

From: T. Daly

LATE DISTRIBUTION

DATE 3-1-11

**Administration's 2011 Realignment Constitutional Amendment:  
2/28/2011 DRAFT Language**

**Immediate Response Needed**

Attached please find the Administration's draft constitutional amendment enacting the Governor's realignment proposal and tax extensions. We are asking for your immediate review of the language to assess the sufficiency of these protections. We will continue to work with the County Counsels' Association, the County Administrative Officers Association, Realignment Working Group, technical subcommittees and other members to vet the proposal. We are also mindful that there remain additional conversations with the Administration and the Legislature on other statutory mitigations that we believe are necessary to make this proposal work. In addition, the technical working groups will be examining this week the Administration's revisions to the program elements.

Note in terms of overall approach, the constitutional amendment clarifies that the realigned programs and revenues will operate outside of the SB 90 and Proposition 1A (2004) construct. In other words, the proposal assumes that counties accept both the scope of the programs and the revenues. To the extent that there are certain future actions that expand the programs, counties will enjoy a new type of protection in that the state will generally be responsible for funding new levels of service. Further, counties will be relieved of providing the higher level of service if the state fails to provide funding. Please share your feedback with us on the constitutional amendment at your earliest convenience, as things are moving quickly in Sacramento. Direct your comments to Jean Kinney Hurst ([jhurst@counties.org](mailto:jhurst@counties.org)). Thank you.

**At-a-Glance Summary of 2/28 DRAFT 2011 Realignment Language**  
**Note: All provisions are contained in proposed new Section 36 of Article XIII in the California Constitution**

Element	Description	Section/Page Reference
Revenue: Years 1-5	Revenues for years 1-5 from tax extension are constitutionally guaranteed for counties, and are continuously appropriated	Sec. 36(d)(2), page 6
Revenue: Years 6 and beyond	<ol style="list-style-type: none"><li>1. In the absence of a budget act appropriating funds, revenues for years 6+ are continuously appropriated from the General Fund, and Controller is directed to pay counties based on a formula (to be set in statute) on a priority payment right behind bond debt and education (section 1 Article XVI, and section 8 article XVI)</li><li>2. No specific revenue source identified, but methodology will be in an accompanying statute</li></ol>	<ol style="list-style-type: none"><li>1. Sec. 36(e), page 9</li><li>2. Sec. 36(e), page 9</li></ol>
Program flexibility	States intent that counties are provided maximum flexibility in running programs, but there is a non-supplantation clause	Flexibility: Sec. 36(a)(2), pages 3-4 Non-supplant: Sec. 36(d)(7), page 9
Revenues	<ol style="list-style-type: none"><li>1. New programs / higher level of service in realigned</li></ol>	<ol style="list-style-type: none"><li>1. Sec. 36(d)(5)(A),</li></ol>

inadequate to meet program needs	<p>programs are the obligation of the State if imposed by State law (including regulation, executive order, or directive), State plan negotiated with the federal government, or State settlement of federal litigation (with limited exceptions). Such new programs / higher level of service are "operative only to the extent that the State provides funding."</p> <ol style="list-style-type: none"> <li>2. No general fund backstop or other remedy if funding provided falls short of what is needed to operate realigned programs</li> <li>3. No protection for new programs / higher level of service imposed by federal law, state or federal judicial decision, voter initiative, or state legislative designation of new crimes</li> </ol>	<p>(d)(5)(B) and (d)(5)(C), pages 6-7</p> <ol style="list-style-type: none"> <li>2. n/a – although counties are only required to provide services to the extent that resources are available (see Sec. 36(d)(5), pages 6-7)</li> <li>3. n/a – see Sec. 36(d)(5), pages 6-8</li> </ol>
County involvement in state/federal decision making	Provides counties a formal role in the state decision making process with the federal government.	Sec. 36(d)(5)(E), page 8
Mandate process	<ol style="list-style-type: none"> <li>1. Relieves counties of the obligation of going through the existing mandate reimbursement process; Realigned programs are not mandates for purposes of Article XIII B, Section 6.</li> <li>2. Clarifies that Brown Act activities are subsumed within Proposition 59 and therefore are no longer reimbursable mandates.</li> </ol>	<ol style="list-style-type: none"> <li>1. Sec. 36(d)(4), page 6</li> <li>2. Sec. 36(d)(4), page 6</li> </ol>
Expedited court relief	No specific judicial remedy available to counties for violations; counties may bring declaratory relief action in State Superior Court to enforce constitutional provisions, and provided for in existing law	n/a

In addition to the constitutional protections outlined above, CSAC is seeking a range of other protections that – for a variety of reasons – are not included in the constitutional amendment. These provisions are the topic of ongoing discussion with the Administration and Legislature.

**ITEMS FOR FUTURE CONSIDERATION**

Poison pill	We will be seeking statutory clarification that any trailer bills associated with the 2011 Realignment are contingent upon the voters' passage of the tax extension measure.
Base restorations	Despite additional resources in the revised realignment proposal, health and human services programs – particularly Child Welfare Services – continue to be underfunded.
Reopener	We will be seeking statutory authority to reopen one or more components of realignment to address statewide issues, such as those not addressed in the constitutional amendment.
True-up provisions	We will be seeking statutory language that provides a true-up mechanism to reconcile revenue estimates and actual receipts.

1991 Realignment	Outside of child welfare services, the 1991 Realigned programs are not subject to the constitutional protections both on the revenue side and with respect to higher levels of service.
Realignment reserve/safety net	We will seek provisions relating to a realignment reserve or safety net.
AB 900/SB 81 reforms	We will be seeking a variety of revisions to the lease-revenue bond construct for local adult and juvenile detention facility projects.
Pre-2004 and Suspended Mandates	We will be pursuing options for funding pre-2004 and funding or repealing suspended mandates.
Election costs	We will be seeking timely reimbursement of costs associated with the June 2011 special election.