ITEM 3

TEST CLAIM

PROPOSED DECISION

Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5

Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)

California Rules of Court 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007

Sheriff Court-Security Services

09-TC-02

County of Los Angeles, Claimant

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Exhibit A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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WENDY L. WATANABE
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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

June 29, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

LOS ANGELES COUNTY TEST CLAIM
SHERIFF COURT-SECURITY SERVICES

The County of Los Angeles respectfully submits the enclosed test claim to recover the cost of security services provided to the Los Angeles County Superior Court. The Los Angeles County Sheriff's Department is the service provider and the related costs have been incurred since July 28, 2009 under the Superior Court Law Enforcement Act of 2002.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
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Enclosure

1. TEST CLAIM TITLE

Sheriff Court-Security Services

2. CLAIMANT INFORMATION

Los Angeles County
Name of Local Agency or School District

Wendy L. Watanabe
Claimant Contact

Auditor-Controller
Title

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Los Angeles, California 90012-3873
City, State, Zip

(213) 974-8301
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3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Leonard Kaye
Claimant Representative Name

Principal Accountant - Contract
Title

Los Angeles County
Organization

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For CSM Use Only

Filing Date:

RECEIVED
JUN 30 2010
COMMISSION ON STATE MANDATES

Test Claim #: 09-TC-03

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

See test claim legislation on the following page i.

☑ *Copies of all statutes and executive orders cited are attached.*

- **See Table of Contents on page ii**

5. Written Narrative: pages _____ to _____.
6. Declarations: pages _____ to _____.
7. Documentation: pages _____ to _____.

Test Claim Legislation
Los Angeles County Test Claim
Sheriff Court-Security Services

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 as a result of the following State test claim legislation (statutes, regulations, executive orders):

Government Code Section 69926 as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(a)(6) as amended and renumbered by Statutes 2009, Chapter 22 (SB 13) and as added as 69927(a)(5) by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(b) as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and Government Code Sections 69920, 69921, 69921.5, 69922, and 69925 added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Section 77212.5 as added by Statutes 1998, Chapter 764 (AB 92) and repealed but replaced and modified by Statutes 2002, Chapter 1010 (SB 1396) under Government Code Section 69926; and, Rule 10.810 of the California Rules of Court Sections (a), (b), (c), (d) and Function 8 (Court Security). Rule 10.810 was amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Subdivision (d) was amended effective January 1, 2007 and previously was amended and relettered effective July 1, 1995. Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule.

Los Angeles County Test Claim
Sheriff Court-Security Services

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> *"Courthouses must be a safe harbor to which members of the public come to resolve disputes that often are volatile. Once courthouses themselves are perceived as dangerous, the integrity and efficacy of the entire judicial process is in jeopardy."* [1]

The landmark Superior Court Law Enforcement Act of 2002 (Act)[2] helped make the courthouse a safe harbor. Trial courts throughout California were uniformly required to improve court security ... to ensure public safety.

County sheriffs played a major role in this effort. Detailed agreements were developed to ensure that sheriff's court security services met high security standards. Court security funds were appropriated by the Legislature. And, counties were reimbursed their court security costs ... that is, up until recently.

On July 28, 2009, the Legislature stopped paying counties for the costs of retiree health benefits of Sheriff personnel who were assigned court security duties. Specifically, Government Code Section 69926(b) as amended by the Statutes of 2009, Chapter 22 (SB 13)[3], indicated that retiree health benefit costs are no longer allowable costs ... are no longer to be paid to the counties.

This claim is filed to recover retiree health benefit costs, which the Legislature refuses to pay, under a Constitutional remedy which the Legislature cannot limit.

Specifically, this claim is filed under article XIII B, section 6 of the California Constitution. Pertinent provisions of the court security 'test claim legislation'[4] are

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[1] As noted by Ronald M. George, Chief Justice of the California Supreme Court, on page 1 of the Administrative Office of the Courts "Fact Sheet" issued in July 2009, attached as Exhibit 6.

[2] This provision of this Act are found in the Statutes of 2002, Chapter 1010 (SB 1396), attached as Exhibit 2.

[3] Statutes of 2009, Chapter 22 (SB 13), is attached, in pertinent part, as Exhibit 1.

