

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
BOARD OF DIRECTORS  
Thursday, December 1, 2011  
2:00pm - 4:00pm  
Grand Ballroom B, Hilton Hotel, San Francisco, CA

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A G E N D A

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Presiding: John Tavaglione, President

**2:00pm**

***PROCEDURAL ITEMS***

- |    |  |        |
|----|--|--------|
| 1. | Roll Call                                | Page 1 |
| 2. | Approval of Minutes of September 8, 2011 | Page 3 |

**2:10pm**

***ACTION ITEMS***

- |    |   |   |
|----|---|---|
| 3. | Election of 2012 Executive Committee<br>▪ <i>Paul McIntosh, CSAC Executive Director</i>   | handout   |
| 4. | CSAC Policy Committee Reports<br>Administration of Justice<br>▪ <i>Supervisor Federal Glover, Chair</i><br>▪ <i>Elizabeth Howard, CSAC staff</i><br><br>Agriculture and Natural Resources<br>▪ <i>Supervisor Richard Forster, Chair</i><br>▪ <i>Karen Keene, CSAC staff</i><br><br>Government Finance and Operations<br>▪ <i>Supervisor Bruce Gibson, Chair</i><br>▪ <i>Jean Hurst &amp; Eraina Ortega, CSAC staff</i><br><br>Health and Human Services<br>▪ <i>Supervisor Liz Kniss, Chair</i><br>▪ <i>Kelly Brooks, CSAC staff</i><br><br>Housing, Land Use and Transportation<br>▪ <i>Supervisor Efren Carrillo, Chair</i><br>▪ <i>DeAnn Baker, CSAC staff</i> | Page 8<br><br>Page 9<br><br>Page 10<br><br>Page 11<br><br>Page 12 |
| 5. | Approval of Resolution Authorizing Executive Director to Conduct CSAC Business<br>▪ <i>Paul McIntosh</i>  | Page 13   |

**3:00pm**  
**DISCUSSION ITEM**

6. 2011 Realignment: Constitutional Initiative  
▪ *Paul McIntosh*

Page 14

**3:45pm**  
**INFORMATION ITEMS**

7. *The following items are contained in your briefing materials for your information, but no presentation is planned:*

- |   |         |
|---|---------|
| ❖ 2012 Board of Directors Meeting Schedule      | Page 52 |
| ❖ Institute for Excellence in County Government | Page 53 |
| ❖ CSAC Litigation Coordination Program Update   | Page 60 |
| ❖ CSAC Finance Corporation Report               | Page 66 |
| ❖ CSAC Corporate Associates Report              | Page 67 |

8. Other Items

**4:00pm**  
**ADJOURN**

# CALIFORNIA STATE ASSOCIATION OF COUNTIES

## Board of Directors

2012

<u>Section</u>	<u>County</u>	<u>Director</u>
U	Alameda County	Keith Carson
R	Alpine County	Terry Woodrow
R	Amador County	Louis Boitano
S	Butte County	Maureen Kirk
R	Calaveras County	Merita Callaway
R	Colusa County	Kim Dolbow Vann
U	Contra Costa County	Federal Glover
R	Del Norte County	Michael Sullivan
R	El Dorado County	Norma Santiago
S	Fresno County	Henry Perea
R	Glenn County	John Viegas
R	Humboldt County	Mark Lovelace
S	Imperial County	Gary Wyatt
R	Inyo County	Susan Cash
S	Kern County	Jon McQuiston
R	Kings County	Doug Verboon
R	Lake County	Anthony Farrington
R	Lassen County	Jim Chapman
U	Los Angeles County	Don Knabe
R	Madera County	Frank Bigelow
S	Marin County	Susan Adams
R	Mariposa County	Lee Stetson
R	Mendocino County	Carre Brown
S	Merced County	Hubert "Hub" Walsh
R	Modoc County	Jeff Bullock
R	Mono County	Duane "Hap" Hazard
S	Monterey County	Fernando Armenta
S	Napa County	Brad Wagenknecht
R	Nevada County	Ted Owens
U	Orange County	John Moorlach
S	Placer County	Jim Holmes
R	Plumas County	Jon Kennedy
U	Riverside County	John Tavaglione

U	Sacramento County	Susan Peters
R	San Benito County	Margie Barrios
U	San Bernardino County	Gary Ovitt
U	San Diego County	Greg Cox
U	San Francisco City & County	Eric Mar
S	San Joaquin County	Larry Ruhstaller
S	San Luis Obispo County	Bruce Gibson
U	San Mateo County	Carole Groom
S	Santa Barbara County	Joni Gray
U	Santa Clara County	Liz Kniss
S	Santa Cruz County	Mark Stone
S	Shasta County	Glenn Hawes
R	Sierra County	Lee Adams
R	Siskiyou County	Jim Cook
S	Solano County	Mike Reagan
S	Sonoma County	Valerie Brown
S	Stanislaus County	Vito Chiesa
R	Sutter County	Larry Munger
R	Tehama County	Robert Williams
R	Trinity County	Judy Pflueger
S	Tulare County	Steve Worthley
R	Tuolumne County	Richard Pland
U	Ventura County	Kathy Long
S	Yolo County	Matt Rexroad
R	Yuba County	Roger Abe

President: John Tavaglione, Riverside  
 First Vice President: Mike McGowan, Yolo  
 Second Vice President: David Finigan, Del Norte

SECTION: U=Urban S=Suburban R=Rural

CALIFORNIA STATE ASSOCIATION OF COUNTIES  
 BOARD OF DIRECTORS  
 September 8, 2011  
 Sacramento Convention Center

MINUTES

Presiding: John Tavaglione, President

1. ROLL CALL

Alameda	Keith Carson	Plumas	absent
Alpine	Terry Woodrow	Riverside	John Tavaglione
Amador	Louis Boitano	Sacramento	Susan Peters
Butte	Maureen Kirk	San Benito	Margie Barrios
Calaveras	Merita Callaway	San Bernardino	absent
Colusa	Kim Dolbow Vann	San Diego	Greg Cox
Contra Costa	Federal Glover	San Francisco	absent
Del Norte	Finigan/Sullivan	San Joaquin	absent
El Dorado	Norma Santiago	San Luis Obispo	Bruce Gibson - audio
Fresno	Henry Perea - audio	San Mateo	absent
Glenn	John Viegas	Santa Barbara	Joni Gray
Humboldt	Mark Lovelace - audio	Santa Clara	Liz Kniss
Imperial	absent	Santa Cruz	absent
Inyo	Susan Cash	Shasta	absent
Kern	Jon McQuiston	Sierra	Lee Adams
Kings	Doug Verboon - audio	Siskiyou	absent
Lake	Anthony Farrington	Solano	Mike Reagan
Lassen	Jim Chapman	Sonoma	Valerie Brown - audio
Los Angeles	absent	Stanislaus	Vito Chiesa
Madera	Frank Bigelow - audio	Sutter	Larry Munger
Marin	Susan Adams - audio	Tehama	Robert Williams
Mariposa	absent	Trinity	absent
Mendocino	Carre Brown - audio	Tulare	Steve Worthley
Merced	Hubert "Hub" Walsh - audio	Tuolumne	Richard Pland - audio
Modoc	Jeff Bullock - audio	Ventura	Kathy Long - audio
Mono	absent	Yolo	McGowan/Rexroad
Monterey	Fernando Armenta	Yuba	Roger Abe
Napa	Brad Wagenknecht	Advisors:	Marshall Rudolph, Nancy Watt, Susan Muranishi,
Nevada	absent		Bruce Goldstein - audio
Orange	John Moorlach		
Placer	absent		

The presence of a quorum was noted.

2. APPROVAL OF MINUTES

The minutes of June 2, 2011 were corrected to reflect that Supervisor Long's name had been misspelled. Minutes approved as corrected.

3. ENDORSEMENT OF COAST2COAST RX DISCOUNT DRUG PROGRAM

CSAC has been approached by Coast2Coast Rx, soliciting CSAC's endorsement of their discount drug card program, in exchange for the payment of a royalty for the endorsement and marketing support. Paul McIntosh indicated the royalty would amount to 40 cents per prescription. Coast2Coast competes directly with CVS/Caremark drug program which is endorsed by NACo. However, CVS/Caremark does not offer a royalty arrangement. CVS/Caremark is currently hosted by 25 California counties and Coast2Coast is currently hosted by 16 California counties. It is estimated that the royalties received from the Coast2Coast endorsement would equal at least 7% of current dues paid by California counties to CSAC, enabling CSAC to sustain current programs and services in the face of a declining state and national economy. While there are no guarantees that royalties would be sustained over the long haul, there are not commitments required of CSAC. Some concerns were raised regarding the perception that this arrangement may be viewed as CSAC receiving "kickbacks."

McIntosh requested authorization to enter into an agreement with Coast2Coast Rx for endorsement of the program in exchange for royalty payments.

Motion and second to authorize CSAC to enter into an endorsement agreement with Coast2Coast Rx. Motion carried (8 'no' votes).

4. INDIAN GAMING: STATE COMPACTS & FEDERAL LAND INTO TRUST REFORM

CSAC has worked with the previous two Administrations on Tribal-State Gaming Compacts in an effort to mitigate the off-reservation impacts of casinos. CSAC staff, working with the County Counsel's Association, has been meeting with the Brown Administration and the Attorney General's Office since April as they consider various policy changes to the previous compact templates executed by Governors David and Schwarzenegger.

Consistent with existing policy, CSAC's main priorities to improve the mitigation and implementation outcomes under new and renegotiated compacts include: promoting local government-tribal mitigation agreements; ensuring that off reservation impacts of tribal casinos are fully mitigated; improving the integrity of tribal environmental review analysis; and providing adequate time for both comment on environmental documents and meaningful negotiations.

There are a few issues being proposed that are not explicitly provided for in CSAC policy. Staff outlined those proposals as follows:

- a. Create a regulatory fund for State oversight activities and the mitigation of impacts on state services and infrastructure.
- b. Create a County Gaming Mitigation Fund for the purposes of mitigating defined public health and safety impacts of gaming operations.
- c. Defines an "Impacted City" as any city in which a gaming facility is located or whose boundary is ¼ miles from the boundary of a gaming facility.
- d. State Designated Agency amended to include "political subdivision of the state".
- e. Requires tribes to share design and building plans with the county for health and public safety purposes.
- f. Tribes must establish a program to ensure that delinquent child support judgment payments are deducted from per capita benefits.
- g. Amends the arbitration provisions to allow the Governor's Special Master to substitute for an arbitrator.

h. Prohibits the sale of alcohol on the casino floor and provides for liability for the tribe related to injuries from drunk drivers leaving the facility.

Motion and second to approve additional policy that supports the proposed changes to the existing compacts as outlined above, especially supporting the County Gaming Mitigation fund, with an amendment to change "impacted city" to "impacted community" in order to address issues where neighboring counties are also affected. Motion carried unanimously.

CSAC formed the Multi-State Fee-to-Trust Coalition in response to the 2009 Supreme Court decision in *Carcieri v. Salazar*, which held that the Secretary of Interior lacks authority to take land into trust for Indian tribes that were not under federal jurisdiction at the time of the passage of the Indian Reorganization Act of 1934. The decision created a unique opportunity for Congress to address long-standing, fundamental deficiencies in the federal Fee-to-Trust process. CSAC and its other state association partners from New York, Wisconsin, and Idaho, have been working over the past two years to develop a legislative proposal to achieve our mutual policy goals. These goals, consistent with established CSAC policy on the Fee-to-Trust process, include: adequate notice and transparency; meaningful consultation; and judicially enforceable intergovernmental agreements.

The Coalition has developed a number of concepts to meet these policy goals. Given the unique conditions in California with respect to tribal gaming, such as the large number of tribes and casinos, CSAC and representatives of the County Counsel's association have outlined a reform approach that they believe is politically viable. Staff reviewed details of the proposal as contained in the briefing materials.

Staff was directed to make the following amendments to the proposal: include a request that counties receive notice of a trust land application at the same time the Secretary of Indian Affairs is notified; and strengthen economic self-sufficiency language. Final language will be brought back to the Board of Directors for review.

Motion and second to approve Fee-to-Trust reform proposal as amended. Motion carried.

#### 5. 2011 REALIGNMENT: CONSTITUTIONAL PROTECTIONS & FISCAL STRUCTURE

Paul McIntosh outlined direction given by the Executive Committee at its August meeting which was to begin to explore all viable options for counties to achieve the constitutional protections promised by the Governor and necessary for counties to make realignment successful. Staff endeavored to accomplish the Executive Committee's direction and met with a variety of campaign professionals to ascertain the options for a path forward. Staff distributed a memo outlining those options and requested direction from the Board of Directors on next steps. Staff also distributed an editorial from the *Los Angeles Times* urging the Governor and Legislature to provide constitutional protections for Realignment and urged individual counties to submit similar editorials to local papers.

A lengthy discussion ensued regarding options and steps to take to achieve constitutional protections for Realignment.

Motion and second to proceed with recommended next steps in the following priority order: 1. Draft and submit a realignment only measure. 2. Conduct polling and voter research to get a better understanding of voter priorities. 3. Engage in a public awareness campaign. 4. Continue to urge the Governor to build a coalition around a single measure that includes appropriate protections and dedication of revenue for counties. 5. Begin building a coalition around constitutional protections for counties. 6. Develop a strategy for building a legislative coalition of former county supervisors. In addition, CSAC should work with county counsels to develop a litigation strategy. Motion carried (1 'no' vote).

Staff was directed to assist counties with organizing local campaigns to hold legislators who are former county supervisors accountable for their lack of support for counties.

#### 6. PENSION REFORM UPDATE

At the Government Finance & Operations (GF&O) policy committee meeting in June 2011, staff provided an update on various pension reform proposals that would apply to public employees, including county employees. Following significant discussion, the Committee directed staff to provide a pension reform update to the CSAC Board of Directors. A detailed summary of those proposals was contained in the briefing materials.

Staff announced that the current legislative proposals will not be moving forward this legislative session and a conference committee will be created to look at pension reform in a broader context beginning in January. The Governor is interested in a cap on pensions, but CSAC does not have current policy regarding caps. Additional proposals will be brought to the GF&O committee in November. Staff was directed to send information to Board of Directors regarding which counties are offering two-tiered programs.

#### 7. CSAC AGRICULTURE & NATURAL RESOURCES POLICY COMMITTEE REPORT

Supervisor Kim Vann, Vice Chair of the CSAC Agriculture & Natural Resources (ANR) committee, provided a report from the meeting held on August 18. CSAC and the Regional Council of Rural Counties have been working to develop a strategy to help counties create a better working relationship with the USFS and BLM to create a statewide voluntary MOA, outlining a structure under which counties and federal public land management agencies consent to communicate and work with one another.

To that end, the policy committee met as a subcommittee and took action to recommend a support position to the full ANR committee on a draft Memorandum of Agreement (MOA) between counties and the U.S. Forest Service (USFS) and Bureau of Land Management (BLM). This item will be brought to the Board of Directors at the annual meeting.

#### 8. REPORT ON THREAT OF ZEBRA & QUAGGA MUSSELS

Supervisor Anthony Farrington provided a report on the Quagga and Zebra mussels (collectively called Dreissenids) which pose a serious risk to water bodies throughout the State. The Quagga mussels are native to the Baltic Region and first arrived in the United States via ballast water discharged into the Great Lakes by ocean freighters in the last 1980s. Infestation spread to the Colorado River and into Arizona, Nevada and California waterways. Supervisor Farrington indicated they impede distribution of municipal water supplies, agricultural irrigation and power plant operation. Mussels can impact recreation by limiting recreational opportunities, encrusting docks and beaches, colonizing recreational equipment including watercraft hulls, engines and steering components. Most areas of the state are vulnerable to future transport and contamination by Quagga and Zebra mussels because they are primarily transported by watercraft.

On August 16, 2011, the Lake County Board of Supervisors adopted a Resolution Requesting the Governor Declare a Statewide Emergency Resulting from Infestation of Dreissenid Mussels into the Water Bodies of the State of California. A copy of the Resolution was contained in the briefing materials. Supervisor Farrington requested that other counties adopt similar resolutions, in order to convey to the Governor the need for a uniformly applied strategy, formulated at the State and Federal levels, designed to ensure the Quagga and Zebra mussels are effectively contained and further contamination is prevented.

#### 9. REPORT ON GREAT CALIFORNIA SHAKEOUT

Supervisor Bruce Gibson presented a report on the "Great California Shakeout" which is a statewide earthquake drill being held on October 20. He urged other counties to participate and distributed a list of parameters with links to various details concerning this important event.



#### 10. PROPOSED JOINT SUMMIT ON STATE OF CALIFORNIA'S CONTINUED DYSFUNCTION

President Tavaglione outlined a proposal that was recently brought before the Riverside County Board of Supervisors by one of his colleagues, Supervisor Jeff Stone. The proposal was that 13 counties in Southern California should secede and create the State of Southern California. The Riverside Board expressed understanding and support for Supervisor Stone's frustration with the continued dysfunction of state government in California, but encouraged him to find an alternate route to resolve the issue and suggested he work with CSAC. Soon, thereafter, Supervisor Stone met with President Tavaglione, Paul McIntosh and representatives of the League of California Cities to discuss a statewide summit, which was another of Supervisor Stone's ideas. Caution was expressed against such a summit without a path from the summit that would enable frustrations expressed to be channeled into change. The meeting ended with the agreement that this issue would be brought to the Boards of Directors of CSAC and the League of Cities for discussion.

