

DEPARTMENT: Board of Supervisors

BY: Lyle Turpin

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Discussion and possible direction to staff regarding the County's position on the Governor's proposed Constitutional Amendment as it relates to realignment. The Governor is proposing a constitutional amendment (CA) that guarantees and dedicates funds generated from a specific revenue source (1-percent of the sales and use tax rate and 0.50-percent of the vehicle license fee rate for the first five years) to counties to fund realigned program. This is assuming that the voters approve the tax extension that the Governor wishes to place in a June special election of this year.

Please see that attached document prepared by the California State Association of Counties for additional information and potential impacts to counties on the CA.

It may be important for the County to have a position on the proposed CA when speaking with our elected State representatives and constituents, regarding the potential impacts this may have on the County's ability to provide critical services.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes (X) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$ _____		List Attachments, number pages consecutively
Additional Funding Needed: \$ _____		Information on Constitutional Amendment
Source:		
Internal Transfer _____		
Unanticipated Revenue _____ 4/5's vote		
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
() General () Other _____		

CLERK'S USE ONLY:

Res. No.: 11-104 Ord. No. _____
 Vote - Ayes: 5 Noes: _____
 Absent: _____
 Approved
 Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

_____ Requested Action Recommended
 _____ No Opinion
 Comments: _____

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California

By: _____
 Deputy

CAO: _____



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

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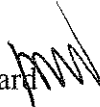
DISTRICT V
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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: SUPERVISOR TURPIN

FROM: MARGIE WILLIAMS, Clerk of the Board 

SUBJECT: Discussion and Possible Direction to Staff Regarding the County's Position on the Governor's Proposed Constitutional Amendment as it Relates to Realignment

RES. 11-104

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on March 22, 2011

ACTION AND VOTE:

7b

Supervisor Turpin

Discussion and Possible Direction to Staff Regarding the County's Position on the Governor's Proposed Constitutional Amendment as it Relates to Realignment

BOARD ACTION: Supervisor Turpin initiated discussion and he advised that this issue will come before the CSAC Executive Committee on Thursday. Rick Benson provided information on the request. (M)Turpin, (S)Cann, Res. 11-104 was adopted approving CSAC and RCRC's support of this amendment/Ayes: Unanimous.

Cc: Rick Benson, CAO
File

What's In the Administration's Proposed Constitutional Amendment?

This document summarizes the provisions of the Administration's proposed constitutional amendment, as amended to address many of the concerns raised by counties, examines the remaining shortfalls of the measure, and discusses potential alternative budget scenarios that could result if 2011 Realignment fails to pass the Legislature or be approved by the voters.

The Administration's proposed Constitutional Amendment (CA) would provide counties constitutional protections primarily based on lessons learned from previous restructuring efforts; these protections exceed those in the 1991 realignment, trial court reforms, or recent juvenile justice realignments. Under the proposed CA, counties would have the ability to rely on a **constitutionally dedicated revenue source** for realigned programs, as well as benefit from certain mitigations that limit, but do not eliminate, future financial risk.

Realignment Revenue Sources are Dedicated. Primarily, the proposed constitutional amendment guarantees and dedicates funds generated from a specific revenue source (1% of the sales and use tax rate and 0.50% of the Vehicle License Fee rate for the first five years) to counties to fund realigned programs.

After the taxes expire (2016-17 and after), the State must provide revenues to fund realigned programs in an amount equal to or greater than the amount of revenue that would have been generated by the 1% sales and use tax rate and 0.50% of the Vehicle License Fee rate for as long as the realigned programs remain the responsibility of counties.

If the State fails to annually appropriate the funds, the Controller is directed to transfer funds from the General Fund to the Local Revenue Fund 2011 in an amount equal to or greater than the amount that would have been generated by the 1% sales and use tax rate and 0.50% of the Vehicle License Fee rate. Although this constitutional obligation is a priority payment lower than school funding and general obligation bond debt, there is sufficient revenue capacity to meet this obligation.