[4] The 'test claim legislation' is: Government Code Section 69926 as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(a)(6) as amended and renumbered by Statutes 2009, Chapter 22 (SB 13) and as added as 69927(a)(5) by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(b) as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and Government Code Sections 69920, 69921, 69921.5, 69922, and 69925 added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Section 77212.5 as added by Statutes 1998, Chapter 764 (AB 92) and repealed but replaced and modified by Statutes 2002, Chapter 1010 (SB 1396) under Government Code Section 69926; and, Rule

examined. No funding disclaimers are found. Reimbursement is required as claimed herein.

AB 92

AB 92, enacted as Chapter 764 of the Statutes of 1998 on September 23, 1998, mandated that county sheriffs enter into agreements with State-administered trial courts to provide security services. Specifically, Government Code Section 77212.5 was added by Chapter 764 to require that:

> "Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services." (Emphasis added.)

This mandate explicitly specified that sheriff departments enter into agreements with the State's trial courts to provide court security services. These requirements and their associated costs were new and subject to reimbursement under article XIII B, section 6 of the California Constitution, as noted by the Legislature in Section 2 of AB 92:

> "Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act

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10.810 of the California Rules of Court Sections (a), (b), (c), (d) and Function 8 (Court Security). Rule 10.810 was amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Subdivision (d) was amended effective January 1, 2007 and previously was amended and re-lettered effective July 1, 1995. Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule.

> shall become operative on the same date that the act takes effect pursuant to the California Constitution."

In addition, the Legislative Counsel opined that (AB 92) court security duties imposed on county sheriffs were likely to be reimbursable under article XIII B, section 6 of the California Constitution. Specifically, Legislative Counsel noted that:

> "This bill would require the trial courts in such a county, commencing July 1, 1999, and thereafter, to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services, thereby imposing a state-mandated local program. (2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.
>
> This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions."

Prior to AB 92, the Trial Court Funding Act of 1997 transferred the responsibility for all trial court "operations costs," as defined in California Rule of Court (CRC) 810, from the County to the State, making the State fully responsible for all trial "court operations" costs, and capping the county's trial court funding responsibility at a fixed annual maintenance of effort (MOE) amount, based upon amounts spent in a 1994-95 base year.

In enacting the Trial Court Funding Act of 1997, the Legislature declared its intent to:

> (1) "Provide state responsibility for funding of trial court operations commencing in the 1997-98 fiscal year." 1997 Cal. Stats., ch 850, §3(a).

(2) "Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994-95 fiscal year...." 1997 Cal. Stats., ch 850, §3(b).

Beginning in 1997, county sheriffs who had historically provided trial court security were required to continue to provide those services by contract with the trial courts they served, with funding provided by the State through the State Judicial Council and its administrative agency, the State Administrative Office of the Courts (AOC) for all "court operations" costs as defined in CRC 810 as it read on July 1, 1996, and which specifically included in such costs, the salary, wages, and benefits of sheriff employees proving court security.

Under AB 92, the State provided option counties, including Los Angeles County, with State grants to be used for trial "court operations" costs defined in Government Code Section 77003, and CRC 810.

Of course, reimbursement for new state-mandated court security services under article XIII B, section 6 of the California Constitution is not required if otherwise provided in accordance with Government Code Section 17556 (e):

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds ...
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." (Emphasis added.)

It should be noted, then, that a 'test claim' may not have been filed to recover Sheriff's court security cost as State revenue "sufficient to fund the cost of the state mandate" may have been provided under AB 92 State grants.

SB 1396

The AB 92 state-mandated court security program in Government Code Section 77212.5 was repealed by SB 1396, enacted as Chapter 1010 of the Statutes of 2002 on September 23, 1998. However, SB 1396 also replaced the prior state-mandated court security program in Government Code Section 77212.5 with an expanded version in Government Code Section 69926 as follows:

"(a) This section applies to the superior court and the sheriff or marshal's department in those counties in which either of the following apply:

(1) The sheriff's department was otherwise required by law to provide court security services on and after July 1, 1998.

(2) Court security was provided by the marshal's office on and after July 1, 1998, the marshal's office was subsequently abolished and succeeded by the sheriff's department, and the successor sheriff's department is required to provide court security services as successor to the marshal.

(b) The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment.

(c) The sheriff or marshal shall provide information as identified in the contract law enforcement template by April 30 of each year to the superior court in that county, specifying the nature, extent, and basis of the costs, including negotiated or projected salary increases of court law enforcement services that the sheriff proposes to include in the budget of the court security program for the following state budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. It is the intent of the Legislature that proposed court security expenditures submitted by the Judicial Council to the Department of Finance for inclusion in the Governor's Budget shall be as defined in the contract law enforcement template.