The consensus of the Board of Directors was that CSAC should not pursue this issue.

#### 11. CSAC LEGISLATIVE REPORT

Staff announced that an end-of-session legislative report will be produced and distributed early next week.

#### 12. OTHER ITEMS

Paul McIntosh announced that the CSAC Institute has created a Leadership Symposium for supervisors and county administrators which is an intensive three-day leadership practices learning experience designed to build capacities in collaboration and adoptive change to evaluate current challenges within counties. It will be held in San Jose on February 16 - 18 and there are 45 slots available. Board members are encouraged to attend. The costs of the instruction and course materials are being underwritten by several founding sponsors.

Meeting adjourned.



## **CSAC 117<sup>th</sup> Annual Meeting**

### **Administration of Justice Policy Committee**

**Tuesday, November 29, 2011 ■ 2:30 – 4:30 p.m.**

**Imperial Ballroom A ■ Ballroom Level ■ Hilton San Francisco Union Square  
333 O'Farrell Street ■ San Francisco City and County, California**

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### **Supervisor Federal Glover, Contra Costa County, Chair Supervisor Merita Callaway, Calaveras County, Vice-Chair**

- 2:30 p.m.      **I. Welcome and Introductions**  
*Supervisor Federal Glover, Contra Costa County  
Supervisor Mike McGowan, CSAC First Vice President*
- 2:35            **II. October 1 Has Come and Gone: Report on Realignment Implementation**  
*Terri McDonald, Undersecretary of Operations, California Department of Corrections and Rehabilitation; Pat Ryan, Executive Director, California Mental Health Directors Association; Karen Pank, Executive Director, Chief Probation Officers of California; Curtis Hill, Legislative Representative, California State Sheriffs Association*
- 3:05            **III. Community Corrections Partnerships (CCP) – Roundtable Discussion on the CCP Planning and Implementation Process**  
*All Administration of Justice Policy Committee Members*
- 3:40            **IV. Strategies to Educate the Public on the 2011 Criminal Justice Realignment**  
*Terry Amsler, Program Director, Public Engagement and Collaborative Governance Program, Institute for Local Government*
- 3:45            **V. Public Safety Affiliate Report: California District Attorneys Association**  
*Cory Salzillo, Director of Legislation, California District Attorneys Association*
- 4:00            **VI. Update on Other Aspects of 2011 Realignment**  
*Elizabeth Howard Espinosa and Rosemary L. McCool, CSAC Administration of Justice Committee Staff*
- 4:15            **VII. AB 900 Phase II Local Jail Construction Funds**  
*Bob Takeshta, Acting Executive Director, Corrections Standards Authority; Leslie Heller, Field Representative, Corrections Standards Authority*
- 4:25            **VIII. End of 2011 Legislative Session Wrap-up**  
*Elizabeth Howard Espinosa and Rosemary L. McCool, CSAC Administration of Justice Committee Staff*
- 4:30            **IX. Closing Remarks and Adjournment**  
*Supervisor Federal Glover, Contra Costa County*



## **Agriculture and Natural Resources Policy Committee**

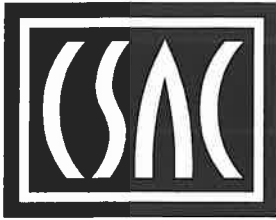
**Tuesday, November 29, 2010 · 10:00 a.m. – 11:45 a.m.**

**Hilton \* Union Square, 333 O'Farrell Street, San Francisco, CA  
Imperial Ballroom A, Ballroom Level**

### **AGENDA**

Supervisor, Richard Forster, Amador County, Chair  
Supervisor Kim Vann, Colusa County, Vice-Chair

- 10:00 a.m.           **I.       Welcome and Introductions**  
*Supervisor Richard Forster, Amador County, Chair*
- 10:05 – 11:15 a.m.   **II.       PANEL DISCUSSION: Challenges & Opportunities:  
Siting Renewable Energy Facilities**
- *Tim Snellings, Development Services Director, Butte County*
  - *David Morrison, Assistant Director, Yolo County Planning & Public Works*
  - *Sandy Goldberg, Senior Counsel, Governor's Office of Planning & Research*
  - *John Gamper, California Farm Bureau Federation*
  - *Mark Nelson, Director of Generation Planning & Strategy, Southern California Edison*
- 11:15 - 11:25 a.m.   **III.      CAL FIRE Director's Report: SRA Fee Update and Priorities  
For 2012**
- Ken Pimlott, CAL FIRE, Director*  
ATTACHMENT: SRA FEE MEMO
- 11:25 -11:40 a.m.   **IV.      What the Future Holds for California State & County Fairs:  
Obstacles and Opportunities**
- Rebecca Desmond, Director, California Division of Fairs & Expositions*
- 11:40 a.m.           **V.       Closing Comments & Adjournment**



**Government Finance and Operations Policy Committee**  
**117th Annual CSAC Annual Meeting**  
**Tuesday, November 29, 2011 — 2:30 p.m. – 4:30 p.m.**  
**Imperial Ballroom B, Hilton Union Square, 333 O'Farrell Street**  
**City and County of San Francisco, California**

**Supervisor Bruce Gibson, San Luis Obispo County, Chair**  
**Supervisor John Moorlach, Orange County, Vice Chair**

- 2:30 p.m.    **I. Welcome and Introductions**  
*Supervisor Bruce Gibson, San Luis Obispo County, Chair*  
*Supervisor John Moorlach, Orange County, Vice Chair*  
*Supervisor Mike McGowan, Yolo County, CSAC 1st Vice President*
- 2:35 p.m.    **II. GASB Proposed Rules for Pension Accounting**  
*Alan Milligan, Chief Actuary, CalPERS*
- 3:00 p.m.    **III. Pension Reform Update**  
*Eraina Ortega, CSAC Legislative Representative*
- 3:30 p.m.    **IV. Pension Benefits: Vesting**  
*Eraina Ortega, CSAC Legislative Representative*  
*Faith Conley, CSAC Senior Legislative Analyst*
- 3:35 p.m.    **V. LAO's Fiscal Outlook**  
*Marianne O'Malley, Managing Principal Analyst, State and Local*  
*Finance, Legislative Analyst's Office*  
*Brian Brown, Local Government Issues, Legislative Analyst's Office*
- 4:00 p.m.    **VI. 2011 Realignment: The Constitutional Amendment Explained**  
*Jean Kinney Hurst, CSAC Legislative Representative*
- 4:20 p.m.    **VII. California's Historic Election Divestment**  
*John Armtz, Director of Elections, San Francisco County (Invited)*
- 4:30 p.m.    **VIII. Closing Comments and Adjournment**  
*Supervisor Bruce Gibson, San Luis Obispo County, Chair*  
*Supervisor John Moorlach, Orange County, Vice Chair*



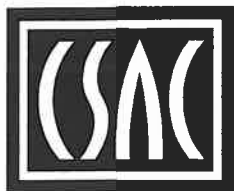
**Health and Human Services Policy Committee**  
**Wednesday, November 30, 2011 - 2:00 – 4:00 p.m.**  
**CSAC 117th Annual Meeting - San Francisco County**  
**Hilton San Francisco Union Square**  
**333 O'Farrell Street, San Francisco, CA 94102**

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**Supervisor Kniss, Santa Clara County, Chair**  
**Supervisor Woodrow, Alpine County, Vice Chair**

This policy committee meeting is an in-person meeting only  
and is being held as part of the CSAC 2011 Annual Meeting.

- 2:00 p.m.      I.      **Welcome and Introductions**  
*Supervisor Liz Kniss, Santa Clara County*  
*Supervisor Mike McGowan, Yolo County, CSAC 1<sup>st</sup> Vice President*
- 2:05 – 2:40      II.      **Governor Brown's California Health and Human Services Agency**  
*Diana S. Dooley, Secretary, California Health and Human Services Agency*
- 2:40 – 3:20      III.      **Health and Human Services: Integral Partners in AB 109 Success**  
*Susan Mauriello, County Administrative Officer, Santa Cruz County*  
*Marta McKenzie, RD, MPH, Director, Health and Human Services Agency, Shasta County*  
*Jo Robinson, MFT, Director, Community Behavioral Health Services, San Francisco City and County*
- 3:20 – 3:50      IV.      **Innovations in Health Care Delivery: Just in Time for 2014**  
*Wendy Jameson, Executive Director, Safety Net Institute*
- 3:50 – 4:00      V.      **The Campaign For Modern Medicines**  
*Kathy Miller, Advisor, Global Public Policy, Eli Lilly and Company*
- 4:00 p.m.      VI.      **Adjourn**  
*Supervisor Liz Kniss, Santa Clara County*



**Housing, Land Use, & Transportation Policy Committee  
117<sup>th</sup> CSAC Annual Meeting**

**Wednesday, November 30, 2011 · 10:00 a.m. – 12:00 p.m.**

**Hilton San Francisco Union Square · Imperial Ballroom A · Ballroom Level  
333 O'Farrell Street, San Francisco, California 94102**

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**AGENDA**

Supervisor Efren Carrillo, Sonoma County, Chair  
Supervisor Matt Rexroad, Yolo County, Vice Chair

- 10:00 a.m. I. **Welcome, Introductions, and Opening Remarks**  
*Supervisor Efren Carrillo, Sonoma County, Chair*  
*Supervisor Matt Rexroad, Yolo County, Vice Chair*  
*Supervisor Mike McGowan, Yolo County, CSAC 1<sup>st</sup> Vice President*
- 10:05 a.m. II. **State and Federal Native American Affairs Update**  
*Bruce Goldstein, County Counsel, Sonoma County*  
*Joe Krahn, Senior Associate, Waterman and Associates*  
*Hasan Sarsour, Associate, Waterman and Associates*  
Attachment One: Memo to CSAC Board: State Indian Gaming Update  
Attachment Two: Memo to CSAC Board: Federal Indian Gaming Update
- 10:30 a.m. III. **California High-Speed Rail Update**  
*Lance Simmens, Deputy Director of Communications,*  
*California High-Speed Rail Authority*
- 10:45 a.m. IV. **California's Changing Economy & Demographics:  
Shaping Future Regional Growth**  
*Paul Fassinger, Partner, CTP Planning & Economics*
- 11:15 a.m. V. **Transportation Funding Needs**  
*DeAnn Baker, CSAC Senior Legislative Representative*  
*Kiana Buss, CSAC Senior Legislative Analyst*  
*Joe Krahn, Senior Associate, Waterman and Associates*  
*Hasan Sarsour, Associate, Waterman and Associates*  
Attachment Three: Draft Executive Summary: Statewide Transportation System  
Needs Assessment  
Attachment Four: MAP-21 Summary Memo
- 11:45 a.m. VI. **State Budget & Legislation: A 2011 Wrap-Up**  
*DeAnn Baker, CSAC Senior Legislative Representative*  
*Kiana Buss, CSAC Senior Legislative Analyst*
- 12: 00 p.m. VII. **Other Items & Adjournment**

## **RESOLUTION OF THE BOARD OF DIRECTORS**

### **County Supervisors Association of California Doing business as the California State Association of Counties**

WHEREAS, the Board of Directors of the California State Association of Counties (CSAC) employs an executive director and other staff to perform its day-to-day business; and

WHEREAS, the Board desires the business of the association to be transacted in an efficient and appropriate manner; and

WHEREAS, from time to time the Executive Director and Secretary of the Corporation must sign or approve documents on behalf of the Board;

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of CSAC hereby authorizes the Executive Director and Secretary of the Corporation, and his designees on staff, to execute and approve bank and other documents as authorized by the Board of Directors or the Executive Committee.

FURTHER BE IT RESOLVED, that this resolution shall remain in effect until the 2012 annual meeting of CSAC, when a similar resolution will be executed by the newly constituted Board of Directors.

Duly adopted this 1<sup>st</sup> day of December, 2011.

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John Tavaglione, President

November 16, 2011



To: Board of Directors  
California State Association of Counties

From: Paul McIntosh  
Executive Director

Re: **2011 Realignment: Constitutional Protections Update**

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1100 K Street  
Suite 101  
Sacramento  
California  
95814

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916.327-7500

Facsimile  
916.441.5507

At its meeting of September 8, 2011, the Board of Directors directed CSAC staff to take the steps necessary to secure constitutional protections for 2011 Realignment while “keeping all options open”. These steps encompassed pursuing a realignment-only proposed constitutional amendment, including polling and voter research as well as drafting and submitting a measure to the Attorney General for title and summary; continuing to work with the Administration on a coalition measure that includes previously negotiated protections and dedication of revenue for 2011 realignment; identifying a litigation strategy counties may wish to pursue should constitutional protections not be achieved; and, pursuing constitutional protections via the Legislature. An update on these efforts is provided below.

As for the realignment-only ballot measure, the Board will not have – from a timing perspective – sufficient information to determine how to proceed until early January. We anticipate receiving title and summary from the Attorney General by December 29, 2011 and will conduct a quick poll to determine voters’ response to that title and summary. With that information, and hopefully more information as to the Administration’s plans, we will convene the Board of Directors at a special meeting the first week in January for action and direction on next steps.

#### **PROPOSED BALLOT INITIATIVE**

Since your meeting of September 8, CSAC staff and legal counsel have worked to develop a proposed ballot initiative that provides similar constitutional protections to those negotiated with the Administration and contained in SCA 1X, which this Board overwhelmingly supported in March of this year. This measure (language and summary are attached) was carefully crafted to appeal to the voters for passage, minimize opposition, secure the support of the Administration, and mitigate any potential negative fiscal implications that would be noted in the fiscal analysis prepared by the Legislative Analyst’s Office<sup>1</sup>. During the course of developing the initiative, staff and consultants briefed stakeholders in Sacramento and extensively evaluated feedback from a variety of sources.

**League of California Cities, California Police Chiefs Association, Big City Mayors.** CSAC received letters from both the mayors of the state’s 10 largest cities and the League of California Cities expressing concerns about cities’ perceived fiscal impacts associated with AB 109 (copies attached). The cities’ concerns about indirect impacts on municipal law enforcement agencies resulting from offender population shifts, coupled with the loss of

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<sup>1</sup> Campaign consultants have strongly advised against deviating from the negotiated agreement that led to SCA 1X and “loading up” a ballot measure, noting the need to secure support of the Administration and avoid an opposition effort, both of which could increase the costs of an initiative campaign.



cities' general purpose Vehicle License Fees (VLF) in the 2011-12 state budget, compelled the League to request incorporation of specific language into the measure to restore \$130 million in general purpose VLF revenues to cities and \$60 million dedicated to cities' front-line law enforcement impacts associated with AB 109. The League made additional requests to ensure that COPS funding for cities and booking fee replacement revenues, as well as the existing allocations and operations of those programs, were explicitly protected. Further, they requested that the state be prohibited from using ad valorem property taxes for purposes of funding new costs associated with realignment or as replacement revenue should the Legislature determine the need for a new revenue source. Finally, the League was concerned about the prohibition on seeking mandate reimbursement for realigned programs, noting that cities may wish to seek mandate reimbursement for ancillary costs imposed upon them as a result of realignment.

After considerable discussion with our officers and other stakeholders, CSAC advised the League of California Cities that their request to increase the sales tax amount diverted from the state general fund was not something we could support. We informed them that the purpose of our measure was to protect the existing level of funding currently provided and to constitutionally protect such revenues against future state raids or redirection. Our staff and political advisors felt that redirecting additional general funds away from the state could attract opposition from the Administration and potentially others with deep pockets.

Other concerns raised by the League, however, warranted some merit and were addressed. After conversations with our law enforcement partners, consultants, and counsel, and at the direction of the CSAC officers, staff and counsel prepared and submitted amendments to the initiative language to accomplish the following:

- Clarifying that property taxes may not be used for reimbursement of costs or as a replacement revenue source for realigned programs;
- Refining the language to ensure that local law enforcement subvention funds cannot be reduced, abolished, reallocated or otherwise changed unless by a 4/5 vote of the Legislature;
- Including clarifying language to exempt new crimes from future State reimbursement, ensuring that we do not inhibit the Legislature from establishing or defining new crimes; and,
- Using the term "local agencies" to describe those entities to which responsibility for realigned programs have been transferred, ensuring cities and special districts that currently receive funding are included in the definition.

**Brown Administration.** Staff and counsel met with Administration representatives to discuss the draft measure and had a productive conversation to clarify intent and discuss areas of concern. Eventually, a number of changes were made to provide clarity and to address some concerns from the Administration. Not all of the Administration's requests, though, were able to be accommodated, including concerns about the established October 9, 2011 date for legislation that transferred responsibilities to counties under 2011 Realignment.

On November 4, 2011, the measure was filed with the Attorney General. By law, the Attorney General has 45 days in which to issue the title and summary. Officially, the measure is sponsored by *Californians to Protect Public Safety and Local Services*, a joint committee formed by CSAC, the California State Sheriffs' Association (CSSA), the Chief Probation Officers of California (CPOC), and others. As proponents of the measure, CSAC has been contacted by both the Attorney General's Office and by the Legislative Analyst's Office to provide input into both the title and summary and fiscal analysis. Staff and counsel are currently working to prepare materials for those meetings. Again, it is anticipated that title and summary and the fiscal note from the Legislative Analyst's Office will be received at the end of December.