Timing and Scope: Implementing Statutes are Critical. The State has the remainder of the legislative year to enact "2011 Realignment Legislation." (The specified date is October 9, 2011, the final day for the Governor to act on bills passed at the end of the current legislative year.) This implementing legislation will provide for the assignment of public safety service responsibilities to counties, and the constitutional amendment requires the implementing legislation to provide maximum flexibility and control over the design and delivery of such services consistent with federal law and funding requirements.

This section of the Constitution broadly defines "Public Safety Services" to describe the listing of programs in the Governor's revised realignment proposal.

The 2011 Realignment Legislation will specify the details of the method for determining the amount of revenue to be transferred to counties after the tax extensions expire, in 2016-17 and each year thereafter, and it will specify the detailed requirements for the Controller to disburse realignment funds to counties in the event the Legislature fails to timely appropriate those funds. The 2011 Realignment Legislation must also specify the mechanism for identifying and providing funding to counties for the State's 50 percent share of new costs associated with federal changes in the realigned programs.

Future Program Changes. Any State legislation enacted after October 9, 2011 that has the overall effect of increasing costs to counties for realigned programs or levels of service (with the exception of new crimes) shall apply only to the extent the State provides annual funding for the cost increase. Counties are not obligated to provide programs or levels of service required by legislation above the level for which funding has been provided. The language provides the same protections for regulations, executive orders, or administrative directives that are not necessary to implement the 2011 Realignment Legislation and that have an overall effect of increasing costs to counties. Finally, the State must provide similar funding for federal plans or waivers, or amendments to those plans or waivers, that have the overall effect of increasing costs to counties.

The costs of future program changes may not be funded from 2011 Realignment funds, ad valorem property taxes, or the Social Services Subaccount from 1991 Realignment.

Program changes that result from a request by a local agency (meaning a Board of Supervisors resolution to sponsor a bill) or to comply with federal law are not required to be funded under this provision.

Shared Risk for Federal Law Changes, Judicial Decisions, and Penalties.

For social services, mental health, and substance use disorder programs, the State will be required to provide at least 50 percent of the non-federal share of the costs associated with subsequent changes in federal law and regulations that alter the conditions under which federal matching funds are obtained and have the overall effect of increasing county costs.

In the event that there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing a county's costs, the State shall provide at least 50 percent of the non-federal share of those costs as determined by the State.

Where the CA Falls Short

The language of the CA is not perfect nor does it include all protections counties might wish to see. The risk of accepting new responsibilities along with a new revenue source and operating programs within that revenue source is a risk fundamental to realignment. As a result, counties will have to live within the performance of the dedicated sales tax and VLF revenue. While counties could benefit from growth over time, we could also experience shortfalls if the revenues underperform. To mitigate these constraints, counties must have the flexibility to manage programs locally to the greatest extent possible. Part of living within the revenue provided means that counties will have to make decisions on how to allocate the available funds among realigned programs.

Remaining risks are outlined below:

Ability to Enforce Continuous Appropriation (Years 1-5): The constitutional amendment language requires that the dedicated tax revenue be deposited in the state Local Revenue Fund 2011. In the first year, the Legislature then provides a continuous appropriation of that revenue to fund realigned programs. Counsels point out that, should the Legislature fail to continuously appropriate these funds or redirect them otherwise, the courts could find that the State has violated the Constitution, but not order the Legislature to act or appropriate funds, something the courts have been loathe to do.

In attempting to quantify this risk, we look to the continuous appropriation set up in the 1991 Realignment. Since then, the Legislature has not taken any action to either undo the continuous appropriation or transfer those funds. Further, there would be a serious political risk for the Legislature to do so, given that voters would be much less likely to approve additional revenues to continue to fund realignment of critical public safety and safety net programs after the temporary taxes expire.

