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The Future of Proposition 36 Funding

L E G I S L A T I V E   A N A L Y S T ' S   O F F I C E

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Key Fiscal Provisions of Proposition 36

☑ ***Treatment Trust Fund.*** The Substance Abuse and Crime Prevention Act of 2000, approved by the voters in the November 2000 election as Proposition 36, provides appropriations from the General Fund to a newly created special fund, called the Substance Abuse Treatment Trust Fund. This money, in turn, has been allocated (1) to offset administrative costs of the Department of Alcohol and Drug Programs (DADP) to operate the program, and (2) to counties for the operation of local Proposition 36 programs.

☑ ***Appropriations Expire End of 2005-06.*** The measure specifically allocated $60 million in startup funds for the 2000-01 fiscal year and $120 million per year for 2001-02 through 2005-06. The funds are not generally subject to annual appropriation in the budget act, although an "in lieu" appropriation of Proposition 36 funds (about $3.9 million in 2005-06) has been provided through the annual budget process for budget-tracking purposes. About $116 million per year has gone to counties.

☑ ***Additional Funding Provided.*** Proposition 36 states that the Legislature may appropriate additional funding to the trust fund beyond the funds it appropriates under its own terms. This has not occurred, although the Legislature has provided additional funding outside of the trust fund. Specifically, the Legislature has earmarked about $8.6 million per year in federal substance abuse treatment grant funds for drug testing of Proposition 36 participants and other local treatment program activities. Some Proposition 36 treatment services are also budgeted under the Drug Medi-Cal Program, although the caseload has been relatively small (in the thousands of cases).

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Key Fiscal Provisions of Proposition 36
(Continued)

- ☑ ***Carryover of Funds Permitted.*** The measure permits counties to carry over unspent Proposition 36 allocations from year to year, and a number of counties have done so. For example, only about $7 million of the initial $60 million round of funding was spent in 2000-01, with the balance carried over by counties into later years as their programs have "ramped up". After increasing in the early stages of Proposition 36 implementation, the amount of available carryover funds available to counties has been dropping.

- ☑ ***Auditing Provisions.*** Proposition 36 requires annual audits of county expenditures of the funds. Counties must repay to the state any funds not spent for the specific allowed purposes set forth in the law, making these funds available for redistribution among counties.

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Funding Proposition 36 In 2006-07 and Beyond: Factors for Legislative Consideration

No appropriations are provided by Proposition 36 for 2006-07 or subsequent years, leaving it to Legislature to determine how much, if at all, to appropriate for this purpose in the future. There are a number of key factors the Legislature may wish to consider as it addresses this issue during the 2006-07 budget process and in subsequent budgets:

- ☑ ***Funding Stops, but the Program Does Not.*** While the appropriations required by Proposition 36 cease at the end of 2005-06, the mandate for diverting certain offenders from prison and jail to drug treatment remains fully in effect. If the Legislature were to simply stop or significantly reduce funding, many counties would struggle to remain in compliance with the law. Because the measure also affects parolees who violate parole rules by possessing illegal drugs, state compliance with the law could also be problematic.

- ☑ ***Cost-Benefit Study Due in April.*** In compliance with Proposition 36, DADP has contracted with University of California, Los Angeles to prepare a series of evaluation reports on Proposition 36. The Legislature adopted budget trailer bill language as part of the *2005-06 Budget Act* directing DADP to provide an upcoming report on the costs and benefits of the measure to the Legislature by April 1. This report could inform legislative decision making on reauthorization of Proposition 36 funding. We recommend the Legislature closely review the findings and assess carefully (1) the evidence available in the study, as well as other available information, regarding the effectiveness of treatment being provided under Proposition 36, and (2) the potentially separate and distinct fiscal effects of the measure on the state and on counties.

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Funding Proposition 36 In 2006-07 and Beyond: Factors for Legislative Consideration

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☑ ***Federal MOE Rules Limit State Options.*** The state now receives about $257 million annually in federal grants for the support of drug treatment programs, most of which is passed through to counties for the support of their treatment systems. However, the money is provided to the state on the condition that the state complies with so-called maintenance-of-effort (MOE) requirements. The MOE rule financially penalizes states which reduce the amount they spend on drug treatment. If the Proposition 36 appropriation were to be "zeroed out," the MOE rules would cost the state $180 million in federal funding over two years, resulting in a major loss for county treatment systems. The state could reduce Proposition 36 funding levels and avoid any MOE penalty if it increased state spending on other drug treatment programs which meet federal criteria.

☑ ***Annual County Spending Higher Than Current Annual Appropriation.*** If the Legislature were to choose to fund Proposition 36 at a level comparable to what counties are now spending collectively on the program, it would be more than the $120 million a year appropriated in 2005-06 under the proposition. That is because a number of counties have ramped up spending to a higher level than that using excess funds they have carried over from prior years. In 2004-05, the last year for which we have complete cost reports, about $143 million was spent. However, that figure does not take into account any expenditures that could be disallowed as a result of ongoing auditing of county spending to ensure it complies with the purposes of Proposition 36. Netting out disallowed expenditures would probably eventually result in a modest reduction in the expenditure level.

Fiscal Issues for Future Consideration By Policy Committees

In addition to the immediate issue faced by the Legislature next year on funding of Proposition 36 programs, there are additional fiscal issues related to the implementation of the measure that it may wish to consider in the context of pending policy legislation:

☑ ***Categorical Structure of Funding a Policy Issue.*** In a 2004 report commissioned by the Legislature, *Remodeling the Drug Medi-Cal Program*, the LAO proposed a reorganization of county drug treatment funding programs, including the funding now provided through Proposition 36, into some form of block grant program. We concluded that such a reorganization of program would allow more cost-effective local operation of these programs and greater leveraging of available federal funds that could be used to expand the services available.

☑ ***New Allocation Approaches Could Be Considered.*** As it considers the level of funding to be provided for Proposition 36 in the future, it should also consider how those funds are being allocated among counties. For example, there have been concerns that present funding allocations provide relatively large sums of money for some counties and lesser shares of funding for others. The Legislature could, among other actions, consider modifying the allocation rules to (1) provide additional funds for counties which demonstrate that they operate the most cost-effective and clinically effective programs, (2) financially reward counties that provide the most significant local matching funds for Proposition 36 purposes, and (3) take further steps to even out funding allocations so that it is distributed more equitably among counties.