(d) If the superior court and the sheriff or marshal are unwilling or unable to enter into an agreement pursuant to this section on or before August 1 of any fiscal year, the court or sheriff or marshal may request the continuation of negotiations between the superior court and the sheriff or marshal for a

> period of 45 days with mediation assistance, during which time the previous law enforcement services agreement shall remain in effect. Mutually agreed upon mediation assistance shall be determined by the Administrative Director of the Courts and the president of the California State Sheriffs' Association." (Emphasis added.)

Accordingly, under Government Code Section 69926, the sheriff is mandated to enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment and will be paid for such services from the State budget of the court security program for the following state budget year.

State-mandated Court Security Program

SB 1396 describes and defines the State-mandated court security program in Government Code Sections 69920 and 69921 as follows:

> 69920. This article shall be known and may be cited as the Superior Court Law Enforcement Act of 2002.
>
> 69921. For purposes of this article:
>
> (a) "Contract law enforcement template" means a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927.
>
> (b) "Court attendant" means a nonarmed, nonlaw enforcement employee of the superior court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or a public safety officer.
>
> (c) "Court security plan" means a plan that is provided by the superior court to the Administrative Office of the Courts that includes a law enforcement security plan and all other court security matters.
>
> (d) "Law enforcement security plan" means a plan that is provided

by a sheriff or marshal that includes policies and procedures for providing public safety and law enforcement services to the court.

(e) "Superior court law enforcement functions" means all of the following:

(1) Bailiff functions, as defined in Sections 830.1 and 830.36 of the Penal Code, in criminal and noncriminal actions, including, but not limited to, attending courts.

(2) Taking charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure.

(3) Patrolling hallways and other areas within court facilities.

(4) Overseeing prisoners in holding cells within court facilities.

(5) Escorting prisoners in holding cells within court facilities.

(6) Providing security screening within court facilities.

(7) Providing enhanced security for bench officers and court personnel, as agreed upon by the court and the sheriff or marshal."

In addition to specifying the types of mandated court security services, SB 1396 specifies how levels of such services are to be set in Government Code Section 69921.5 as follows:

"The duties of the presiding judge of each superior court shall include the authority to contract, subject to available funding, with a sheriff or marshal, for the necessary level of law enforcement services in the courts."

Also, SB 1396 specifies the types of court actions requiring the attendance of the sheriff in Government Code Section 6922 as follows:

"Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court held within his or her county. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the

> presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions. Notwithstanding any other provision of law, the presiding judge or his or her designee may provide that a court attendant take charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure. The sheriff shall obey all lawful orders and directions of all courts held within his or her county."

Importantly, the sheriff is required to collaborate with the presiding judge in order to develop efficient practices in delivering court security services under Government Code Section 69925 which provides that:

> "On and after July 1, 2003, the sheriff or marshal, in conjunction with the presiding judge, shall develop an annual or multiyear comprehensive court security plan that includes the mutually agreed upon law enforcement security plan to be utilized by the court. The Judicial Council shall provide for the subject areas to be addressed in the plan and specify the most efficient practices for providing court security services. The Judicial Council shall establish a process for the review of court security plans by the Judicial Council in the California Rules of Court. The Judicial Council shall annually submit to the Senate Judiciary Committee and Assembly Judiciary Committee a report summarizing the court security plans reviewed by the Judicial Council, including, but not limited to, a description of each plan, the cost involved, and whether each plan complies with the rules for the most efficient practices for providing court security services." (Emphasis added.)

Therefore, SB 1396 mandates that the State's Judicial Council control, oversee and administer the development of court services and their efficient delivery. However, the Legislature, in SB 1396 did not propose to achieve these efficiencies by eliminating reimbursement for retiree health benefits for Sheriff's personnel assigned court security duties.

Retiree Health Benefit Costs

In fact, SB 1396 does not address retiree health benefit costs at all. Government Code Section 69927(a)(5), added by SB 1396, only provides an illustrative, but not a comprehensive or exhaustive, listing of allowable benefit costs as follows:

"(a) It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget may not be reduced as a result of this article. Any new court budget may not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature ....

(5) "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel. " (Emphasis added.)

Therefore, county sheriffs are not limited to the above listing of allowable benefit costs.