Ability to Enforce 50/50 Share of Cost for New Federal Requirements: A similar risk exists in the language that provides for the State to appropriate at least 50 percent share of costs of new federal requirements, including penalties, or for cost increases that result from federal judicial actions. If the State fails to meet its minimum 50 percent funding obligation, the courts would not order the Legislature to appropriate those funds. However, under the status quo (existing Proposition 1A/SB 90 mandate protections), local agencies are currently not entitled to reimbursement for any costs associated with new programs or higher levels of service imposed by federal law or judicial decision. For existing realignment, those new costs are shared under existing sharing ratios. Currently, federal penalty costs are shared pursuant to statutory sharing ratios that can be changed by the Legislature at any time.

Non-supplantation Language: The Administration's proposed language includes a prohibition from using 2011 Realignment funds to supplant existing

spending on realigned programs. This provision will require counties to continue funding existing programs, services, and administrative costs with county general fund revenue to the extent such funding is provided as of the effective date of the measure, and require a maintenance of effort for some programs.

Authorizes Third-Party Lawsuits: The proposed language authorizes an “appropriate party” to seek judicial relief if the state or local agency fails to perform a duty or obligation in realigned programs and states that such proceedings have priority over all other civil matters. This provision gives third parties standing in the constitution to sue counties for failing to adequately perform realigned programs, though for many, if not most, of the realigned programs, third parties have standing to sue under existing law. Thus, this provision does not represent a significant change over the status quo.

No Protection for Outcomes of State Court Decisions: The language does not offer protections to counties from state court outcomes. However, counties have legal standing to intervene in state court cases.

Realignment Responsibilities, Including State Regulations, Not Subject to Mandate Claim or Reimbursement: New programs or higher level of service responsibilities associated with the 2011 Realignment would not be subject to the protections provided by Article XIII B, Section 6 (existing Proposition 1A/SB 90 mandate protections). This includes state regulations that are issued to implement the 2011 Realignment Legislation. Counsels have advised us that the State could promulgate regulations that they claim are necessary to implement the 2011 Realignment Legislation, and the courts would be reluctant to second guess a legislative or executive determination that a new program or higher level of service is necessary to implement 2011 Realignment Legislation.

What Is the Alternative?

It has been difficult for anyone in Sacramento to quantify an alternative state budget outcome that does not rely on a balanced approach – a combination of program cuts and new revenue – should the Legislature fail to garner the votes necessary to place the constitutional amendment before the voters or should the voters reject the ballot measure. However, we know that there are a number of ways for the State to achieve General Fund savings with a majority vote that can profoundly impact counties. In fact, recent events have suggested some possibilities, which we outline below.

Statutory implementation of “realignment”: With the passage of Proposition 25, the Legislature can pass bills necessary to implement the budget with a majority vote. State budget decisions that shift responsibilities and/or costs to counties without any revenue are possible, if not likely, particularly in the public safety area. (Obviously, without the tax extensions, the funding from the VLF currently provided to local public safety grant programs would expire.)

Permanent program reductions: Because the State has limited ability to reduce its budget, given Proposition 98 and federal constraints, permanent program cuts that have the effect of shifting significant costs to counties, primarily in the health and human services area, are likely. (See February 10, 2011 Legislative Analyst's Office letter to Senator Leno, attached.)

Failure to ratify the gas tax swap: After Proposition 26, a 2/3 vote is necessary to ratify the gas tax swap. Failing to ratify the gas tax swap would result in a \$2.5 billion reduction in transportation funding; further, an additional \$1 billion in state transportation funds could be diverted for General Fund relief by majority vote, resulting in a total annual loss of \$3.5 billion.

Additional fund sweeps: Any revenues or special funds not protected by the Constitution can be diverted to the state General Fund. Counties can anticipate sweeps – such as the EMS Maddy Fund proposal in the pending state budget – on a much larger scale.



COUNTY of MARIPOSA

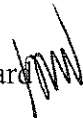
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MARIPOSA COUNTY BOARD OF SUPERVISORS AMENDED MINUTE ORDER

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Cc: Richard J. Benson, CAO
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