**Campaign Finance.** CSAC is in the process of developing a financing plan to allow for the collection of signatures to begin as soon as possible after title and summary are received, should the Board of Directors choose to take action to do so. Our campaign consultants estimate that 1.3 million signatures will be required to provide the 850,000 valid signatures necessary to qualify a constitutional amendment for the November 2012 ballot. The cost of collecting signatures is estimated at \$3 million. The cost of signatures can vary significantly based on factors outside of our control: the number of other measures "on the street" and what those other campaigns are paying. The more measures, the higher the cost. If the Board of Directors determines that CSAC should move forward independent of a broader coalition led by the Governor, we propose that non-public funds available to CSAC from the Finance Corporation be used to cover those costs. It must be noted, though, that these funds are currently contributed to CSAC to subsidize services provided to California counties. The loss of these subsidized funds would have to be backfilled to avoid a serious degradation of CSAC's advocacy efforts. We will bring a proposal to address that issue to the Board, as well.

It is important to note that state law prohibits the use of public funds for campaign purposes; CSAC will carefully monitor activities and expenditures to ensure that campaign-related costs are billed to the campaign account and paid for with non-public funds. Costs associated with securing the title and summary and fiscal analysis for a ballot measure, signature-gathering, and the like must be funded through non-public funds.

#### **GOVERNOR'S COALITION EFFORT**

As of the date of this writing, CSAC has not yet been briefed on the current status of the Governor's effort to bring together education, labor, and the business community on a comprehensive ballot measure that would provide new revenue for education and constitutional protections for realignment. Recall that AB 114, the education trailer bill to the budget, expressly calls for a November 2012 ballot measure to provide additional dedicated funding to schools. Also, recall that the California School Boards Association, along with others, has filed a legal challenge against the state's calculation of the Proposition 98 guarantee in the 2011-12 state budget, charging that the state illegally underfunded education by an estimated \$2.5 billion by not holding Proposition 98 harmless for the transfer of state revenues from the General Fund to the Local Revenue Fund (the state special fund for realignment).

While CSAC, CSSA, and CPOC continue to have discussions with the Administration about progress on the coalition effort, it remains unclear as to where things stand today. To be sure, time is running short.

## **LEGISLATIVE APPROACH**

While the Legislature appears to generally be supportive of protections for counties for realigned programs, there are significant political challenges that should be considered prior to seeking legislative approval of a constitutional amendment that provides the protections counties desire for realigned programs. Democrats are supportive of realignment protections, but have the challenge of desiring more revenues to help fund education; many Republicans, while generally supportive of local governments and providing protections, disavow the policies behind public safety realignment.

Also, simply due to timing, signature-gathering on our realignment-only ballot initiative must begin during the first quarter of 2012 – making action, from the Legislature’s perspective, less urgent. Recall that the Legislature can place a constitutional amendment on the November 2012 ballot as late as summer 2012 with a 2/3 vote. However, in order to qualify via signature gathering, our window closes sooner.

## **LITIGATION STRATEGY**

The County Counsels’ Association has prepared the attached memorandum outlining a possible approach on a litigation effort regarding realignment. Existing protections provided by Proposition 1A (2004) prohibit the state from shifting costs to local agencies without providing funding. As has been discussed with you previously, this protection is particularly relevant to the social services, mental health, and substance abuse treatment programs included in realignment, as there is no argument as to whether or not these are cost shifts. However, counties would be required to litigate the transfer after keeping careful data about expenditures associated with new program costs. As with all things mandate-related, such a case could take many years to litigate, leaving counties with significant costs until a final decision is reached. The question of whether the transfer of responsibilities associated with certain aspects of managing the new offender population assigned by AB 109 is a cost shift under the same provisions of Proposition 1A is less clear and likely would also have to be litigated.

## **NEXT STEPS**

Again, it is anticipated title and summary will be issued by the Attorney General in late December, that title and summary will be tested with voters in early January, and the Board of Directors will be convened in a special meeting shortly thereafter. Armed with that information and data, plus additional intelligence about the Administration’s progress on a coalition effort, we are hopeful that the Board can determine at that time whether to move forward with signature-gathering on the proposed initiative.

### **Attachments:**

- Initiative Language
- Initiative Summary
- Letter from the League of California Cities
- Letter from the “Big Ten Mayors”
- Memo from the County Counsels’ Association re: Litigation
- Letter to Attorney General Kamala Harris re: Title and Summary

## Summary: Draft Realignment Constitutional Protections

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**Introduction.** The measure's title and prefatory language frames the issue for voters and is intended to highlight the measure's purpose, obviously with an eye toward voter support. It is also very important should the measure see litigation.

**Definitions.** A significant drafting change relates to the definitions of the services realigned to counties. Rather than describe the new duties as a narrative, as in SCA 1X, the measure identifies realigned services by cross reference to specific statutes in the 2011 Realignment Legislation. We specifically defined Law Enforcement Subvention Programs to include booking fee replacement revenue, COPS funding, Juvenile Justice Crime Prevention Act funds, Juvenile Probation and Camp funds, CalEMA local assistance grants, and small and rural county sheriffs grants.

2011 Realignment Legislation is defined as the legislation that was enacted during the 2011 legislative session to assign new responsibilities to local agencies.

**Revenues.** Dedicates the existing 1.0625% of state sales and use tax revenues and the remaining 25.1% of Vehicle License Fees (VLF) to the Local Revenue Fund 2011 starting in fiscal year 2011-12 and continuing thereafter. These revenues are continuously appropriated to the Local Revenue Fund 2011 to fund the provision of realigned programs. Pending full implementation, the funds may also be used to reimburse state costs.

Counties must create a County Local Revenue Fund 2011 and use revenues deposited into the fund exclusively for realigned programs, as specified in statute.

The measure ensures that the legislature cannot redirect, shift, or otherwise interfere with the allocation of these revenues to the Local Revenue Fund 2011.

**Mandates.** Removes realigned programs from the SB 90 mandate process.

**Future Program Changes.** State legislation, regulations, executive orders, or administrative directives that are enacted after this year that have the effect of increasing costs shall only apply to the extent the state provides annual funding for the cost increase. The state is prohibited from requiring new programs or higher levels of service without funding.

Any legislation enacted between October 9, 2011 and the effective date of the amendment that has the effect of increasing costs or responsibilities for realigned programs shall be void unless the state provides annual and ongoing funding for the increased cost or responsibility. Local agencies are not required to provide programs or levels of service above the level for which funding has been provided.

The state is prohibited from submitting plans or waivers (or amendments to existing plans or waivers) to the federal government that increase costs to local agencies for realigned programs unless the state provides annual funding for the increase.

Increased costs that are associated with changes in federal statutes or regulations or court decisions will be shared with the state (state providing at least 50 percent of the nonfederal share of costs) for specified realigned health and human services programs.

The state may not use property taxes, 2011 realignment funds, or 1991 realignment funds to pay for these increased costs.

Funds deposited in the County Local Revenue Fund 2011 shall not be used to supplant other funding for realigned programs.

Except for the defined Law Enforcement Subvention programs, the Legislature may reduce or eliminate one or more of the realigned programs and reduce the appropriations of funds in the amount allocated for that program (or programs). The local agency is then no longer required to provide that service. If there is a dispute as to the amount of revenue reduced, a local agency may challenge the state in court. If the court finds that the state in fact reduced the appropriation in an amount greater than the amount actually spent, the court shall order the Controller to appropriate the correct amount to the counties.

Reductions to the defined Law Enforcement Subvention programs may only occur with a 4/5 vote of the Legislature.

**Future Revenue Changes.** The measure does not limit the Legislature's ability to impose a lawful fee or tax. The measure ensures that the Legislature can also reduce or eliminate fees or taxes.

However, if the dedicated revenue sources are reduced or eliminated, the state remains obligated to commit funding to the Local Revenue Fund 2011 in amount equal to or greater than the amount that would have been generated by those revenue sources for as long as local agencies are required to provide the realigned programs.

If the state fails to do so, the Controller is directed to transfer General Fund revenues on a monthly basis to the Local Revenue Fund 2011 and disburse them in accordance with 2011 Realignment Legislation. This obligation is a priority payment for the state behind general obligation debt and the state's responsibility to fund schools.

**Subject to Audit.** The measure authorizes the Controller to perform audits of expenditures from the Local Revenue Fund 2011 and any county Local Revenue Fund to ensure that those funds are used and accounted for in a manner consistent with this section, and to provide information about whether the cost of providing transferred services exceed the amount of revenues provided by the State.

RECEIVED  
NOV 10 2011

November 10, 2011

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

VIA PERSONAL DELIVERY

The Honorable Kamala D. Harris.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor, P.O. Box 944255  
Sacramento, CA 95814

Attention: Dawn McFarland, Initiative Coordinator

Re: Request to Make Nonsubstantive Amendment to Initiative No. 11-0061 Amdt.  
#1S

Dear Ms. Harris:

A typographical error was recently discovered in Initiative No. 11-0061 Amdt. # 1S. On page 5, line 7 of the measure, the word "or" in the phrase "Notwithstanding Section 6 or Article XIII B" should be "of," so that the phrase reads "Notwithstanding Section 6 of Article XIII B."

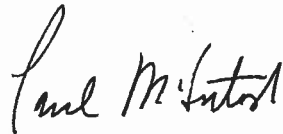
The proponent believes this amendment is non-substantive.

All inquires or correspondence relative to this initiative and the amendments described above should be directed to Nielsen, Merksamer, Parrinello, Gross & Leoni,

LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814, (916) 446-6752, Attention:  
Cathy Christian.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Paul McIntosh". The signature is written in a cursive style with a large initial "P" and a distinct "M".

Paul McIntosh, Proponent

1 This measure shall be known as “The Local Taxpayers, Public Safety and Local Services  
2 Protection Act of 2012.”

3 **SECTION 1. FINDINGS AND DECLARATIONS.**

4 The people of the State of California find and declare that:

5 (1) In the 2011 Legislative session, the State Legislature transferred from state  
6 government to counties and other local governments the responsibility for providing a number of  
7 public services, including law enforcement and public safety services, care for abused and  
8 neglected seniors and children, mental health and substance abuse recovery programs, and  
9 monitoring and detaining specified felony offenders, in a series of legislative enactments known  
10 as “2011 Realignment.”

11 (2) However, while the Legislature required local governments to provide these services,  
12 the State did not provide a guaranteed source of ongoing funding to pay for the delivery of these  
13 services beyond one year.

14 (3) Local governments are more accountable to the public and better able to deliver  
15 services efficiently and effectively. However, transferring responsibility for services without also  
16 guaranteeing State revenue to provide these services jeopardizes local government’s ability to  
17 provide law enforcement and public safety, mental health and substance abuse recovery, care for  
18 abused and neglected children and seniors, and other services vital to Californians.

19 (4) Historically, the State Legislature has repeatedly raided and shifted funds dedicated  
20 to local governments, and the State has also failed to adequately reimburse local governments for  
21 the costs of providing services that the State mandates local governments provide.

22 (5) It is the intent of this ballot measure to require the State to transfer ongoing State  
23 funding to counties and local governments to pay for the cost of providing services that were



1 transferred in 2011 by the State to local government. This measure dedicates *existing* state  
2 revenues, and does not raise taxes.

3 (6) The ballot measure prohibits the State Legislature from raiding or otherwise  
4 redirecting these existing revenues away from counties and local governments in the future  
5 unless the transferred programs are reduced or eliminated.

6 (7) This ballot measure also prohibits the State from passing any new law or regulation  
7 that imposes additional costs on local governments to provide services associated with 2011  
8 Realignment, unless the State provides ongoing State funding to pay for these services.

9 (8) All revenues from this measure are subject to annual, independent audits by the State  
10 Controller to ensure that they will be used only for local public safety responsibilities and other  
11 local services that have been transferred to the counties and local governments by the State, and  
12 to provide information about whether the cost of providing transferred services exceed the  
13 amount of revenues provided by the State.

14 **SECTION 2. STATEMENT OF PURPOSE.**

15 The purpose of this measure is to require the State to provide ongoing, guaranteed funding to  
16 counties and other local governments for the cost of providing services that were shifted in 2011  
17 from the State to local government; to prohibit the State from reducing funding for 2011  
18 Realignment in future years unless there also is a commensurate reduction in local government  
19 program responsibilities; and to prohibit the State from passing any new law or regulation that  
20 imposes additional costs on local governments to provide these services unless the State  
21 provides a source of state funding to pay for the additional costs.

22 **SECTION 3.** Section 36 is added to Article XIII of the California Constitution, to read:

23 SEC. 36. (a) For purposes of this section:

1           (1) “Public Safety and Other Local Services” includes the programs and services  
2 transferred to local agencies in the 2011 Realignment Legislation, including Law Enforcement  
3 Subvention Programs.

4           (2) “2011 Realignment Legislation” means the following chaptered bills: Assembly Bills  
5 94, 109 (as amended by Assembly Bill 117 of the 2011-2012 Regular Session of the Legislature  
6 and Assembly Bill 17 of the 2011-2012 First Extraordinary Session of the Legislature), 111, and  
7 118 (as amended by Assembly Bill 16 and Senate Bill 4 of the 2011-2012 First Extraordinary  
8 Session of the Legislature) of the 2011-2012 Regular Session of the Legislature; Senate Bills 87  
9 and 93 of the 2011-2012 Regular Session of the Legislature; and the programs set forth in Part  
10 2.5 (commencing at section 5775) of Division 5 of the Welfare and Institutions Code and Article  
11 5 (commencing at section 14680) of Chapter 8.8 of Part 3 of Division 9 of the Welfare and  
12 Institutions Code, as those provisions existed on October 9, 2011.

13           (3) Law Enforcement Subvention Programs means the following provisions as they  
14 existed on October 9, 2011:

15           (i) The criminal justice payments set forth in Article 12 (commencing at section 29550)  
16 of Chapter 2 of Division 3 of Title 3 of the Government Code;

17           (ii) The supplemental local law enforcement services funding set forth in Chapter 6.7  
18 (commencing at section 30061) of Division 3 of Title 3 of the Government Code;

19           (iii) Assistance for rural and small county law enforcement services set forth in Chapter  
20 6.9 (commencing at section 30070) of Division 3 of Title 3 of the Government Code;

21           (iv) Criminal justice grants set forth in Chapter 3 (commencing at section 13820) of Title  
22 6 of Part 4 of the Penal Code; and

1 (v) Juvenile probation funding set forth in Chapter 3.2 (commencing at 18220) of Part 6  
2 of Division 9 of the Welfare and Institutions Code.

3 (b) In order to deliver local public safety, protective and preventative services for seniors  
4 and children, and other public services that were shifted to local agencies from State government  
5 as the result of the 2011 Realignment Legislation, this section creates a guaranteed source of  
6 ongoing, dedicated state funding for local agencies, out of existing state funds, that cannot be  
7 redirected, shifted or taken by the Legislature in the future unless there also is a commensurate  
8 reduction in Public Safety and Other Local Services.

9 (c) Commencing in fiscal year 2011-2012 and continuing thereafter, the following  
10 revenues shall be deposited into the Local Revenue Fund 2011, as established by Section 30025  
11 of the Government Code:

12 (1) All revenues, less refunds, derived from the taxes described in Sections 6051.15 and  
13 6201.15 of the Revenue and Taxation Code, as those sections read on July 1, 2011.

14 (2) All revenues (including penalties) less refunds, derived from the vehicle license fees  
15 described in Section 11005 of the Revenue and Taxation Code, as that section read on July 1,  
16 2011.

17 (d) (1) Funds deposited in the Local Revenue Fund 2011, less costs of administering the  
18 fund, are hereby continuously appropriated to each County Local Revenue Fund 2011, as  
19 allocated by the Controller as directed by statute, exclusively to fund Public Safety and Other  
20 Local Services. Pending full implementation of the 2011 Realignment Legislation, funds may  
21 also be used to reimburse the State for costs incurred in providing Public Safety and Other Local  
22 Services on behalf of local agencies.

1           (2) The county treasurer, city and county treasurer, or other appropriate official shall  
2 create a County Local Revenue Fund 2011 within the treasury of each county or city and county.  
3 The money in each County Local Revenue Fund 2011, as created by the county treasurer, city  
4 and county treasurer, or other appropriate official in accordance with Section 30025 of the  
5 Government Code, shall be exclusively used to fund Public Safety and Other Local Services by  
6 local agencies as specified by the 2011 Realignment Legislation.

7           (e) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a  
8 mandate of a new program or higher level service on a local agency imposed by the 2011  
9 Realignment Legislation, or by any regulation adopted or any executive order or administrative  
10 directive issued to implement that legislation, shall not constitute a mandate requiring the State  
11 to provide a subvention of funds within the meaning of subdivision (b) of that section.

12           (f) (1) The Legislature shall be prohibited from enacting legislation after October 9, 2011,  
13 that has an overall effect of increasing the costs or scope of responsibility borne by a local  
14 agency for Public Safety and Other Local Services mandated, transferred or realigned to local  
15 agencies by the 2011 Realignment Legislation unless the State provides annual, ongoing funding  
16 for the increased cost or responsibility. Local agencies shall not be obligated to provide  
17 programs or levels of service required by legislation, described in this paragraph, above the level  
18 for which funding has actually been provided.

19           (2) Any legislation enacted after October 9, 2011 and prior to the effective date of this  
20 paragraph that has an overall effect of increasing the costs or scope of responsibility borne by a  
21 local agency for Public Safety and Other Local Services transferred or realigned by the 2011  
22 Realignment Legislation shall be void unless the State provides annual, ongoing funding from  
23 revenues appropriated by the State for such increased cost or responsibility. Local agencies shall

1 not be obligated to provide programs or levels of service required by legislation, described in this  
2 paragraph, above the level for which funding has actually been provided.

