Realignment
Briefing Paper on the Poison Pill Provisions

Background

State-county "realignment" legislation passed the Legislature and was signed by Governor Pete Wilson in 1991. This realignment transferred program responsibilities for a number of health, mental health, and social services programs from the state to counties. Along with this greater responsibility, the realignment provided counties with dedicated revenue sources for these programs – a half-cent state sales tax increase and 24.33 percent of Vehicle License Fee revenues. When realignment was enacted, revenues from the VLF were expected to be $769 million and revenues from sales tax were anticipated to be $1.4 billion for 1992-93. Since then realignment revenues and program costs have grown significantly. In January 2003, the Department of Finance estimated that VLF would generate $1.4 billion and sales tax would generate $2.3 billion in realignment revenues for 2003-04.

The realignment legislation, AB 1288 (Chapter 89, Statutes of 1991), includes provisions for a number of 'poison pills' or mechanisms that "undo" the statutory provisions if a certain event occurs. The poison pill language is in uncodified sections of AB 1288. Uncodified statutes carry the weight of law but are not organized within code sections. In order to review these provisions, one must read a copy of AB 1288 (Chapter 89, Statutes of 1991).

The Poison Pill Provisions of Realignment at Work

There are four poison pill provisions in AB 1288 – a state mandate poison pill, an indigent health care poison pill, a vehicle license fee poison pill, and a Proposition 98 poison pill. Please note that these poison pill provisions appear again in Sections 28 and 29 of SB 463 (Chapter 100, Statutes of 1993).

State Mandates Poison Pill: Section 209(a) of AB 1288 would make the provisions of the realignment inoperative if a final judicial determination is made by the California court of appellate jurisdiction that any provision of the act is a state-mandated local program requiring state reimbursement in excess of $1 million.

Indigent Health Care Poison Pill: Section 210(b) of AB 1288 would repeal the increase in the Vehicle License Fee (which occurred via a change in the depreciation schedule) if a final judicial determination is made by a California court of appellate jurisdiction that counties are owed additional funds for indigent health care under law of 1982. In 1982, state law transferred responsibility for medically indigent adults from the state to the counties. This would not repeal the entire VLF, just the 1991 increase that generates revenues for realignment.

Vehicle License Fee Poison Pill: Section 210(a) of AB 1288 would repeal the increase in Vehicle License Fee if a California court of appellate jurisdiction makes a final decision that the Legislature has acted in conflict with the section of the Constitution that dedicates the proceeds of the VLF to cities and counties.

Proposition 98 Poison Pill: Section 211 of AB 1288 would repeal the ½ cent increase in the state sales tax rate that is earmarked for realigned programs if a final decision is made by a California court of appellate jurisdiction that these revenues are subject to the Proposition 98 guarantee.

San Diego County Litigation

San Diego is in litigation with the State of California regarding medically indigent adults. This case could trigger the Indigent Health Care poison pill provisions in realignment.

Beginning in 1983, the State transferred responsibility for medical care for medically indigent adults ("MIAs") to the counties. When the State did so, it also transferred 70 percent of the level of funding to counties that the state had been providing. However, the funds did not keep up with population growth and inflation. San Diego County established the County Medical Services (CMS) program to provide the required medical care to MIAs. Beginning in fiscal year 1989-90, the State failed to fully fund its CMS obligation. In February 1990, San Diego County attempted to terminate its CMS program after the State's allocation of funds was exhausted. The Legal Aid Society for the County of San Diego filed a lawsuit against the County, and the County filed a cross-complaint against the State to recover the funds expended by the County to provide necessary health services to MIAs. In May 1991, the superior court issued an order preventing San Diego County from terminating the program and requiring the County to continue funding the program at historic levels. The court agreed with the County's position that the CMS program was a state mandated program and that the State was obligated to fully fund the program. San Diego County also prevailed on its theory before the court of appeal and the California Supreme Court. On March 3, 1997, the California Supreme Court ruled in favor of the County and remanded the case to the Commission on State Mandates for a determination of San Diego's costs in excess of the funds provided by the state. In April of 1997, the Wilson Administration determined that this decision did not trigger a poison pill.

San Diego County presented its claim of $15.1 million to the Commission on State Mandates. The Commission appointed an Administrative Law Judge (ALJ) to hear testimony and consider evidence. The judge recommended rejection of the claim entirely; the Commission concurred with ALJ recommendation. On February 26, 2001, San Diego then filed a petition for writ of mandate in the superior court challenging the Commission's dismissal of the County's claim. The court rejected the county's petition. The county appealed. On September 24, 2003, the court of appeal entered a decision finding that the county is entitled to recover $3,455,754 from the State, thereby reversing the decisions of the superior court and the Commission.

Both the State and San Diego County filed appeals with the Supreme Court. On December 24, 2003, the Supreme Court denied the petitions. The Supreme Court's action makes the appellate court decision final immediately.

How the Indigent Health Care Poison Pill Provision Would Work

The indigent health care poison pill language affects Revenue and Taxation Code sections 10753.2 and 11001.5. These two sections will be automatically repealed if the poison pill is triggered. Section 10753.2 includes the depreciation schedule used by the DMV to determine market value for purposes of computing the VLF. However, Section 10753.2 also includes the extension of the depreciation schedule that had the effect of generating a larger amount of VLF fees. These additional revenues have been used to fund realignment.

Section 11001.5 provides that 24.33% of the VLF collected by the State shall be paid to the Local Revenue Fund ("Realignment VLF"). The balance of 75.67% ("Base VLF") is used to cover administrative costs of the DMV and the Franchise Tax Board and then distributed to cities and counties as general fund revenue, which can be used for other purposes.

As a general matter, the poison pill language does not repeal the VLF in its entirety. Rather, the director of the Department of Finance notifies the Department of Motor Vehicles. The Department of Motor Vehicles reverts to the old depreciation schedule for the VLF. Thus, the State would continue to collect the VLF and would still be constitutionally required to allocate the money collected to cities and counties.

Section 210 of AB 1288 states that the affected statutory provisions become inoperative on the first day of the month in which the director the Department of Finance notifies the Department of Motor Vehicles. There is an argument that the State could elect not to notify the DMV and thus never trigger the poison pill, although such an approach is entirely up to the State.

If the indigent health care poison pill is activated, over $1.4 billion in VLF revenue is at risk. Under realignment, VLF revenues fund health, mental health, and social services programs, with the vast majority of funds going to health and mental health programs. In fiscal year 2001-02, $1.35 billion in VLF was allocated among the three program areas as follows:

- Health: $1.02 billion
- Mental health: $283.2 million
- Social Services: $43.9 million

While VLF revenues for realignment would be gone, counties would still be obligated to provide realigned services under state law. It is very likely that a county or counties would file a claim that realignment is a mandate, thus testing state mandate poison pill.