Accordingly, retiree health benefit costs are allowable here.

Moreover, as previously noted, Government Code Section 69926(b) as added by SB1396 provides merely that:

> "The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment."

And, retiree health benefits are allowable here as well.

Also, retiree health benefits are allowable as 'benefits' under the California Rules of Court (CRC) Rule 10.810 (formerly Rule 810 on July 1, 1996) in Function 8 as "salary, wages and benefits (including overtime) of sheriff ... employees who perform the court's security". Consequently, the elimination of retiree health benefits would violate the Legislature's provision in Government Code Section 69927(b) as added by SB1396, that:

> "Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996, or that meets the definition of any new law enforcement component developed pursuant to this article."

But all this was forgotten by the Legislature when retiree health benefit reimbursements for the Sheriff's court security employees were deleted in SB 13.

SB13

Government Code Section 69926(b) was amended and expanded by SB13, which was enacted as Chapter 22, Statutes of 2009 on July 28, 2009. This section now provides that:

> "The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime

pay. In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel." (Emphasis added.)

However, paragraph (6) of subdivision (a) of Section 69927 does not list retiree health benefits as an unallowable cost. This paragraph provides that:

""Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, workers' compensation paid to an employee in lieu of salary, workers' compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

(A) The Administrative Office of the Courts shall use the average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.

(B) Courts and court security providers shall manage their resources to minimize the use of overtime." (Emphasis added.)

Again, it should be noted that county sheriffs are not limited to the above listing of allowable benefit costs.

Accordingly, retiree health benefit costs are allowable under paragraph (6) of subdivision (a) of Section 69927.

In addition, retiree health benefits are allowable as 'benefits' under the California Rules of Court (CRC) Rule 10.810 (formerly Rule 810 on July 1, 1996) in Function 8 as "salary, wages and benefits (including overtime) of sheriff ... employees who perform the court's security". Consequently, the elimination of retiree health benefits would violate the Legislature's provision in Government Code Section 69927(b) as amended by SB13, that:

> "Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on January 1, 2007, or that meets the definition of any new law enforcement component developed pursuant to this article."

Even though Government Code Section 69927(b) prohibits an increase in the county's obligation for a court operation cost, defined by Function 8 of Rule 810 of the California Rules of Court, as it read on January 1, 2007. Nevertheless, the Legislature did so. The obligation to pay for retiree health benefit costs were shifted from the State to counties. Such a shift was addressed in *Lucia Mar* by the California Supreme Court.

Lucia Mar

Lucia Mar School District v. Bill Honig, et al. (44 Cal.3d 830) stands for the fundamental proposition that under article XIII B, section 6 of the California Constitution, schools and local agencies have rights to recover State-mandated program costs when these obligations are shifted from the State to them, as is the case here. In this regard the Court finds that:

> "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate ***681section 6 of article XIIIB because the programs are not "new." Whether the shifting of costs is accomplished by compelling local governments to **323 pay the cost of entirely new programs created by the state, or to accept financial

> responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, seems equally violative of the fundamental purpose underlying section 6 of that article.[FN7] We conclude, therefore, that because section 59300 shifts partial financial responsibility for the support of students in the state operated schools from the state to school districts-an obligation the school districts did not have at the time article XIIIB was adopted-it calls for plaintiffs to support a "new program" within the meaning of section 6." (44 Cal.3d 830, 834)

Here, of course, the partial financial responsibility shifted was for retiree health benefit costs. Like the shift in Lucia Mar, the result was that a new 'program' was created. Specifically, this 'program' was created on July 28, 2009 --- when Government Code Section 69926(b) was amended by SB13 (Chapter 22, Statutes of 2009) shifted the costs of retiree health benefits from the State to the County.

It should be noted that there are no statutory funding disclaimers under Government Code Section 17556 which would bar recovery of retiree health benefit costs under article XIII B, section 6 of the California Constitution.

Section 17556

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

> (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph.

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments which are sufficient to reimbursement the county for all costs necessarily incurred in complying with the test claim legislation.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature. Any reimbursements for duplicative activities

claimed herein will be deducted from those claimed under the test claim legislation detailed herein.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute

or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction."

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Costs Mandated by the State

State reimbursement for retiree health benefits under article XIII B, section 6 of the California Constitution, requires, in pertinent part, that:

"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 ... " (Emhasis added.)