3 (3) The State shall be prohibited from enacting regulations, executive orders, or  
4 administrative directives, after October 9, 2011, that are not necessary to implement the 2011  
5 Realignment Legislation, and that have an overall effect of increasing the costs already borne by  
6 a local agency for Public Safety and Other Local Services mandated by the 2011 Realignment  
7 Legislation, unless the State provides annual, ongoing funding from revenues appropriated by the  
8 State for such increased cost or responsibility. Local agencies shall not be obligated to provide  
9 programs or levels of service pursuant to new regulations, executive orders, or administrative  
10 directives, described in this paragraph, above the level for which funding has been actually  
11 provided.

12 (4) Any new program or higher level of service provided by local agencies, as described  
13 in paragraphs (1), (2) and (3), in excess of the provided funding, shall not require a subvention of  
14 funds by the State nor otherwise be subject to Section 6 of Article XIII B. This subdivision shall  
15 not apply to legislation currently exempt from subvention under paragraph (2) of subdivision (a)  
16 of Section 6 of Article XIII B.

17 (5) The State shall not submit to the federal government any plans or waivers, or  
18 amendments to those plans or waivers, that have an overall effect of increasing the cost or  
19 responsibility borne by a local agency for Public Safety and Other Local Services mandated,  
20 transferred or realigned by the 2011 Realignment Legislation, except to the extent that the State  
21 provides annual funding for the cost increase.

22 (6) The State shall not be required to provide a subvention of funds pursuant to this  
23 subdivision for a mandate that is imposed by the State at the request of a local agency or to

1 comply with federal law. State funds required by this subdivision shall be from a source other  
2 than ad valorem property taxes or the Social Services Subaccount of the Sales Tax Account of  
3 the Local Revenue Fund, or the Local Revenue Fund 2011.

4 (7) Except as provided in paragraph (8) of this subdivision, nothing in this section  
5 prohibits the Legislature from subsequently reducing or eliminating one or more of the Public  
6 Safety and Other Local Services. Should the Legislature do so, it may reduce the appropriation  
7 of the revenues described in subdivision (c) and allocated to the County Local Revenue Fund  
8 2011 by the amount allocated by the State for one or more of the reduced or eliminated Public  
9 Safety and Other Local Services during the prior fiscal year. Upon such reduction or  
10 elimination, the local agency shall no longer be required under the 2011 Realignment Legislation  
11 to provide such services. Any local agency may challenge the amount of the reduction in the  
12 appropriation to the County Local Revenue Fund 2011 under this paragraph in a court of  
13 competent jurisdiction. Upon a finding by the Court that the Legislature reduced the  
14 appropriation in an amount greater than the amount allocated by the State for the reduced or  
15 eliminated Public Safety Services during the prior fiscal year, the Controller shall impound and  
16 allocate to counties the improperly reduced or unallocated funds from the continuous  
17 appropriation provided for in subdivision (d).

18 (8) Notwithstanding paragraph (7) of this subdivision, the Legislature may only reduce,  
19 eliminate, or reallocate the funding for, or otherwise make changes to, Law Enforcement  
20 Subvention Programs by vote of four-fifths of the membership of both houses of the Legislature.

21 (g) (1) For Public Safety and Other Local Services described in paragraphs (3) to (5),  
22 inclusive, of subdivision (i) of Section 30025 of the Government Code, as that section read on  
23 July 1, 2011, if there are subsequent changes in the federal statutes or regulations that alter the

1 conditions under which federal matching funds as described in 2011 Realignment Legislation are  
2 obtained that have the overall effect of increasing the costs incurred by a local agency, the State  
3 shall provide annual funding of at least 50 percent of the nonfederal share of those costs as  
4 determined by the State.

5 (2) When the State is a party to any complaint brought in a federal judicial or  
6 administrative proceeding that involves one or more of the Public Safety and Other Local  
7 Services described in paragraphs (3) to (5), inclusive, of subdivision (i) of Section 30025 of the  
8 Government Code, as that section read on July 1, 2011, and there is a settlement or judicial or  
9 administrative order that imposes a cost in the form of a monetary penalty or has the overall  
10 effect of increasing the costs already borne by a local agency for Public Safety and Other Local  
11 Services mandated, transferred or realigned by the 2011 Realignment Legislation, the State shall  
12 provide annual funding of at least 50 percent of the nonfederal share of those costs as determined  
13 by the State. Payment by the State is not required if the State determines that the settlement or  
14 order relates to one or more local agencies failing to perform a ministerial duty, failing to  
15 perform a legal obligation in good faith, or acting in a negligent or reckless manner.

16 (3) The State funds provided in this subdivision shall be from funding sources other than  
17 ad valorem property taxes, the Social Services Subaccount of the Sales Tax Account of the Local  
18 Revenue Fund, or the Local Revenue Fund 2011.

19 (h) (1) The funds deposited into a County Local Revenue Fund 2011 shall be spent in a  
20 manner designed to maintain the State's eligibility for federal matching funds, and to ensure  
21 compliance by the State with applicable federal standards governing the State's provision of  
22 Public Safety and Other Local Services.

1           (2) The funds deposited into a County Local Revenue Fund 2011 shall not be used by  
2 local agencies to supplant other funding for Public Safety and Other Local Services.

3           (3) This section shall not be construed to prevent the Legislature from subsequently  
4 imposing, increasing, reducing, or repealing a fee or tax enacted in accordance with this  
5 Constitution.

6           (i) If the Legislature reduces or repeals the revenue described in subdivision (c) and  
7 adopts an alternative source of revenue to replace them, the alternative source of revenue is  
8 hereby continuously appropriated, and shall be deposited into the Local Revenue Fund 2011 in  
9 an amount equal to or greater than the aggregate amount that otherwise would have been  
10 provided by the revenue described in subdivision (c) in the year the revenue was reduced or  
11 repealed. If the Legislature reduces or repeals the revenue described in subdivision (c) and fails  
12 to adopt an alternative source of revenue, the funds are hereby appropriated from the General  
13 Fund to the Controller who shall transfer therefrom the amount described above in pro rata  
14 monthly shares to the Local Revenue Fund 2011. Thereafter, the Controller shall disburse these  
15 amounts to local agencies in the manner directed by statute. The State funds provided in this  
16 subdivision shall be from funding sources other than ad valorem property tax, the Social Services  
17 Subaccount of the Sales Tax Account of the Local Revenue Fund, or the Local Revenue Fund  
18 2011. The State shall be obligated to provide the amount described above for so long as the local  
19 agencies are required to perform the Public Safety and Other Local Services responsibilities  
20 mandated, transferred or realigned by 2011 Realignment Legislation. The State obligations  
21 under this subdivision have a lower priority claim to General Fund money than the first priority  
22 for money to be set apart under Section 8 of Article XVI and the second priority to pay voter-  
23 approved debts and liabilities described in Section 1 of Article XVI.



1           (j) The Controller, pursuant to his or her statutory authority, may perform audits of  
2     expenditures from the Local Revenue Fund 2011 and any County Local Revenue Fund to ensure  
3     that those funds are used and accounted for in a manner consistent with this section, and to  
4     provide information about whether the cost of providing transferred services exceed the amount  
5     of revenues provided by the State.



October 12, 2011

John Tavaglione, President  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814

Dear Mr. Tavaglione:


As Mayors of the largest cities in California, we understand the monumental task that Counties will be faced when implementing realignment. To succeed in keeping our streets safe, a collaborative effort must take precedence across the state and between cities and counties.

As the State's plan has already begun, we urge you to consider in your discussions the following guiding principles that will be key to a successful realignment plan across the state:

1. **Follow the offender** - Funding should go directly to public safety agencies involved with either the responsibility of direct and indirect oversight/supervision, or suppression/apprehension of parolees, as well as to those cities and counties with front-line law enforcement responsibilities of protecting their communities from potential offenses by parolees.
2. **Intervention/Prevention** - State should provide direct funding to cities that are implementing **data-driven, comprehensive gang prevention strategies** that include evaluation outcomes and re-entry plans.
3. **Re-entry** – Direct funding should be provided for supplemental functions that cities will provide like housing and work force development to assist in re-entry.

The success of realignment will be contingent on the partnerships between counties and cities across the state that will be charged with implementing realignment plans. It is critically important to the success of realignment that cities obtain a guaranteed funding stream from the state to supplement the work of counties. We urge you to adopt these principals in defining your ballot language.

Thank you for your consideration.



TOM TAIT  
Mayor – Anaheim



ASHLEY SWEARENGIN  
Mayor – Fresno



MIGUEL PULIDO  
Mayor – Santa Ana



ANTONIO R. VILLARAIGOSA  
Mayor – Los Angeles



JEAN QUAN  
Mayor – Oakland



KEVIN JOHNSON  
Mayor – Sacramento



JERRY SANDERS  
Mayor – San Diego



EDWIN LEE  
Mayor – San Francisco



CHUCK REED  
Mayor – San Jose

cc: Paul McIntosh, Executive Director, California State Association of Counties



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www.cacities.org

October 19, 2011

Paul McIntosh, Executive Director  
California State Association of Counties  
1101 K St., Suite 101  
Sacramento, CA 95814

**SUBJECT:** Proposed Constitutional Amendment for Protecting Realignment Funding

Dear Paul:

Thanks for meeting with Dan Carrigg and me last Friday, October 14, to discuss our ideas about how to forge a consensus and coalition to protect the interests of counties and cities in responding to the state's realignment initiative. In our meeting we laid out a proposal to create what we believe would be a Win-Win proposal for CSAC and the League as well as our allied associations in public safety and elsewhere. It involved dedicating \$190 million of the non-mental health realignment portion of the 0.65% VLF to cities (\$130 million) and city realignment (\$60 million) with a corresponding 0.0375% increase in the set-aside of the state sales tax to produce a similar amount to fund the public safety grant programs that have been of critical importance to both cities and counties.

We explained the proposal would protect the state's realignment funding commitment to counties while preventing the CSAC ballot measure from undermining the League's efforts to secure the return of VLF funding for four (4) new cities in Riverside County of \$15.4 million annually that is vital to their continued existence and \$115 million in general VLF funding for all cities for public safety and other critical municipal functions.

Both in our meeting of October 3 and in our follow-up letter to you of October 5 we stressed the importance to the League of the CSAC initiative not interfering with VLF funds that were needed for these critical purposes. We committed to you that we would work with the California Police Chiefs Association to develop a proposal for dedicated municipal realignment funding and return of VLF funds to cities that met what we understood to be CSAC's only prerequisite--that it not require raising taxes. As a result, I was very disappointed last Friday when you indicated you could not include any provisions that varied from the basic approach of SB 89 and AB 109. If I misunderstood your response last Friday, I would appreciate your clarification.

We are open to partnering with CSAC on a realignment revenue protection ballot measure that advances the strategic interests of both CSAC and the League. We have been strong partners in past campaigns (i.e., Prop. 65, Prop. 1A, Prop. 90, and Props. 98/99), and I think we have demonstrated our ability to deliver on our commitments. Our preference has always been to work with CSAC in a collaborative way on measures and legislation that benefit both counties and cities, and we believe our proposal does this through only a minor modification to the draft CSAC proposal. In addition to our request for modification of the funding protections as we have proposed, we have identified a number of drafting issues (see below) that we believe need to be addressed before filing the measure.

## Comments on Draft Ballot Measure

In our meeting you gave us the most recent draft of the CSAC ballot measure and invited our comments. Betsy Strauss, Dan Carrigg and I have reviewed it in detail and discussed our concerns. The first tier of our comments below reflect our serious concerns about the way the proposed measure undermines what the League and CSAC have fought for over the years in the way of important local revenue protections. The second tier involves concerns about inadequate protection for the COPS and Jail Detention Facility Grants and other matters. As you will see below, in its current form we believe the measure will harm the strategic interests of cities. Moreover, the proposal we gave you last Friday would avoid the most important of these problems with the current approach and draft.

1. **Weakening of Protections in Propositions 47 and 1A.** The League and CSAC worked together to pass Proposition 47 in 1986 and Proposition 1A in 2004 that provide important protections for the VLF and property taxes to prevent them from being taken by the state. We believe the CSAC draft seriously weakens these protections and reduces the protections from unfunded mandates in Prop. 1A.

- a. VLF and Prop. 47. The draft measure directly undercuts the League's efforts to return \$130 in VLF to cities, including the four new cities in Riverside County that are facing bankruptcy or disincorporation if a solution is not found. By dedicating the VLF to funding the public safety grant programs (that were not previously part of realignment), the draft eliminates the protections of Prop. 47 that its own legislative history demonstrates were designed specifically to protect the VLF for **general** city and county purposes<sup>1</sup>. SB 89 clearly violates Prop. 47 (Article XI, Sec. 15), as slightly amended and strengthened by Prop. 1A. Our proposal to you last Friday would not suffer from these problems for cities since it restores the general city share of the VLF, but it also allows the balance of the VLF to be dedicated for city realignment and public safety grant program funding.
- b. Property Tax and Mandate Protections in Prop. 1A. As you know, Prop. 1A also contained important amendments to Art. XIII B, Sec. 6 that we believe may be unintentionally undermined by your current draft.<sup>2</sup> This could be addressed by redrafting this provision to make it clear that it applies only to counties and that the measure establishes an alternative to, rather than an exception from, the Constitutional requirement to reimburse for state mandates. This would clarify the voters' intent that it is not in any way intended to apply to other mandates for new programs or higher levels of service.

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<sup>1</sup> See New Sec. 36 (c) (2) and (d) (2) on page 4 which dedicate the "vehicle license fees described in Sec. 11005 of R&T Code" to fund "Public Safety Services by local agencies as specified by the 2011 Realignment Legislation." Also, Finding No. 5 in Section 1 describes the VLF as "State funding."

<sup>2</sup> For example, the way New Sec. 36 (e) on page 4 is drafted could give rise to future presumptions that Art. XIII B, Sec. 6 does not apply to similar state mandates in the future. Moreover, it may weaken the provisions of Art. XIII B, Sec. 6 (b) (3) that provides: "Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service." For example, Section 36(f) (1) and (2) requires the State to provide "annual funding" for increased costs or responsibilities. The "annual funding" could be property taxes from cities or special districts.

2. **Other Concerns.** The draft raises a number of other concerns for us that are enumerated below:

- a. COPS Program Restricted to Realignment and Not Protected. Unlike SB 89/AB 118, the draft measure restricts the use the COPS program funds to realignment related “public safety services.”<sup>3</sup> Moreover, the funding for it could be eliminated and used for some other realignment purpose.
- b. Jail Detention Facility Grants Restricted to Realignment and Not Protected. Like COPS, the jail detention facility grants to sheriffs also appear to become realignment related “public safety services” under the draft measure. Like the CPS program, the funding for it could be discontinued and used for some other realignment purpose. In such case, there is no limitation in the measure on cities being charged booking fees.
- c. Underperforming Revenues/Deferred Payments. The measure does not seem to contemplate a decline in revenues dedicated to realignment from underperforming sales tax, VLF, or substitute revenue. Further, there is no protection against deferral of payment of the funds.
- d. DMV Administrative Costs. The draft does not limit the portion of the VLF that could be dedicated to the DMV to defray its administrative costs. In our proposal we suggested capping it at the currently authorized amount of \$25 million.

We will make ourselves immediately available to elaborate on our concerns above and to assist with additional drafting. We have honored your request to keep the draft language confidential, but we feel we now need to share it with others as soon as possible, so your prompt response would be appreciated.

Sincerely,



Christopher McKenzie  
Executive Director

- c. John Tavaglione, CSAC President  
League Executive Committee

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<sup>3</sup> New Section 36(d) (2) states that the money in each County Local Revenue Fund 2011 “shall be exclusively used to fund Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.” We understand this section to be referring to AB 109. Although Section 36(a) (1) includes a definition of “Public Safety Services,” Section 36(d) (2) seems to restrict the use of these revenues to programs and services mentioned in AB 109.

## Proposal for Protecting Realignment and Historic City VLF Funding

Since October 5, 2011, the League has been working with the California Police Chiefs Association to refine an estimate of the necessary additional annual funding for municipal realignment needs and to develop a specific proposal that would advance both CSAC's and the League's need for funding certainty and protection. Our specific proposal is laid out below. It would restore and protect city VLF general purpose revenues diverted by SB 89 (including the funding for the new cities), provide and protect VLF funding for an additional \$60 million to finance new city realignment public safety duties, and provide and protect the same level of funding for county realignment programs and law enforcement grant programs as the legislature provided this fiscal year in AB 109 and SB 89. Here are its details:

1. Increase the portion of the state sales tax dedicated to realignment from the existing 1.0625% to 1.10%. The 0.0375% increase will yield approximately \$190 million annually. Dedicate and protect the increase of funds for the local law enforcement grant programs funded from the Supplemental Local Law Enforcement Services Account.
2. Allocate and protect \$490 million of the non-mental health realignment portion of the 0.65% VLF as follows<sup>4</sup>:
  - a. \$300 million to the Supplemental Local Law Enforcement Services Account of the Local Revenue Fund 2011 for the local law enforcement grant programs.
  - b. \$190 million (that is no longer needed for the local law enforcement grant programs because of the additional state sales tax flowing to fund the grant programs) as follows:
    - i. \$130 million to cities for general purposes.
    - ii. \$60 million to cities to mitigate the impact of realigned public safety duties.
3. Cap state VLF administrative costs from 0.65% VLF at \$25 million.

