participation to Provide Financing for the County's emPowerSBC Program and Other Capital Projects, and Approving Related Documents and Actions (Attachment 1). Pursuant to this Resolution, the Board will, among other things, authorize execution and delivery of Certificates of Participation and approve related legal documents (Attachment 2).

**Summary Text:**

On December 1, 2009, the Board directed staff to initiate a judicial validation action in coordination with outside counsel following formation of the emPowerSBC program; the Board of Supervisors will consider formation of emPowerSBC on April 13, 2010. A number of options are available to the County, through which emPowerSBC could provide financing to program participants. One of these options is the execution and delivery of one or more series of Certificates of Participation. The Certificates of Participation would represent fractional interests in lease payments to be made by the County. It is expected that the County's lease payments would be payable from contractual assessments levied on parcels that voluntarily choose to participate in the emPowerSBC program, but the County would also agree to appropriate from its General Fund on an annual basis, subject to the conditions described in the

Sublease, the amounts necessary to pay the Lease Payments. Outside counsel has drafted the attached resolution (Attachment 1) and legal documentation (Attachment 2) relating to the issuance of Certificates of Participation. The Board must authorize execution and delivery of the Certificates of Participation and approve the related legal documents in order to undertake a validation action, but the Board will have an opportunity to review the details of proposed financings prior to execution and delivery of the Certificates of Participation at a later date.

### **Background/Discussion:**

A judicial validation action is required prior to offering financing to emPowerSBC program participants. The purpose of a validation action is to receive a superior court judgment that the contractual assessments levied by the County are valid assessments and that any obligations issued by the County to finance installation of renewable energy, energy efficiency and water efficiency improvements, along with all related documents, are legal, valid and binding. The County cannot undertake a judicial validation action until the Board of Supervisors has approved the Certificates of Participation and the related documents. Accordingly, outside counsel has prepared the attached documentation relating to the execution and delivery of one or more series of Certificates of Participation. The Certificates of Participation would represent fractional interests in lease payments to be made by the County. It is expected that the County's lease payments would be payable from contractual assessments levied on parcels that voluntarily choose to participate in the emPowerSBC program, but the County would also agree to appropriate from its General Fund on an annual basis, subject to the conditions described in the Sublease, the amounts necessary to pay the Lease Payments. Another financing option – a Limited Obligation Bond – is discussed as part of a separate item on the April 13, 2010 Board agenda.

With the recommended action, the Board is requested to adopt the attached resolution. Pursuant to the resolution, the Board would authorize execution and delivery of the Certificates of Participation and approve as to form the attached legal documentation. If given this direction from the Board, staff will proceed with presenting these documents to the County's Finance Corporation; consistent with County practice, the Corporation is the counterparty to the Lease and Sublease. If approved, staff would then work with outside counsel to initiate a judicial validation action.

Upon a successful completion of the judicial validation action, staff will return to the Board prior to the execution and delivery of any Certificates of Participation to define acceptable terms, including whether an issuance will be competitive or negotiated, the maximum principal amount of the issuance, and the associated interest rate. At that time, the Board also will consider any sale-related documents, including the certificate purchase agreement and the official statement.

If the attached documents are not approved today for inclusion in the judicial validation process, financing options available for the emPowerSBC program will be limited, hampering the ability of the program to adequately respond to changing market dynamics.

**Fiscal Analysis:**

<b><u>Funding Sources</u></b>	<b><u>Current FY Cost:</u></b>	<b><u>Annualized On-going Cost:</u></b>	<b><u>Total One-Time Project Cost</u></b>
General Fund	NA	NA	NA
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

**Narrative:**

There is no financial impact associated with adopting the attached resolution. Staff will return to the board at a later date to actually undertake a particular financing.

**Staffing Impacts:**

**Legal Positions:**  
NA

**FTEs:**  
NA

**Special Instructions:**

NA

**Attachments:**

Attachment 1: County of Santa Barbara Resolution Authorizing Delivery Certificates of Participation to Provide Financing for the County's emPowerSBC Program and Other Capital Projects, and Approving Related Documents and Actions

Attachment 2: Certificate of Participation Documents: Lease Agreement, Sublease Agreement, Assignment Agreement, and Trust Agreement

**Authored by:**

Chris Rich, County Executive Office

**cc:**

Robert Geis, Auditor-Controller

Bernice James, Treasurer-Tax Collector