This 'new program' requirement was met, as previously discussed, when Government Code Section 69926(b) was amended by SB13 (Chapter 22, Statutes of 2009) shifted the costs of retiree health benefits from the State to the County on July 28, 2009.

State reimbursement for retiree health benefits under article XIII B, section 6 of the California Constitution further provides that the Legislature may, but need not, provide a subvention of funds for the following mandates:

> "(1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

Certainly, the County did not request to assume the financial obligation of retiree health benefit costs, so this funding disclaimer is not applicable here.

In addition, the test claim legislation did not define a new crime or change the definition of a crime, as previously noted under the disclaimer funding section, so this funding disclaimer is not applicable here.

None of the mandates clamed herein or in the test claim legislation are found in legislation enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975. The oldest legislation included in this test claim is AB 92, enacted as Chapter 764 of the Statutes of 1998 on September 23, 1998.

In addition, a test claim must be timely filed in accordance with 17551(c) which requires that:

> "(c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."

This test claim was timely filed within a year of enactment of SB13 (Chapter 22, Statutes of 2009) which shifted the costs of retiree health benefits from the State to the County on July 28, 2009.

The retiree health benefit costs claimed herein are quantified in the attached declaration of Steve Smith and in the Statewide cost surveys following Mr. Smith's declaration. These costs are far in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

In conclusion, under article XIII B, section 6 of the California Constitution and Sections 17500 et. seq. of the Government Code, reimbursement of retiree health benefit costs is required as claimed herein.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ADDRESS ALL CORRESPONDENCE TO:
ACCOUNTING DIVISION
500 W. TEMPLE ST., ROOM 603
LOS ANGELES, CA 90012-2713

LOS ANGELES COUNTY TEST CLAIM
SHERIFF COURT-SECURITY SERVICES

Declaration of Steven J. Smith

Steven J. Smith makes the following declaration and statement under oath:

I, Steven J. Smith, Chief Accountant for the Accounting Division of the Auditor-Controller Department of the County of Los Angeles (County), am responsible for analyzing, reporting and recovering the County's trial court costs, including the County Sheriff's court security costs, in accordance with California law; and, I have been doing so for the past twenty years.

I declare that I have prepared the attached schedule which show best estimates of County court security retiree health benefit costs for the 2009-10 and 2010-11 fiscal years.

I declare that I have attached responses from other counties indicating their best estimates of County court security retiree health benefit costs for the 2009-10 and 2010-11 fiscal years.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and to those matters, I believe them to be true.

June 29, 2010 in Los Angeles
Date and Place

Signature

Attachment to the Declaration of Steven J. Smith

Los Angeles County
Sheriff Court Security – Retiree Health Benefit Costs

The County of Los Angeles (County) is in the process of filing a 'test claim' with the Commission on State Mandates (which is due by June 30, 2010) for retiree health benefit costs for sheriff staff providing security (trial court) services mandated under Govt. Code section 69926. On July 20, 2009, this section was subsequently amended to now expressly exclude retiree health benefit costs that were previously reimbursed. The County's test claim seeks to recover these excluded costs.

As part of the requirement for filing a test claim, a statewide cost survey must be completed. Los Angeles County has been identified as one of the five counties that are affected by this exclusion. If successful, State reimbursement for retiree health benefit costs will be made for the 2009-10 and subsequent years.

The best estimates of Sheriff's security service trial court retiree health benefit costs by fiscal year are:

$4,813,476	for 2009-10
$4,890,183	for 2010-11

Prepared by Steven J. Smith of Los Angeles County

Statewide Cost Survey
Sheriff Security Services - Trial Courts

The County of Los Angeles is in the process of filing a 'test claim' with the Commission on State Mandates (which is due by June 30, 2010) for retiree health benefit costs for sheriff staff providing security (trial court) services mandated under Govt. Code section 69926. On July 20, 2009, this section was subsequently amended to now expressly exclude retiree health benefit costs that were previously reimbursed. Our test claim seeks to recover these excluded costs.

As part of the requirement for filing a test claim, a statewide cost survey must be completed. Your county has been identified as one of the five counties that are affected by this exclusion. If we are successful, State reimbursement for retiree health benefit costs will be made for the 2009-10 and subsequent years.

Please let us know your best estimates of your Sheriff's security service trial court retiree health benefit costs for:

	(Retiree Health Savings Plan)	(Retiree Medical Offset)	Total
2009-10	$89,865	$102,652	$192,517
2010-11	$94,900	$ 65,992	$160,892
Totals	$184,765	$168,644	$353,409

Submitted by: Laura Castleman, (916) 874-2768, of Sacramento County

Thank you for your prompt response !