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<sup>4</sup> Each of the dollar amounts (\$300 million; \$130 million; and \$60 million) would be identified in the Constitutional amendment as a percentage of the total revenues attributable to the 0.65% VLF that is not currently dedicated to W & I 7600.



# County Counselors' Association of California

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*Jennifer B. Henning*

## MEMORANDUM

**To:** John Tavaglione, President, and  
Members of the Board of Directors

**From:** County Counselors' Association Litigation Overview  
Committee

**Date:** December 1, 2011

**Re:** Potential Realignment Litigation Strategy

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Summary: At your Board's September 8 meeting, you requested information on the remedies available through the courts related to 2011 Realignment. Specifically, your Board expressed concern that certain public safety functions and health and human services funding ratios were legislatively realigned to counties without a constitutionally dedicated source of ongoing revenue. The Board directed CSAC staff to pursue all options to achieve dedicated revenues for realignment, including a possible litigation strategy.

The County Counselors' Association's Litigation Overview Committee has discussed the 2011 Realignment Legislation and has concluded that a possible viable option for obtaining funding for realignment is to pursue mandate reimbursement as provided for in section 6 of article XIII B of the constitution (Prop. 1A). Prop. 1A requires the State to provide subventions whenever the Legislature mandates a new program or higher level of service on any local government. Seeking those subventions before the Commission on State Mandates and/or in the courts would, at a minimum, add pressure to attempts to obtain constitutionally protected revenues. Successful mandate claims would also obligate the State to pay counties for the actual costs of the realigned programs.

Prop. 1A does not, however, offer a quick, instant remedy. Any effort to seek mandate reimbursements for realigned programs would be a significant undertaking. Further, Prop. 1A has some important limitations and risks for counties. These include: (1) the inability to actually require the State to make the payments due to counties even where mandate claims are successful; (2) the requirement to pay for services without any opportunity for reimbursement for those unfunded or underfunded programs that have been declared mandates that a county elects to continue providing; and (3) the only real remedy if the State fails to fund a mandated program is that counties can stop providing the service, which may not be viable for these realigned programs.



Background:

*Realigned Programs Are Mandates That Require Reimbursement*

Section 6 of article XIII B of the constitution states: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service. . . .” That section goes on to state that a “mandated new program or higher level of service includes a transfer by the Legislature from the State to . . . counties of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.”

The 2011 Realignment Legislation<sup>1</sup> constitutes “a new program or higher level of service” for purposes of mandate reimbursement. The relevant legislation shifts the responsibility to counties for specified low level offenders, and increases the county funding share for specified health and human services programs. Both aspects of the 2011 Realignment Legislation fit plainly within section 6 of article XIII B, and therefore require the State to provide subventions to counties to reimburse for the costs of providing the services.<sup>2</sup>

*The Mandate Reimbursement Process*

The State has established an administrative process for seeking mandate reimbursement, which is conducted through the Commission on State Mandates. It is a quasi-judicial process that involves participation from local government, state agencies and the Legislature.

A successful claims process has four basic elements: test claim, parameters and guidelines, State Controller’s claiming instructions, and statewide cost estimate. A simplified summary of each follows<sup>3</sup>:

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<sup>1</sup> 2011 Realignment occurred through a number of separate bills. Those bills are: AB 94, AB 109 (as amended by AB 117 and ABx1\_17), AB 111, AB 118 (as amended by ABx1\_16 and SBx1\_4), SB 87 and SB 93.

<sup>2</sup> Section 6 of Article XIII B exempts from the subvention requirement “legislation defining a new crime or change an existing definition of a crime.” While the AB 109 declares that the mandates created by the legislation constitute new crimes and therefore are not reimbursable mandates (AB 109, Section 635) such declarations by the Legislature are not controlling on the courts or the Commission and while the precise meaning of this exemption has never been litigated, the Litigation Overview Committee believes AB 109 does not fit within this exemption. AB 109 does not create a new crime or change the definition of a crime, but merely alters the penalty from State prison to county custody for specified low level offenses. This is an issue, however, that may complicate attempts to have AB 109 declared a mandate.

<sup>3</sup> The process is governed by Title 2, sections 1183 to 1183.32 of the California Code of Regulations, and is explained in detail in the *Guide to the State Mandate Process* [<http://www.csm.ca.gov/docs/Guidebook.pdf>].

- **Test Claim:** The process is initiated when a local agency files a test claim with the Commission. The claim must be on the prescribed form and must establish the existence of state-mandated costs as a result of a statute or executive order implementing a new program or a higher level of service for an existing program. Commission staff reviews the claim for completeness. Assuming the claim is complete, a comment period begins permitting comments on the claim and rebuttals to the comments. Commission staff then issues a draft analysis and recommendation and another comment period follows. Commission staff then issues a final analysis, which is heard at a Commission hearing. The Commission will approve or deny the claim. The Commission's decision can be challenged via the filing of a petition for writ of mandate in the Superior Court.
- **Parameters and Guidelines:** If the Commission approves the claim, it must then determine the amount to be subvended to local agencies for reimbursement. These parameters and guidelines identify the mandated program, eligible claimants, period(s) of reimbursement, reimbursable activities, and other necessary claiming information. The successful test claimant submits proposed parameters and guidelines and a comment period follows. Commission staff then issues an analysis and proposed parameters and guidelines. The Commission holds a hearing and adopts the final parameters and guidelines.
- **State Controller's Claiming Instructions:** Once the Commission adopts the parameters and guidelines, the State Controller will issue claiming instructions for each mandate. The claiming instructions, together with the Local Agencies Mandated Cost Manual, assist local agencies in claiming reimbursable costs. Once the instructions are issued, eligible claimants can file claims.
- **Statewide Cost Estimate:** After the Commission adopts the parameters and guidelines, Commission staff prepares an estimate of statewide costs, which includes the total funds estimated to reimburse all eligible local agencies for costs incurred as a result of the mandate during the first 12-month period following the operative date of the mandate. The Commission holds a hearing to consider the staff estimate, and ultimately adopts the statewide estimate. The cost estimate is provided to the Legislature so that it can provide funding to meet the costs through the local government claims bill.

Claims for reimbursement are submitted and paid in arrears. Annual claims for reimbursement of costs incurred in a fiscal year must be submitted by February 15<sup>th</sup> following the fiscal year in which the costs were incurred. Generally, the State must pay annual claims by October 15<sup>th</sup> or within 60 days after the date the appropriation for the claim is effective, whichever is later.

There are some important aspects to note about this process. First, as the description alone makes apparent, it is a very time consuming and expensive endeavor that involves not only legal work, but extensive cost estimates from county programmatic staff. An adverse decision at any point along the way may result in litigation, which would add

further delay. It is not uncommon for the process to take five to seven years or more before claims for payment can be filed and paid.

Second, for the current fiscal year, the “mandate reimbursement process” mandate itself has been suspended. When the mandate is not suspended, local agencies are reimbursed for costs incurred in pursuing mandate claims. Suspension of the mandate has two important implications for counties. First, counties are not required to perform suspended mandates. Though this particular issue has not been addressed by a court, the Litigation Overview Committee believes that suspension of this mandate means that a local agency is not required to use the administrative process, but could file an action directly in court seeking to have the realigned programs declared mandates. Also, if a county chooses to file a claim at the Commission for State Mandates, it does so at its own cost with no opportunity to seek reimbursement.

### *Risks and Limitations of Pursuing Mandate Reimbursement*

Even successful mandate reimbursement claims have risks and limitations, the most significant of which are:

- After a test claim is successful and realigned programs are declared mandates, if they are unfunded or substantially underfunded and counties continue to perform the services, they may do so at their own expense. As such, while filing test claims on realigned programs might put added pressure on the Administration to keep its promise to pursue a constitutional amendment, its viability as a long term solution for realignment is limited.
- A related problem is that the only remedy under Prop. 1A for unfunded mandates is that the local agency is not required to perform the service. It is difficult to understand, however, how that remedy applies to the realigned programs. For example, how does a county stop performing the AB 109 services? Would offenders sentenced to county jail or county probation simply be released to the streets? This clearly poses both political and practical problems for counties.
- As noted above, pursuing a test claim is expensive and time consuming. This is true for even just one new program. To pursue a comprehensive mandate claim for all 2011 Realignment Legislation programs would be a significant undertaking, which would require considerable resources.
- Because the AB 109 programs are new to counties, there are some challenges in how to prove costs and/or underfunding. While the initial test claim does not require proof that the mandate is unfunded or underfunded, it does require a written narrative estimating annual costs, including statewide costs. This could prove quite difficult for AB 109 programs because counties do not yet have accurate cost data yet, and the programs will not be fully realigned for several more years.

- AB 118 contains a provision that requires the State to use money in the County Local Revenue Fund 2011 to pay mandate claims before using general fund revenue, presumably to the detriment of the other programs funded from those same dollars. Thus, each successful test claim for a realigned program may have the effect of reducing funding for the other realigned programs that have not yet been declared mandates. One approach to avoiding this problem would be to file test claims for all programs realigned by 2011 Realignment Legislation.

#### *Next Steps*

In order to move forward with a mandate reimbursement strategy, one county should be designated as the test claimant. The test claimant would need to make several initial strategic decisions, including whether to file before the Commission or directly in court, and whether to file claims for only some of the realigned programs or all of 2011 Realignment Legislation. The test claimant should also consult with experts in the mandate reimbursement process, including CSAC's SB 90 service, to determine the costs for pursuing the claims and how best to coordinate the effort.

The County Counsels' Association's Litigation Overview and Cost Shift Committees remain available resources to this Board as well, and would be glad to provide any additional information this Board should need.

**NIELSEN MERKSAMER  
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November 14, 2011

The Honorable Kamala D. Harris  
Attorney General of California  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, CA 95814

Attention: Dawn McFarland, Initiative Coordinator

Dear Madam Attorney General:

This law firm represents Californians to Protect Public Safety and Local Services, the committee formed to support Initiative No. 11-0061 Amdt. #1 NS, The Local Taxpayers, Public Safety and Local Services Protection Act of 2012. We submit this letter to explain the initiative measure and the context in which it was created, and to suggest an attached draft title and summary comprising the principal points of the measure. We hope to meet with your office soon after you have received the fiscal statement from the Legislative Analyst's Office to discuss any concerns or questions you may have.

### **Background**

In January 2011, Governor Jerry Brown released his proposed 2011-12 State Budget, a cornerstone of which was his proposal to "realign," or shift, a number of public safety, health, and human services responsibilities from the state to local agencies (counties, primarily). This proposed shift restructured how and where billions of dollars in a wide range of public services is delivered. While the transfer of responsibility to counties for certain adult offender populations may have been the central feature of the first phase of the so-called "realignment" effort, full financial responsibility for other vital programs and services were also shifted to local agencies. Chief among those were responsibility for the safety and protection of children in the child welfare system along with adults/seniors in the Adult Protective Services Program, and the provision of mental health services and substance abuse treatment. The total amount of the proposed transferred services in this first phase totaled approximately \$6 billion.

In order to pay for this shift, the Governor's plan also included an extension of certain taxes temporarily imposed in 2009 (specifically, increases of 1.0% in the sales tax rate and 0.5% in the Vehicle License Fee (VLF) rate) which was to be approved by the voters at a special election in June 2011. Along with the extension of those taxes, voters would also be asked to approve a number of constitutional amendments to ensure that local agencies could rely on protected funding for the shift in responsibilities as well as for future programmatic changes to the realigned programs. One of the most important amendments ensured that any revenue dedicated to local agencies for purposes of providing realigned programs would be annually guaranteed.

The Governor's Office convened a large group of stakeholders to negotiate the details of this proposal. In mid-March 2011, SCAX1 1 (Steinberg) was introduced, reflecting the agreement reached. SCAX1 1 contained (1) the extension of the temporary 2009 taxes, (2) guaranteed funding for realigned programs, and (3) protections for future costs associated with those programs. SCAX1 1 was never taken up for a vote in the Legislature.

In April 2011, notwithstanding the failure to approve SCAX1 1, the Legislature approved on a majority vote basis — and the Governor signed — AB 109, which directed that sentences for a number of non-serious, non-violent, non-sexual felony offenders would be served at the county jail level instead of state prison and that counties would now be responsible for supervision of certain former state parolees who met specified eligibility criteria.

Subsequently, in May 2011, the United States Supreme Court affirmed a federal three-judge panel order directing California to reduce its prison population by up to 37,000 inmates over the next two years.<sup>1</sup> While the ruling focused on long-standing practices by the state Department of Corrections and Rehabilitation that had resulted in severe prison overcrowding, realignment of certain criminal justice responsibilities (specifically AB 109) became the means by which the state decided to mitigate the impacts of the ruling. The Administration then once again reiterated its commitment and desire to put the entirety of SCAX1 1 before the voters to ensure a dedicated and guaranteed source of funding to counties for purposes of implementing both AB 109 and the other health and human services programs shifted to local agencies.

As the weeks progressed, it became evident that there would be insufficient legislative support to place SCAX1 1 before the voters. The Legislature then approved the 2011-12 State Budget on a majority vote basis just in time to meet the constitutional deadline. The budget package included the full shift of responsibilities to local agencies largely as contemplated in the Governor's

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<sup>1</sup> *Brown v. Plata*, 131 S. Ct. 1910 (2011).

January budget plan, again, most notably of which were: mental health services, prevention and protection services for vulnerable children and adults, supervision and detention of specified felony offenders and related public safety services, and substance abuse recovery programs. <sup>2</sup>

Funding for this shift in services during fiscal year 2011-12 was provided by the Legislature through dedication of a portion of *existing* tax revenues, viz., 1.0625% of the state sales tax rate and a portion of Vehicle License Fees. These revenues were statutorily continuously appropriated to the Local Revenue Fund 2011, a newly created special fund from which the Controller is to make allocations to local agencies. However, the budget package did not place on the statewide ballot a constitutional amendment guaranteeing funding for these realigned programs, nor did it contain protections to ensure payment to local agencies for future programmatic costs that were contained in the Administration-sponsored SCAX1 1.

The Local Taxpayers, Public Safety and Local Services Protection Act of 2012 addresses the lack of guaranteed, ongoing realignment funding by amending the Constitution to accomplish the following three priorities:

- 1) Ensuring that local agencies are provided ongoing state funding as long as responsibility remains shifted to local agencies to provide the realigned services;
- 2) Ensuring that the funding is not taken away, reduced, or redirected in the future so long as counties maintain responsibility for providing realigned services; and
- 3) Prohibiting the state from increasing program costs or adding additional responsibilities under the realignment regime, unless the state provides additional funding to cover the cost of providing these services.

## **Summary of The Local Taxpayers, Public Safety and Local Services Protection Act of 2012**

### **Section 1. Findings and Declarations.**

The finding and declarations are self-explanatory and explain the context of the measure.

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<sup>2</sup> The realigned programs in addition to the detention and supervision responsibilities set forth in AB 109 are in AB 118, signed by the Governor on June 30, 2011. An additional budget trailer bill, SB 89, included additional realigned programs and dedicated funding. Clean-up legislation was enacted in the same legislative session to both AB 109 and AB 118, but did not substantively change the responsibilities transferred.

## **Section 2. Statement of Purpose.**

This section makes clear that the purpose of the measure is to provide ongoing, guaranteed funding to local agencies for the cost of providing the programs realigned in 2011. It also makes clear that the State can't reduce funding unless it reduces local agency program responsibilities, and that the State can't increase the cost of a program unless additional funding is provided.

## **Section 3. Addition of Section 36 to Article XIII of the State Constitution.**

### **a. Defined Terms:**

- All of the programs and services transferred to local agencies in 2011 are entitled "Public Safety and Other Local Services."
- The term "2011 Realignment Legislation" includes the specific statutes that accomplished the transfer of responsibilities.<sup>3</sup>
- The term "Law Enforcement Subvention Programs" includes the specific law enforcement services set out in the enumerated statutes.

b. New Section 36 creates a guaranteed source of funding for realigned programs and prohibits the Legislature from taking those funds without a reduction in the programs.<sup>4</sup>

### **c. Requires deposit into the Local Revenue Fund 2011:**

- A specified portion of the sales tax, as described in statutes set forth therein.
- A specified portion of Vehicle License Fees, as described in the statute set forth therein.<sup>5</sup>

d. (1) Continuously appropriates these funds to County Local Revenue Funds, to be allocated by the Controller as specified by statute. Funds can only be used for Public Safety and Other Local Services. State can be reimbursed from Local Revenue Fund 2011 for activities carried out at the state level until programs are fully realigned to local agencies.

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<sup>3</sup> Thus, the reference in our proposed title and summary to "public safety responsibilities, protective programs for children and seniors, mental health and substance abuse programs."

<sup>4</sup> Thus, the reference in our proposed title and summary to "Prohibits state from taking these funds as long as local governments are responsible for providing the services." See also Cal. Const., art. XIII, § 36(i), added by the measure.

<sup>5</sup> Thus, the reference in our proposed title and summary to "Requires ongoing transfer of existing state funds to local governments for cost of providing certain public safety and other local services shifted by Legislature in 2011."