Statewide Cost Survey
Sheriff Security Services - Trial Courts

The County of Los Angeles is in the process of filing a 'test claim' with the Commission on State Mandates (which is due by June 30, 2010) for retiree health benefit costs for sheriff staff providing security (trial court) services mandated under Govt. Code section 69926. On July 20, 2009, this section was subsequently amended to now expressly exclude retiree health benefit costs that were previously reimbursed. Our test claim seeks to recover these excluded costs.

As part of the requirement for filing a test claim, a statewide cost survey must be completed. Your county has been identified as one of the five counties that are affected by this exclusion. If we are successful, State reimbursement for retiree health benefit costs will be made for the 2009-10 and subsequent years.

Please let us know your best estimates of your Sheriff's security service trial court retiree health benefit costs for:

_____69,463.00___ 2009-10

_____69,463.00___ 2009-11

Submitted by Han Nguyen_____ of Kern_____ County

Thank you for your prompt response !

Statewide Cost Survey
Sheriff Security Services - Trial Courts

The County of Los Angeles is in the process of filing a 'test claim' with the Commission on State Mandates (which is due by June 30, 2010) for retiree health benefit costs for sheriff staff providing security (trial court) services mandated under Govt. Code section 69926. On July 20, 2009, this section was subsequently amended to now expressly exclude retiree health benefit costs that were previously reimbursed. Our test claim seeks to recover these excluded costs.

As part of the requirement for filing a test claim, a statewide cost survey must be completed. Your county has been identified as one of the five counties that are affected by this exclusion. If we are successful, State reimbursement for retiree health benefit costs will be made for the 2009-10 and subsequent years.

Please let us know your best estimates of your Sheriff's security service trial court retiree health benefit costs for:

___$455,915_____ 2009-10

___$582,768_____ 2010-11

Submitted by Thuy Nguyen of Santa Clara County

Thank you for your prompt response!

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County Test Claim
Sheriff Court-Security Services

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the subject test claim.

I declare that it is my information and belief that retiree health benefit costs incurred in performing State-mandated Sheriff court-security services are reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

6/29/10; Los Angeles, CA
Date and Place

Signature

Senate Bill No. 13

CHAPTER 22

An act to amend Section 6322.1 of the Business and Professions Code, to amend Sections 68086.1, 69926, 69927, 69957, 70602, 70603, 70611, 70612, 70613, 70614, 70621, 70626, 70650, 70651, 70652, 70653, 70654, 70655, 70656, 70658, and 70670 of, to add Sections 68106.2, 68511.9, and 77202.5 to, and to add and repeal Sections 68106 and 68106.1 of, the Government Code, to amend Section 103470 of the Health and Safety Code, to amend Section 5023.5 of, and to amend, repeal, and add Section 1465.8 of, the Penal Code, to amend Section 7660 of the Probate Code, and to amend Sections 1955 and 1961 of the Welfare and Institutions Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 28, 2009. Filed with Secretary of State July 28, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 13, Ducheny. Courts omnibus bill: public safety.

(1) Existing law sets the fees at $15 or $20 for various court services, including, but not limited to, issuing a writ for the enforcement of an order or judgment, issuing an abstract of judgment, recording or registering any license or certificate, issuing an order of sale, and filing and entering an award under the Workers' Compensation Law.

This bill would increase those fees by $10, and would provide that the $10 fee increase shall be transmitted quarterly for deposit in the Trial Court Trust Fund and, commencing July 1, 2011, used by the Judicial Council for implementing and administering the civil representation pilot program described in (5) below.

(2) Under existing law, $25 of each specified filing fee in connection with certain civil proceedings is required to be used for services of an official court reporter in civil proceedings.

This bill would increase the amount of those filing fees required to be used for services of an official court reporter in civil proceedings to $30.

(3) Under existing law, to the extent that a memorandum of understanding for trial court employees designates certain days as unpaid furlough days for employees assigned to regular positions in the superior court, the court may not be in session on those days except as ordered by the presiding judge.