(2) The appropriate official in each County shall set up a County Local Revenue Fund 2011, exclusively to fund Public Safety and Other Local Services.

e. Notwithstanding Section 6 of Article XIII B or any other constitutional provision, none of the programs imposed by the 2011 Realignment Legislation constitute a mandate for which reimbursement can be sought by a local agency. This section reflects a compromise: a guaranteed revenue stream to fund the realigned programs, but no ability to seek mandate relief if costs exceed the amount available in the revenue stream.

f. (1) The Legislature is prohibited from enacting legislation after October 9, 2011 that has the “overall effect” of increasing costs or scope of responsibility of a local agency for Public Safety and Other Local Services shifted by the 2011 Realignment Legislation unless the State provides additional annual, ongoing funding. If the State does not do so, local agencies are not obligated to provide services above the level for which additional funding has actually been provided.<sup>6</sup>

(2) Any legislation enacted after October 9, 2011 that increases costs or scope of responsibility for realigned programs or services without providing enough funding to local agencies for the increase is void.

(3) The prohibition against increasing costs includes enacting regulations, executive orders, or administrative directives.

(4) The State is not obligated to provide additional funding if local agencies provide the realigned services in a manner that exceeds the funding the State provides. The obligation to provide additional funding in this entire subdivision also doesn’t apply to the creation of a new crime, which is currently exempt from mandate protection under paragraph (2) or subdivision (a) of Section 6 of Article XIII B of the Constitution.

(5) The State is prohibited from submitting plans or waivers to the federal government that increase costs or responsibility for local agencies unless annual funding is provided.

(6) No additional state funding is required if a mandate is imposed by the State at the request of a local agency or to comply with federal law. Any additional state funds required by the measure may not be from ad valorem property taxes, the Social Services Subaccount within the existing 1991 realignment fund (which is sales taxes and Vehicle License Fees sent

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<sup>6</sup> Thus, the reference in our proposed title and summary to “State prohibited from increasing cost or scope of programs without providing local governments additional funding.”

to that fund to pay for a variety of health and social services programs that were realigned in 1991), or from the Local Revenue Fund 2011.

(7) The Legislature is free to reduce or eliminate one or more of the programs contained in Public Safety and Other Local Services, and if it does, it can reduce the appropriation of revenues by an appropriate and commensurate amount. If that happens, local agencies are no longer required to provide the service. If however, a court determines that the amount reduced or eliminated is greater than the amount required to provide any remaining required service, the Controller is directed to impound and allocate the additional amount, as determined by the court, to the local agencies.

(8) With respect to Law Enforcement Subvention Programs, the Legislature can only reduce, eliminate, or reallocate funding by a 4/5 vote of each house.

g. (1) If federal statutes or regulations are changed to require additional matching funds and therefore increase the cost incurred by a local agency to provide the service, the State is required to annually provide at least 50% of the non-federal share of costs.

(2) If the State is a party to a complaint in a federal proceeding involving a program contained in Public Safety and Other Local Services, and there is a settlement or order that imposes a penalty or that has the effect of increasing a local agency's costs for one or more of these programs, then the State must provide annual funding of at least 50% of the non-federal share of costs.

(3) Funds used to satisfy this subdivision must come from sources other than ad valorem property taxes, the Social Services Subaccount within the 1991 realignment fund, or the Local Revenue Fund 2011.

h. (1) Funds spent from a County Local Revenue Fund 2011 must be spent in a manner designed to maintain state eligibility for federal matching funds and state compliance with applicable federal standards.

(2) Funds deposited into a County Local Revenue Fund 2011 cannot be used to supplant other funding for Public Safety and Other Local Services.

(3) Nothing in this subdivision can be construed to prevent the Legislature from subsequently imposing, increasing, reducing, or repealing a fee or tax that is enacted in accordance with the Constitution.

i. If the Legislature reduces or repeals the revenues now dedicated to fund Public Safety and Other Local Services mandated by the 2011

Realignment Legislation (a percentage of sales tax receipts and vehicle license fees), the alternative source of revenue designated to replace that revenue is continuously appropriated and deposited in the Local Revenue Fund in an amount equal to or greater than the amount previously deposited. The Controller then allocates the revenue pursuant to statute, as before. The alternative source of revenue must come from sources other than ad valorem property taxes, the Social Services Subaccount within the 1991 realignment fund, or the Local Revenue Fund 2011. The State must continue to provide the necessary amount of funds for so long as local agencies are required to perform the services transferred by the 2011 Realignment Legislation. The state obligations under this subdivision have a lower priority claim to the General Fund than school obligations under Section 8 of Article XVI or voter-approved debt repayment under Section 1 of Article XVI.

j. The Controller may conduct audits of expenditures from both the Local Revenue Fund 2011 and any County Local Revenue Fund.

## CONCLUSION

With this background in mind, we believe the chief points and purposes of the measure are quite clear.

- 1) The overall subject of the measure is the continued transfer of state funding to local agencies for the realigned programs—namely public safety, vulnerable child and senior protection, mental health, and substance abuse programs. This concept was first advanced in SCAX1 1, and has been carried over into this measure.
- 2) This measure prohibits future Legislatures from reducing, redirecting, or taking these funds as long as local agencies maintain responsibility for providing the realigned services.
- 3) The State is prohibited from increasing the cost or scope of the realigned programs without providing additional funding.
- 4) Just as important to voters' understanding of the measure is the fact that only *existing* state revenues already dedicated by the Legislature for realignment funding are being protected by this measure.

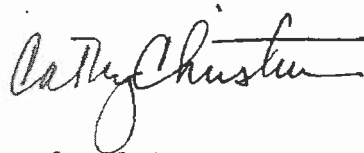
Regarding the fact that this measure only deals with *existing* state revenues and does not raise taxes, without this information voters will not have the opportunity to fully understand how this measure fits into the existing state and local fiscal landscape. (See *Yes on 25, Citizens for an On-Time Budget v. Super. Ct.* (2010) 189 Cal.App.4th 1445, 1454, noting that because debates regarding changes to California's budget process routinely include a discussion of whether and how taxes should be raised, the Attorney General was reasonable in

concluding that describing a measure's impact on taxes in the title and summary was "*necessary* to provide voters with an understanding of the potential impact of the measure." [Emphasis in original.]

To be sure, nothing in this measure raises taxes, or "locks in" the programs or revenues. Rather, the measure simply gives the necessary assurance to local agencies that the revenue already appropriated in the 2011-12 State Budget continues to flow to them to fund programs that have already been realigned to them.

We believe that our title and summary accurately and fairly reflects the chief purpose and points of the measure, described above. Once the fiscal summary has been prepared, we look forward to meeting with your office to discuss any questions or concerns you may have.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Christian". The signature is written in black ink and is positioned above the typed name.

Cathy Christian  
Attorneys for Californians to Protect  
Public Safety and Local Services

**LOCAL GOVERNMENT. STATE FUNDING FOR PUBLIC SAFETY AND OTHER LOCAL SERVICES SHIFTED FROM STATE TO LOCAL GOVERNMENTS. INITIATIVE CONSTITUTIONAL AMENDMENT. [20]**

Requires ongoing transfer of existing state funds to local governments for cost of providing certain public safety and other local services shifted by Legislature in 2011. Prohibits state from taking these funds as long as local governments are responsible for providing the services. [43]

Services shifted to local governments include certain public safety responsibilities, protective programs for children and seniors, mental health and substance abuse programs. [22]

State prohibited from increasing cost or scope of programs without providing local governments additional funding. [15]

[100 words]

## **CSAC Board of Directors 2012 Schedule of Meetings**

### **February 23**

10:00am – 1:30pm, CSAC Conference Center  
1020 11<sup>th</sup> Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814

### **May 31**

10:00am – 1:30pm, CSAC Conference Center  
1020 11<sup>th</sup> Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814

### **September 6**

10:00am – 1:30pm, CSAC Conference Center  
1020 11<sup>th</sup> Street, 2<sup>nd</sup> Floor, Sacramento, CA 95814

### **November 29**

2:00pm – 4:00pm, Los Angeles County  
Hyatt Regency Long Beach Hotel  
200 South Pine Avenue, Long Beach, CA 90802

## Report to the CSAC Board of Directors

1 December 2011



In just over two years the CSAC Institute has become an important continuing education resource for California County Supervisors and senior executives. That value is expressed in the expanding participation in Institute courses. With the severe fiscal constraints facing counties, there is the recognition this is precisely the time to invest in expanding capacities of staff and elected officials through continuing education to be able to address the challenges facing counties.

Up to the 2012 Annual Meeting the Institute has held 80 classes with 1,962 course attendees. Four classes are scheduled in conjunction with the annual meeting, which will bring the total number of attendees well over 2,000. To date 1,042 individual County Supervisors and senior executives have taken at least one Institute course, giving an average of just under two courses per person. 124 County Supervisors have taken at least one course. All 58 counties have participated in CSAC Institute courses. Several courses offered this semester were sold out (70+ participants) and are being repeated next semester.

At the Annual Meeting the Institute will award nine new Credentials, bringing the total to 54 Credentialed Supervisors and senior executives in California. At least 35 additional individuals are currently working on their Credential.

Attendance is one method to gage success. The real measure is the value participants feel they obtain from their class. Every Institute course is evaluated by the participants and tracked by staff. Attached is a summary of those evaluations. On a six point scale, the average "Overall Value" for all 80 courses is rated at 5.3. An exceptionally high rating from 1,962 participants. Whenever ratings fall below 5.0, staff works closely with the course instructor to improve the quality of instruction or secure new faculty for the class. The sentiment Institute staff has heard from many participants was best described by a Solano County executive who will be receiving her credential at the annual meeting:

*I ... look forward to collectively celebrating the accomplishment of all who have earned the CSAC Credential. It is a high quality and very relevant set of courses with excellent instructors and I will remain on the lookout for classes to attend beyond my credential.*

M. Lynn Hoffman, MSW  
Policy and Fund Development Manager, Solano County First 5

A majority of the Supervisors of Nevada County along with the CEO has earned their credential, and the County has now set the credential as a requirement for its executives.

The Winter/Spring 2012 Course Schedule is being released at the annual meeting. It features 16 courses offered through June, including six new courses that have been requested by participants. New courses include: Information Technology Services Policy and Future; New Aspects of Labor Relations – AB 646; Child Welfare and Juvenile Justice; Building and Sustaining the Board/CAO Relationship; and more. The Institute continues to offer courses with MCLE (attorneys) and CPE (certified public accountants) credits.

In mid-February the Institute will be offering the first Executive Leadership Symposium. Designed exclusively for County Supervisors and CEO/CAOs the Symposium is an intensive three-day challenging experience to explore leadership practices and to equip participants with practical skills to expand

leadership capacity. The course is designed and taught by Marty Linsky, a world-respected faculty member from the Kennedy School of Government at Harvard University, and lead instructor for the Senior Executives in State and Local Government program at the School. 40 Supervisors and CAO/CEOs have registered for this program. Staff has secured \$57,250 in grants to underwrite all of the instructional and staff costs of the Symposium. Participants are responsible for \$100 registration and their lodging and meals. The Symposium is being held in San Jose, February 16-18, 2012.





# What Our Participants Say about Course Quality & Value

Participant ratings of Institute courses on a six-point scale, with six as the highest rating.

Number	Course	Organization	Relevancy	Instructor	Overall Value	Participants	Times Offered
111	The Art & Practice of Elected Leadership	5.8	5.8	5.9	5.8	22	2
112	Getting Things Done: Working Effectively with Others	5.7	5.9	5.9	5.8	50	3
113	Coalition Building: Creating Consensus	5.3	5.6	5.7	5.5	25	2
114	Public Engagement: Involving the Community in Decisions	5.4	5.4	5.3	5.2	27	2
120	The Art & Practice of Organizational Leadership	5.7	5.8	5.7	5.7	79	4
122	Values-Based Leadership: Strategies for Success	5.4	5.3	5.4	5.4	52	2
140	Interpersonal Relations - Why Won't They Change for Me?	5.5	5.6	5.8	5.5	34	2
150	Local Governance in California	5.4	5.5	5.6	5.4	81	4
151	Financing California Counties	5.2	5.6	5.6	5.5	160	5
152	Shaping the Landscape: Land Use Policy	4.9	5.2	5.2	5.0	15	1
153	Labor Relations in Local Government	5.4	5.7	5.6	5.4	65	3
154	County Finances - It's a Whole New World	4.8	5.1	4.8	4.8	67	2
155	Capital Improvement Planning and Financing	5.3	5.1	4.9	4.8	21	1
301	Legislative Policy and the County Legislative Process	5.5	5.8	5.8	5.5	20	1
303	County Mental Health Requirements and Services	5.1	5.7	5.6	5.4	37	1
304	Climate Change; AB 32 and SB 375	5.5	5.7	5.4	5.2	31	1
306	County Pensions and Pension Reform	4.9	5.3	5.2	5.1	30	1
307	Realignment 101	5.5	5.7	5.4	5.4	76	1
307	Realignment 201: Working in a New Era	5.3	5.5	5.4	5.2	148	2
308	Fiduciary Responsibility - Managing the County Treasury	5.2	5.4	5.0	5.1	29	1
309	Shaping Federal Legislation, Regulation & Rules	5.0	5.0	5.0	4.7	9	1
310	County Health Care Systems - Roles & Responsibilities	5.3	5.5	5.4	5.2	26	1
311	Water in California - The Politics, Distribution & Future	5.0	5.5	5.1	5.5	80	2
314	Understanding County Social Services	5.0	5.0	5.7	5.1	28	1
316	Unraveling Public Retirement Systems	4.7	4.4	4.4	4.2	23	1
317	Imposing Agreements: Concession Bargaining	5.6	5.7	5.6	5.4	18	1
318	The New Face of Community Corrections	5.2	5.4	5.1	5.2	40	1
330	County Revenues and the State Fiscal Crisis	5.6	5.8	5.6	5.4	18	1
331	Federal Health Care Reform and California Counties	5.5	5.6	5.6	5.4	100	2
351	Managing Effective Meetings	5.8	5.7	5.8	5.8	12	1
352	Making and Impression: Media Interviewing	5.3	5.8	5.7	5.3	24	2
353	Effective Electronic Communication	5.3	5.0	5.3	4.9	32	2
354	GASB Financial Reporting Requirements for Counties	4.9	4.9	5.1	4.8	25	1
356	Negotiations and Collaboration in Complex Environments	5.5	5.8	5.9	5.8	22	1
357	When Bad Things Happen - Managing Crises in Counties	5.4	5.8	5.7	5.6	38	2
359	Beyond the Brochure: Recruiting Senior Executives	4.9	5.5	5.2	5.4	18	1
360	Managing Conflict and Disagreement in Comfort	5.4	5.7	5.9	5.7	21	1
361	Effective Partnerships with CBOs	5.1	4.9	4.8	4.7	16	1
362	Communicating Directly with the Public	4.5	5.1	4.6	4.8	17	1
363	Thinking Strategically in Trying Times - Enduring Problems	4.9	4.8	4.9	4.5	28	1
366	Detecting Fraud in Governments & Non-Profits	5.4	5.7	5.7	5.5	70	1
370	Performance Measurement	5.0	5.0	4.6	5.0	42	3
371	Building and Maintaining a Team Culture	5.4	5.2	5.5	5.3	11	1
372	To Do or Not To Do: Leadership in Decision Making	5.5	5.6	5.6	5.3	16	1
373	Project Management	5.4	4.5	5.5	4.9	9	1
374	Service Excellence Through Process Improvement	4.5	4.8	5.0	4.5	31	1
375	Coping with Ambiguity: Leadership for Challenging Times	5.3	5.6	5.6	5.3	42	2
376	Managing in a New Era - Adaptive Change	5.5	5.6	5.6	5.3	24	1
378	The Practice of Storytelling in Adaptive Leadership	6.0	6.0	6.0	6.0	8	1
380	Talent Development and Succession Planning	5.8	5.5	5.8	5.5	10	1
381	Creative Budget Solutions and Innovative Service Design	5.3	5.5	5.5	5.4	35	1
	Average	5.3	5.4	5.4	5.3		
	Totals					1962	80

# Winter-Spring 2012 Course Schedule



*A genuinely free society cannot be a spectator society. Freedom, in its deepest sense, requires participation — full, restful, knowledgeable participation. — President Lyndon Johnson*

## LEADERSHIP AND MANAGEMENT

### 112 Getting Things Done: Working Effectively to Achieve Objectives

To get things done you work with a range of county staff, elected officials and community members ... some of whom may not agree with your goals. What techniques and tools exist to help you pursue your objectives? This course examines practices that improve the likelihood of achieving desired objectives. It examines the elements which contribute to success, from interpersonal relations to building a system of monitoring and a culture of accountability. Participants look at themselves and the values that underlie ethical behavior and trustworthiness. Other components address coalition building, collaboration, and setting expectations.



**Instructor:** David Landis is a former Nebraska state senator, an award-winning teacher and a skilled negotiator in the public arena. Many of the over 250 bills he has passed in twenty-four years in the Unicameral have been consensus measures forged by negotiation that brought contesting parties to agreement.

**Friday, January 13<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### Semester at a Glance

#### January

- 13 (F) 112 Getting Things Done: Working Effectively to Achieve Objectives  
26 (Th) 307 Realignment 201: Working in a New Era?

#### February

- 3 (F) 153 New Aspects of Labor Relations: AB 646 and More  
16-18 Executive Leadership Symposium  
24 (F) 364 Cost Principles for County Governments and Nonprofit Partners

#### March

- 2 (F) 122 Values-Based Leadership: Strategies for Success  
15 (Th) 381 Creative Budget Solutions and Innovative Service Design  
29 (Th) 333 Information Technology Services: Policies and the Future

#### April

- 13 (F) 357 When Things Go Bad: Managing Crises from Realignment  
20 (F) 360 Managing Conflict (even hostility) and Disagreement in Comfort  
26 (Th) 151 Financing California Counties: A History of Funding Sources

#### May

- 3 (Th) 313 Capital Improvement Planning and Alternative Funding  
11 (F) 150 Local Government in California: All those Agencies!  
18 (F) 305 Child Welfare and Juvenile Justice: County Services to Families

#### June

- 1 (F) 356 Negotiations and Collaboration in Complex Environments  
15 (F) 383 Building and Sustaining the Board/Executive Relationship  
21 (Th) 366 Detecting Fraud in Government and Non-Profit Environments

### 122 Values-Based Leadership: Strategies for Success in Public Service

Understanding the relationship of values to decisions can be a helpful decision-making tool. Focusing on commonly held (although sometimes competing) values underlying difficult policy dilemmas can help leaders bridge differing perspectives—either while policies are being debated or after difficult decisions have been made and need to be explained. In addition, clearly articulated organizational values provide staff with important information on an organization's priorities. This course explores the role values play in both personal and organizational leadership, strategies to consider in modeling organizational values, and approaches to making and explaining difficult decisions.

**Instructor:** John King is nationally recognized as a senior teacher, coach, and program leader. He is co-founder of CultureSync, a consulting firm focused on leadership, cultural change and executive coaching. Along with Dave Logan, PhD, John is co-author of the books *Tribal Leadership* and *The Coaching Revolution*.

**Friday, March 9<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 356 Negotiation and Collaboration in Complex Environments

Negotiation is "a back and forth interaction among two or more people who wish to arrive at a mutually agreeable outcome where the parties have some interests in common and some that are opposed." This definition from Fisher and Ury's book *Getting to Yes* describes most "Public Good" negotiations.

*Solution-Based Negotiation* teaches participants how to achieve the most beneficial outcomes for all negotiating parties while ensuring the outcomes are in the best interest of the public and that the negotiating parties' relationships end positively. This course covers the most current tried and tested behaviors in the field of negotiation AND it gives you tools that will be immediately useful in your work. Best of all, it can help you serve your constituents in the best possible ways without needless "compromise."

#### Objectives

- ♦ Differentiate solution-based versus positional negotiation
- ♦ Explore a framework for defining "The Public Good"
- ♦ Surface assumptions and mental models of other parties
- ♦ Understand subtle, negative influencers in negotiation
- ♦ Apply the Suasion™ Model for Ethical Stakeholder Analysis
- ♦ Use creativity to break stalemates

**Instructor:** Dr. Laree Kiely is president of the Kiely Group; organizational effectiveness consultants, and a professor at the USC Marshall School of Business. She regularly appears on PBS in her management communications series.

**Friday, June 1<sup>st</sup>, 2012** 9:00–2:30  
Following the CSAC Legislative Conference  
Sacramento • \$75/person for counties • 3 credits • Board/Execs



For more information and to register please visit: [www.csacinstitute.org](http://www.csacinstitute.org)

LEARN . GROW . ACHIEVE

### 360 Managing Conflict (even hostility) and Disagreement in Comfort

Conflicts and disagreements are a fact of life in counties. They can contribute to better outcomes or can lead to an escalating situation. Transform the most difficult circumstances into a satisfying experience for all involved. This course helps County Supervisors and executives identify constructive approaches to positively managing conflict whether from the dais, in a meeting, or one-on-one. Participants develop tools to quickly analyze and respond to difficult situations and create practical, positive outcomes.



#### Objectives

- ◆ To gain new knowledge about the concept of conflict
- ◆ To shift attitudes regarding conflict
- ◆ To change behaviors before, during, and after conflict

**Instructor:** Dr. Laree Kiely is president of the Kiely Group; organizational effectiveness consultants, and a professor at the USC Marshall School of Business. She regularly appears on PBS in her management communications series.

**Friday, April 20<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 381 Creative Budget Solutions and Innovative Service Design

Given mandated services, citizen expectations and the continuing and lasting scope of the economic meltdown, California counties cannot simply cut their way out of their deep budget challenge. This interactive course will explore the paradoxes and dilemmas of typical budget cutbacks, a menu of creative budget solutions, practical tools for departments, and leadership approaches. Class highlights innovative approaches to redesigning service delivery. Two county case studies are used to identify innovative approaches and lessons learned. Course participants will also contribute case examples of service redesign as well as effective tools.

**Instructors:** Dr. Frank Benest is former city manager of Palo Alto and a noted expert in organizational leadership and management. David Boesch is the former county manager of San Mateo County.

**Thursday, March 29<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 383 Building and Sustaining the Board/County Executive Relationship

The county administrator/executive serves the Board of Supervisors as a whole. Establishing an effective relationship between the Board and its key executive is crucial to the success of the county. Every time a new member is seated on the Board is an opportunity to revisit the relationship. This course will examine in-depth the role of the Board members – individually and collectively – as they relate to their executive and strategies for the CAO/CEO to build and sustain effective relationships with the Board. Discussion will highlight strategies to repair relationships during stressful events. The course is designed for both Supervisors and CAO/CEO participation.

**Instructors:** Course Moderator is JoAnne Spears, executive director of the Institute for Local Government. ILG is the research and education affiliate of CSAC and the League of California Cities.



**Friday, June 15<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

## COUNTY GOVERNANCE

### 150 Local Governance in California

California has a complex system of providing state, federal and local services through local governments. It is often difficult to understand or explain the broad responsibilities counties have to provide a vast range of often unrelated services.

This course provides an overview of government structure and responsibilities in California. A brief history of California governance is followed by a review of the roles and responsibilities of the state, cities, counties and special districts. Overlapping jurisdictions are examined along with strategies for communicating county services and responsibilities to constituents. Discussion focuses on the authority and responsibilities of the county as a municipal service provider and as a regional services provider. Participants explore mandatory and discretionary services counties provide and the mandated levels of those services.



#### Objectives

- ◆ Understand similarities and differences in responsibility and authority of local governments, including cities, counties, special districts and joint power authorities
- ◆ Examine role and county interaction with regional agencies such as LAFCo, regional transportation agencies, metropolitan planning organizations and council of governments
- ◆ Difference between countywide and municipal services

**Instructor:** Bill Chiat, Manager of the CSAC Institute and Executive Director of the California Association of Local Agency Formation Commissions.

**Friday, May 11<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 151 Financing California Counties: A History of Funding Sources

Have you found yourself overwhelmed trying to understand the financial reports from county programs? Or worse yet, trying to explain county finances and revenues to your constituents? This course provides an in-depth examination of the federal, state and local county funding sources and how those funds are typically spent. The class examines the history and consequences of major elements in county funding streams including:

- ☞ Proposition 13, 172, 1A ☞ VLF
- ☞ Realignment ☞ CalWORKS
- ☞ ERAF and more ERAF ☞ State Budget collapse

#### Objectives

- ◆ Understand the legislative context and history of major county funding streams
- ◆ Describe to constituents county revenues, and impacts of state and federal program cuts on county programs
- ◆ Discuss current issues related to state funding streams

**Instructor:** Diane Cummins is Special Advisor to the Governor on State and Local Realignment. For over 30 years she served in key Senate and gubernatorial advisory roles on budget and fiscal issues that shape the county-state financial relationship.

**Thursday, April 26<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 313 Capital Improvement Planning and Alternative Funding Approaches

You've heard about a "CIP" in your county? This class will help you better understand what it is, how it is developed, management of Capital Improvement Project programs, funding sources, and what questions you should be asking. Participants examine emerging fields of alternative funding options such as Public-Private Partnerships (P3), Design Build Project Deliver and other alternative funding streams, including benefits, opportunities, and cautions. The session will look at various case studies and lessons learned, such as the Placer County jail facility. Legal issues for protecting county interests are also discussed.



#### Objectives

- ◆ Understand what is considered a capital improvement and the purpose of a capital improvement plan
- ◆ Describe the policies a county should consider for its capital improvement program
- ◆ Describe information that should be available to decision-makers and the community on a capital improvement program, and what to look for in that information
- ◆ Understand traditional capital project delivery (i.e. design and construction) and the basic forms of alternative delivery (CM@Risk, Multi-Prime and Design-Build)
- ◆ Learn the basics of P3 – what is it, where is it being used, what are the advantages and disadvantages for your county?

**Instructors:** Mike Courtney, Vanir Construction Management, Inc., Steve Surprenant, HDR Inc. and experienced county project managers.

**Thursday, May 3<sup>rd</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 357 When Things Go Bad: Managing Crises from Realignment

With the 2011 public safety realignment comes broad collaboration among county agencies, community organizations and the courts. There also comes the likelihood that some things will go wrong. Is your County prepared? How will all the partners come together quickly when bad things happen? This course will help you be prepared! A specific set of steps will be examined to prepare your communications response, including gathering the right set of officials, designing strategies and tactics which target affected audiences, preparing key messages which tell the county's story, and delivering your response via the news media and other important communications vehicles. Counties will share case examples and participants will have an opportunity to work on their own plans.



#### Objectives

- ◆ Identify the roles and response options for elected officials and executives when the unexpected occurs
- ◆ Be prepared to respond to situations with sample messages and statements
- ◆ Understand the reporters' perspectives on approaching officials in crisis

- ◆ Avoid common pitfalls and missteps by senior officials in government and the private sector
- ◆ Build on live practical experience

**Instructors:** Sheri Benninghoven, APR is President of SAE Communications and former Communications Director for the League of California Cities. Scott Summerfield is an expert in public agency strategic communications and former Public Information Officer for the City of Newark.

**Friday, April 13<sup>th</sup>, 2012** 10:00–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 364 Cost Principles for County Governments and Their Nonprofit Partners

With few exceptions, counties and nonprofits that receive grants from the federal government must follow certain cost principles. Violating these cost principles can result in unallowable expenditures, often culminating in large refunds. Understand the cost principles applicable to state and county governments and nonprofit organizations and learn how to ensure that costs claimed against government grants are allowable, and therefore, reimbursable.

#### Objectives

- ◆ Understand criteria for determining whether a cost is allowable
- ◆ Explain the permissibility of specific items of cost
- ◆ Review how to adequately document the costs claimed

**From CalCPA**  
Eligible for 6  
CPE credits

**Instructor:** Sefton Boyars, CPA, CGFM, CFS from the California Certified Public Accountants (CalCPA) Education Foundation.

**Friday, February 24<sup>th</sup>, 2012** 9:30–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 366 Detecting Fraud in Governmental and Non-Profit Environments: What a Steal!

Boards of Supervisors, county executives/administrators and auditors have a fiduciary responsibility to oversee the financial operations of the county. This course identifies the seven most common instances of fraud in local governmental entities through an interactive discussion and review of several recent headlined fraud cases. It examines conditions within entities that leave them susceptible to fraud. Highlighted topics include: personal fraud, fraudulent charging of expenses, overriding purchasing controls, personal use of public assets, kickbacks, and control weaknesses.

#### Objectives

- ◆ Ascertain specific conditions in policies and procedures that can lead to fraud before it occurs in seven common instances
- ◆ Key elements of sound policies and procedures in purchasing, payroll, disbursement and collections
- ◆ Understand how to specifically revise policies and procedures in order to stop these kinds of frauds from occurring

**From CalCPA**  
Eligible for 6  
CPE credits

**Instructor:** Dr. Peter Mark Hughes, CPA from the California Certified Public Accountants (CalCPA) Education Foundation. Dr. Hughes is director of internal audit for Orange County.

**Thursday, June 21<sup>st</sup>, 2012** 9:30–3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

**Please Note:** Class schedules and content may change. For current course schedules and descriptions visit the Institute's web site at [www.csacinstitute.org](http://www.csacinstitute.org).

## POLICY DEVELOPMENT

### 153 New Aspects of Labor Relations in Local Government: AB 646 and More

The class examines the basics of labor relations in the county environment with a particular focus on recent changes to the Meyers-Millias-Brown Act (MMBA). The class explores labor relations at a policy level, with a focus on the Board versus staff. AB 646 may be the most significant change to any of California's public sector labor relations acts since 2000. In 2012, you must know how to prepare for and successfully engage in factfinding. Even if your county has been subject to factfinding for many years, this class will help you prepare a factfinding strategy that considers all the new issues, including premature declaration of impasse.

Eligible  
for MCLE  
credits

#### Objectives

- ◆ Detailed requirements of impasse factfinding under the recently amended MMBA (AB 646)
- ◆ How to deal with changes in negotiations dynamics resulting from the factfinding requirement, and planning the negotiations strategy.
- ◆ Preparation for factfinding, including the selection of the factfinding panel
- ◆ Relationship of mediation and the mediator to the factfinding process
- ◆ The post-factfinding report quagmire: The 10-day settlement period, the public release of the factfinding report, unilateral adoption, and the post-factfinding revival of negotiations.

**Instructors:** William F. Kay, Esq. is a partner with Burke, Williams & Sorensen, LLP and respected state-wide authority on public sector labor and employment law. M. Carol Stevens is Executive Director of the California Public Employers Labor Relations Association and a partner with Burke, Williams & Sorensen.

**Friday, February 3<sup>rd</sup>, 2012** 10:00-3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 305 Child Welfare and Juvenile Justice: County Services to Families

The 2011 realignment, along with the financial realities of local governments, have moved many counties to take a broader look at the services it provides to families through its individual HHS and justice agencies. Participants examine how counties are working to drive down barriers between departments to treat families comprehensively, rather than as individuals through individual programs. Strategies to deal with constraints on funding, changing culture and other obstacles are discussed. Driven in part by the realignment of programs and funding to counties, counties are seeking more efficient and sustainable ways to deliver services that treat root causes and improve families.



This course examines strategies counties have used to overcome obstacles and the policies and support needed to create fundamental changes in how counties provide services to the entire family.

**Friday, May 18<sup>th</sup>, 2012** 10:00-3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 307 Realignment 201: Working in a New Era?

You hear about realignment nearly every day. The funding streams are complex and it's hard to understand what and why programs are included. What is realignment, where did it come from and how does it work? This course examines the history and rationale for establishing it in 1991, why programs were included, what was learned, and the expansion to realignment in 2011.

Participants first examine the establishment and programs of the 1991 realignment. Discussion details health and human services and mental health programs. Participants explore individual programs, how they work, funding and current status. The course then examines the 2011 realignment – including AB 109 – with an emphasis on public safety programs. Details on the realigned programs, changes to HHS and mental health services, implementation, funding and how counties are implementing the 2011 realignment are all discussed.

**Instructors:** Diane Cummins, special advisor to the Governor on state and local realignment; Graham Knaus, Placer County Budget & Finance Operations Manager; Dr. Sandra Naylor Goodwin, President and CEO of the California Institute for Mental Health; and Karen Pank, Executive Director of the Chief Probation Officers of California.

**Thursday, January 26<sup>th</sup>, 2012** 10:00-3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

### 333 County Information Technology Services: Policies, Security, Governance and the Future

This policy course examines the role of IT in changing the delivery of county services. It highlights key elements in the management of information technology in counties, what supervisors and senior executives should know or ask, model policies, and how technology should be governed. At a policy level participants explore the IT value proposition, aligning IT services with county business objectives, and standards to be expected from IT services. From a governance perspective the course considers the questions you should be asking IT executives, what decisions should be made by whom, governance of IT, and establishment of parameters for security and confidentiality. Participants also explore why IT projects fail and how to anticipate and avoid those situations.



Looking to the future, participants explore emerging technologies and their application in delivering county services. Cloud computing (this is the future), mobility of computing and information access, and personal devices are all included in the discussion. The conversation focuses on increasing expectations from IT services, setting metrics and crafting the direction into a manageable plan.

**Instructor:** Jon W. Fullinwider is Principal of Integrated Technology Solutions and former Chief Information Officer of Los Angeles County.

**Thursday, March 29<sup>th</sup>, 2012** 10:00-3:30  
Sacramento • \$75/person for counties • 3 credits • Board/Execs

Visit [www.csacinstitute.org](http://www.csacinstitute.org) for information about becoming a



California Credentialed  
County Supervisor



California Credentialed  
County Senior Executive



# County Counselors' Association of California

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## MEMORANDUM

**To: Supervisor Mike McGowan, President, and  
Members of the CSAC Board of Directors**

**From: Jennifer Henning, Litigation Coordinator**

**Date: December 1, 2011**

**Re: Litigation Coordination Program Update**

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This memorandum will provide you with information on the Litigation Coordination Program's activities since you received your last regular update in September, 2011. If you have questions about any of these cases, please do not hesitate to contact me.

### I. New Amicus Case Activity Since March

#### ***Elk Hills Power v. Board of Equalization***

Previously published at: 194 Cal.App.4th 285 (4th Dist. Div. 1 May 10, 2011)(D056943), *petition for review granted* (S194121)

The California Supreme Court has agreed to consider a tax assessment issue: whether an electric power plant's emission reduction credits (ERC's) should be included in its unitary tax determination. The appellate court upheld the Board of Equalization's decision to include the ERC's in the tax determination, rejecting plaintiff's argument that the ERC's should be exempted as intangible property. Instead, the court concluded that because the ERC's are necessary to the ongoing productive use of the property, they should be included in determining the fair market value of the property. CSAC will file a brief in support of the Board.

#### ***Filarsky v. Delia***

621 F.3d 1069 (9th Cir. Sept. 9, 2010)(09-55514), *petition for cert. granted* (Sept. 27, 2011)(10-1018)

Plaintiff, a firefighter, was placed off-duty due to a work related injury. Given a history of disciplinary problems, his supervisors believed he may not have been truthful about the extent of his injuries, so the City of Rialto hired a private investigation firm to conduct surveillance and outside counsel to conduct an internal affairs investigation. The federal Ninth Circuit Court of Appeals eventually concluded that the techniques used during the investigation violated plaintiff's right under the Fourth Amendment to be protected from a warrantless unreasonable compelled search of his home. However, the court found the city

and its employees were granted qualified immunity because the right was not clearly established at the time of the constitutional violation. Importantly, the court denied qualified immunity for the outside counsel used to conduct the investigation, creating a split of opinion between federal courts on the issue of immunity for outside counsel. The United States Supreme Court granted review. CSAC will file a brief urging the Court to extend immunity under these circumstances.

***Hrdlicka v. Reniff***

631 F.3d 1044 (9th Cir. Jan. 31, 2011)(09-15768), *petition for rehearing denied* (Sept. 1, 2011)

The owner of the magazine *Crime, Justice & America* sought permission from the Butte County Sheriff to distribute unsolicited copies of the magazine to inmates in the county jail. The Sheriff refused, and plaintiff brought this action in federal district court alleging a violation of his First Amendment rights. The district court agreed with the county that the Sheriff's refusal to distribute the publication is rationally related to legitimate penological interests, but the Ninth Circuit reversed. The court concluded that *CJA* has a First Amendment right to access the inmates, and that under applicable law, the ban on unsolicited materials constituted a First Amendment violation. Butte County will be seeking Supreme Court review, and CSAC will file a brief in support.

***Pack v. Superior Court (City of Long Beach)***

199 Cal.App.4th 1070 (2d Dist. Oct. 4, 2011)(B228781), *petition for review pending* (filed Nov. 10, 2011)(S197169)

Long Beach adopted a medical marijuana collectives ordinance that requires collectives to have a permit to operate, sets buffer zones between collectives and sensitive uses, and requires collectives to be at least 1,000 feet apart. A lottery system was created for applicants whose collectives would be within 1,000 feet of one another to determine which of them may operate. Applicants were required to submit an application fee in excess of \$14,000, which is nonrefundable. Any collective operating at the time the ordinance was adopted that did not subsequently obtain a permit under the ordinance was required to close. Plaintiffs sued, alleging the city's ordinance was preempted by both state and federal law. The superior court upheld the ordinance, and plaintiffs filed a writ petition in the Second District. The court granted the writ, concluding that to the extent the ordinance permits and regulates medical marijuana collectives rather than merely decriminalizing specific acts, it is preempted by federal law. Long Beach is seeking Supreme Court review, and CSAC will file a letter in support.

***People v. Cooperative Patients' Services***

Pending in the Fourth Appellate District, Division Two (filed Apr. 12, 2011)(E053310)

Cooperative Patients' Services (CPS) opened a medical marijuana dispensary in the City of Temecula, even though the operation of a dispensary is not a permitted use in the city. (CPS also failed to secure a valid certificate of occupancy and business license for the dispensary.) The trial court granted the city's motion for a preliminary injunction to prohibit CPS's operation as a public nuisance in violation of the zoning code. The court rejected CPS's argument that the city's effective ban on dispensaries under the ordinance is

preempted by state law. The court prohibited CPS from operating a medical marijuana dispensary at any location in the city, as well as any business without a valid business license and certificate of occupancy. CPS has appealed. CSAC will file a brief in support of the City of Temecula.

***Qualified Patients Assoc. v. City of Anaheim***

Appeal to be Filed in the Fourth Appellate District, Division Three

In 2007, the City of Anaheim enacted an ordinance banning medical marijuana dispensaries. The trial court upheld the ordinance and the case was appealed. In the first appeal, the court left open the issue of whether the State's Medical Marijuana Program Act (MMPA) preempts local ordinances regulating medical marijuana activities. The case went back to the trial court, and the court upheld all but the criminal penalties of the ordinance against the state preemption challenge. The court found that there is no conflict between the MMPA and the city's ordinance. The court also concluded that the Compassionate Use Act (CUA) "clearly does not occupy the field of medical marijuana distribution." Similarly the court found that the MMPA does not fully occupy the area of medical marijuana distribution law. The court did conclude that the CUA preempts the criminal sanctions, but concluded that the criminal sanction portion of the ordinance is severable. The remaining provisions making medical marijuana dispensaries a nuisance per se were upheld. Plaintiff plans an appeal. CSAC will file a brief in support of the City of Anaheim.

***Rosenbaum v. Washoe County***

654 F.3d 1001 (9th Cir. Aug. 22, 2011)(10-15637), *petition for rehearing en banc pending* (filed Sept. 30, 2011)

Until this case, the law on probable cause allowed an arrest to be based on a statute identified after the arrest, even if there was no evidence that the arresting officer was ever aware of the existence of the law. The rationale behind this approach is that the constitutionality of an arrest should not depend upon the experience of the arresting officer. In this case, however, the Ninth Circuit concluded that the ability to identify a statutory basis for an arrest after the fact does not apply if the identified statute is remote or obscure. The case involves a man who was arrested for trying to sell state fair tickets that he had received for free in a promotion. He was released after the officers determined he had not actually broken any law. He filed a civil rights complaint. In defense the officers cited as a plausible basis for the arrest a statute under which the court determined no person had ever actually been prosecuted. The Ninth Circuit rejected the defense, concluding that the statute was so obscure that it could not reasonably be relied upon to justify the arrest. Washoe County is seeking rehearing en banc, and CSAC has filed a brief in support.

***Sierra Club v. Superior Court (County of Orange)***

Previously published at: 195 Cal.App.4th 1537 (4th Dist. Div. 3 May 31, 2011)(G044138), *petition for review granted* (Sept. 14, 2011)(S194708)

The Sierra Club made a Public Records Act request for the county's "Landbase" in an electronic GIS file format, which would allow the Sierra Club to conduct searches and analysis of the data. The Sierra Club argued the county must produce these files for free in a GIS format without charging the county's standard GIS Basemap licensing fees. The



county relied on Government Code section 6254.9's computer mapping system exemption in support of the licensing fee, which is used to recoup the costs of maintaining and updating the Landbase. (The county was willing to produce the information for free in a non-GIS format.) The Sierra Club then brought this action, arguing the county was required to produce the information in a GIS format without charging a licensing fee because producing the information in other formats prevented them from utilizing the functions of a GIS. The trial court ruled in favor of the county, and the Fourth District affirmed, holding that the County could properly charge a licensing fee for its geographic information system database. However, the Supreme Court granted Sierra Club's petition for review. CSAC will file a brief in support of Orange County.

## **II. Amicus Cases Decided Since September**

In addition to the new amicus cases already decided, which are discussed above, the following amicus cases have been decided since the Board's last meeting in September:

### ***County of Butte v. Federal Energy Regulatory Commission***

Memorandum Order of the Ninth Circuit Court of Appeals (Aug. 2, 2011)(10-70140)

#### **Outcome: Negative**

Butte County appealed two orders of the Federal Energy Regulatory Commission (FERC) regarding the costs of providing public safety at the Oroville Dam, which is owned and operated by the California Department of Water Resources. The FERC license to operate the dam requires the licensee to make provisions for public safety and recreational activities. Butte County complained to FERC that DWR was not meeting that requirement because while the county provides first responder and police services at the project site, DWR is exempt from property taxes and does not make any in-lieu payments to compensate the county for the approximately \$5.8 million it spends per year to provide these services at the site. Butte alleged it is the obligation of the licensee to provide these public safety services, and as such requested that FERC order DWR to pay the county \$5.8 million per year for law enforcement and public safety services, and another \$6.9 million per year to reimburse the county for the essential infrastructure needed to provide the services. FERC rejected the complaint, finding that "it is our policy to require our licensees to implement necessary license conditions and not to fund personnel at local agencies." Butte County appealed, and the Ninth Circuit affirmed. The court found that under the abuse of discretion standard, and the substantial deference that is shown to an administrative agency's interpretation of its own regulations, the county did not show any violations in FERC's decision not to impose a license provision requiring reimbursement for services. CSAC filed a brief in support of the county.

***Edna Valley Watch v. County of San Luis Obispo***

197 Cal.App.4th 1312 (2d Dist. Aug. 2, 2011)(B223653), *petition for rehearing denied* (Sept. 1, 2011)

Outcome: Negative

The Second District has found that Code of Civil Procedure 1021.5 allows for attorney fees incurred in an administrative hearing. In the case, petitioners opposed the planning commission's approval of a conditional use permit for a church. They appealed to the Board of Supervisors, which denied the appeal. Petitioners then filed a writ petition alleging various CEQA violations. Ultimately, the church decided to abandon its project, and after some wrangling, petitioners eventually dismissed their petition. They then filed a motion for approximately \$35,000 in attorney fees, with more than half of the requested fees arising out of work related to the administrative hearing before the Board of Supervisors. The trial court found that petitioners were entitled to fees since their petition was the catalyst for the church abandoning its project, but that petitioners were not entitled to fees for work at the administrative hearing. The Second District reversed. The court noted that section 1021.5 allows an award of fees "in any action," but does not specify whether "action" includes administrative proceedings. The court found that in order to further the purposes of the private attorney general statute – to encourage suits that effectuate strong public policy – fees must be available for the administrative hearings that are required to be exhausted before a lawsuit can be filed. The court left open the question of whether a party who only participates in an administrative proceeding, and not a court action, is entitled to fees. CSAC filed a letter in support of the county's petition for rehearing, but rehearing was denied.

***Fuchino v. Edwards-Buckley***

196 Cal.App.4th 1128 (3d Dist. June 27, 2011)(C064973), *petition for review/depublishation denied* (Sept. 14, 2011)(S195395)

Outcome: Negative

This case raises the question of whether a county is responsible under Welfare and Institutions Code section 17000 for the costs of ambulance services that one of its medically indigent adults receives in another county. In considering the question, the court first concluded that the ambulance services qualify as emergency or medically necessary care within the meaning of section 17000. The court went on to find that the recipient's home county has an obligation under section 17000 to cover the cost of out-of-county emergency ambulance services. The court also found that the lack of a contract between the home county and the ambulance service provider did not relieve the county of the obligation to pay for the service. CSAC's request for depublishation was denied.

***In re M.C.***

199 Cal.App.4th 784 (1st Dist. Sept. 20, 2011)(A129528)

Outcome: Negative

Welfare and Institutions Code section 329 allows any person to request a social services agency to investigate allegations of abuse or neglect. Following the investigation, the social services worker can either initiate a petition (if the worker determines the minor

meets the standards under W&I 300 (b) or (g)), or notify the requestor of the decision not to proceed. The requestor may seek review of the decision not to proceed in juvenile court. Under W&I 331, the court may either “affirm the decision of the social worker or order him or her to commence juvenile court proceedings.” Here, Legal Services for Children made a request for an investigation of a 17 year old runaway from Guatemala. The agency determined that he did not meet the standards set for protective custody, but the court ordered the agency to file a petition and take the minor into protective custody. The agency appealed, arguing that section 331 violates the doctrine of separation of powers to the extent it authorizes the juvenile court to order the agency to file a dependency petition. The First District affirmed. The court, recognizing this as an issue of first impression, concluded that section 331 does not violate the separation of powers doctrine because the agency has not been vested with exclusive authority to determine whether to initiate dependency proceedings: “[W]e fail to see how the judiciary can ‘usurp’ a power never exclusively vested in the executive branch. We find nothing in our Constitution or the statutory dependency scheme that would classify initiation of dependency proceedings as a ‘core’ or ‘essential’ executive function. Nor do we see how the limited judicial review provided by section 331 would ‘defeat or materially impair’ the executive authority which is vested in the Agency.” CSAC filed a brief in support of the agency.



December 2, 2011

**To:** CSAC Board of Directors  
**From:** Nancy Parrish, Executive Director, CSAC Finance Corporation  
**RE:** **Finance Corporation Program Update  
INFORMATION ITEM**

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The following are highlights of the numerous programs that the CSAC Finance Corporation offers to your counties:

**CalTRUST**

- CalTRUST currently has assets of approximately \$900 million and over 110 participant accounts.
- An RFP for investment administration services for CalTRUST is currently being developed.
- The next meeting of the CalTRUST Board of Trustees will be held April 25, 2012.

**California Communities (CSCDA)**

- CSCDA has recently adopted updated policy and procedures to reflect changes in business practices that have evolved over the last ten years. As part of those updates we will renegotiate our contract with CSCDA in the early part of 2012. No major changes are expected.

**U.S. Communities**

- All 58 counties continue to utilize U.S. Communities.
- The new food contract is gaining tremendous traction and proving to be very valuable for agencies that provide meals (e.g., law enforcement, schools and senior centers). A new flooring products and accessories, installation and related services was recently awarded to Empire and will be available for use in the next 30 days.

**Coast2Coast**

- We have launched our discount prescription drug card program with Coast2Coast and have 16 counties currently participating and four more likely to join by the end of December.

**General Information**

- Former CSAC President and founding member of the CSAC Finance Corporation Board of Directors Les Brown is gravely ill. We ask that you keep Les and his family in your thoughts and prayers.
- The next meeting of the CSAC Finance Corporation Board of Directors will be held April 26<sup>th</sup> and 27<sup>th</sup>, 2012.
- We continue to meet with individual counties and their department heads to present our programs and benefits. Please let us know if you would like a meeting set with your county's department heads.

If you have any questions regarding these or any other CSAC Finance Corporation programs please do not hesitate to contact us via phone, 916.327.7500 x556, or via email, [nparrish@counties.org](mailto:nparrish@counties.org); Laura Labanieh at 916.327.7500 x536 or [llabanieh@counties.org](mailto:llabanieh@counties.org).



December 2, 2011

To: CSAC Board of Directors  
From: Nancy Parrish, Executive Director, CSAC Finance Corporation  
Re: Corporate and Sponsorship Programs

This fall, in an effort to improve our Corporate and Sponsorship Programs and increase the revenue the programs generate, we began the process of totally revamping these programs. As part of that effort, we have eliminated the Corporate Relations Manager position and are now recruiting for a Director of Corporate Relations. We are also meeting with our Platinum and Gold Members to seek their input into the process.

Although still a work in process, some of the improvements we expect to incorporate into the program are:

- Increase the quality and quantity of opportunities for our Corporate and County Members to interact
- Simplify the existing membership levels to reflect the value of the opportunities offered
- Develop industry specific tracks (e.g., information technology, telecommunications, health, infrastructure development, etc.) to improve the quality of programming offered to our Corporate Members
- Increase sponsorship opportunities to provide additional networking venues and revenue
- Improve the content provided to Corporate Members at their meetings
- Transition our Corporate and Sponsorship programs from a calendar year to match our fiscal year

We expect to hire the Director of Corporate Relations in January of 2012 and fully implement these changes over the 18 months. We expect that the branding study being produced by Consor will provide valuable insight into additional public-private opportunities for collaboration and appropriate membership levels and dues.

# Calendar of Events

2012

## **January**

19 CSAC Executive Committee Meeting, Sacramento County

## **February**

1-3 CSAC Corporate Associates Retreat, Orange County

23 CSAC Board of Directors Meeting, Sacramento County

## **March**

3-7 NACo Legislative Conference, Washington, D.C.

## **April**

19 CSAC Executive Committee Meeting, Sacramento County

26-27 CSAC Finance Corporation Meeting, Monterey County

## **May**

16-18 NACo Western Interstate Region Conference, Santa Fe County, New Mexico

30-31 CSAC Legislative Conference, Sacramento County

31 CSAC Board of Directors Meeting, Sacramento County

## **July**

13-17 NACo Annual Meeting, Allegheny County (Pittsburgh), Pennsylvania

## **August**

2 CSAC Executive Committee Meeting, Los Angeles County

## **September**

6 CSAC Board of Directors Meeting, Sacramento County

13-14 CSAC Finance Corporation Meeting, San Diego County

## **October**

3-5 CALAFCO Annual Conference, Monterey County

10-12 CSAC Executive Committee Retreat, Orange County

17-20 NACo National Council of County Association Executives Annual Fall Meeting

## **November**

27-30 CSAC 118th Annual Meeting, Long Beach, Los Angeles County

## **December**

12-14 CSAC Officers Retreat, Site TBD

## 2013

### **March**

2-6 NACo Legislative Conference, Washington, D.C.

### **May**

22-24 NACo Western Interstate Region Conference, Flagstaff, Arizona

29-30 CSAC Legislative Conference, Sacramento County

### **July**

19-23 NACo Annual Conference, Tarrant County, Ft. Worth, Texas

### **September**

10-13 CSAC Finance Corporation Fall Meeting

### **November**

19-22 CSAC 119th Annual Meeting, San Jose, Santa Clara County

## 2014

### **March**

1-5 NACo Legislative Conference, Washington, D.C.

### **May**

28-29 CSAC Legislative Conference, Sacramento County

### **July**

11-15 NACo Annual Conference, New Orleans Parish, New Orleans, LA

### **November**

18-21 CSAC 120th Annual Meeting, Anaheim, Orange County