This bill, until July 1, 2010, would authorize the Judicial Council to provide that the courts be closed for the transaction of judicial business for one day per month, which would be treated as a holiday, and to adopt court rules to implement these provisions, subject to specified conditions. The bill would authorize a judge or justice to sign a form, to be prepared by the

Administrative Office of the Courts, stating that the judge or justice voluntarily agrees to irrevocably waive an amount equal to 4.62% of his or her monthly salary, as specified. The bill also would require a 4.62% reduction in the compensation due to the sheriff for court security services because of the closure of the courts under these provisions, and would, where a memorandum of understanding has been executed, require the court and the sheriff, county, or sheriff and county to negotiate that reduction in good faith and amend the memorandum of understanding accordingly. By imposing additional duties on county officials, the bill would create a state-mandated local program.

(4) Existing law authorizes the Judicial Council to regulate the budget and fiscal management of the trial courts. The Judicial Council is required to adopt rules to provide for reasonable public access to budget allocation and expenditure information at the state and local level, and to adopt rules ensuring that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees.

This bill would provide that any person shall have the right to obtain specified budget, expenditure, and personnel records of the courts, except as specified. The bill would require the Judicial Council to adopt rules of court that provide public access to nondeliberative or nonadjudicative court records, budget, and management information on or before January 1, 2010.

(5) Existing law requires the Judicial Council to provide an annual status report to the chairpersons of the budget committee in each house of the Legislature and the Joint Legislative Budget Committee regarding the California Case Management System and Court Accounting and Reporting System, as specified. Under existing law, the office of the State Chief Information Officer is responsible for the approval and oversight of information technology projects.

This bill would provide that the California Case Management System, and all other administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than $5,000,000, shall be subject to the review and recommendations of the office of the State Chief Information Officer, as specified. The bill would require the State Chief Information Officer to submit a copy of those reviews and recommendations to the Joint Legislative Budget Committee.

(6) The Superior Court Law Enforcement Act of 2002 authorizes the presiding judge of each superior court to contract with a sheriff or marshal for the necessary level of law enforcement services in the courts. Existing law requires the sheriff or marshal and presiding judge of any county to develop a court security plan to be utilized by the court, as specified, and requires the Judicial Council to establish a process for its review of court security plans in the California Rules of Court. Existing law requires the superior court and the sheriff or marshal to enter into a memorandum of understanding specifying the agreed upon level of court security services and their cost and terms of payment, and requires the sheriff or marshal to

provide specified information to the courts by April 30 of each year, with actual court security allocations subject to the approval of the Judicial Council. Existing law requires the Administrative Office of the Courts to use the actual salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the annual funding request for the courts that will be presented to the Department of Finance.

This bill would provide that the cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. In calculating the average cost of benefits, the bill would provide that only specified benefits may be included. The bill would require the Administrative Office of the Courts to use the average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the annual funding request for the courts that will be presented to the Department of Finance.

(7) Existing law permits limited use of electronic recording devices in court proceedings under certain circumstances, but prohibits a court from expending funds for electronic recording technology or equipment to make an unofficial record of an action or proceeding or to use that technology or equipment to make the official record of an action or proceeding in any circumstance that is not authorized. Existing law also requires each superior court to report semiannually to the Judicial Council, and the Judicial Council to report semiannually to the Legislature, regarding all purchases and leases of electronic recording equipment that will be used to record superior court proceedings.

This bill would prohibit a court from expending funds for or using electronic recording technology or equipment to make an unofficial record of an action or proceeding, including for purposes of judicial notetaking, or to make the official record of an action or proceeding in any circumstance that is not authorized. The bill would authorize a court to use electronic recording equipment for the internal personnel purpose of monitoring judicial officer performance, if notice is provided to litigants that the proceeding may be recorded for that purpose, as specified. The bill would require a court, prior to purchasing or leasing any electronic recording technology or equipment, to obtain advance approval from the Judicial Council.

(8) Existing law states the intent of the Legislature to establish a moratorium on increases in filing fees until January 1, 2012.

This bill would provide that, due to the economic crisis facing California in the 2009–10 fiscal year, a first paper filing fee increase is included in conjunction with the Budget Act of 2009. This bill would increase those first paper filing fees by $5.

(9) Existing law requires the Legislature to make an annual appropriation to the Judicial Council for the general operations of the trial courts based upon the request of the Judicial Council. Existing law requires the annual budget request to include, among other items, a cost-of-living and growth adjustment based on the year-to-year change in the state appropriations limit, and additional funding for the trial courts for costs resulting from the

implementation of statutory changes that result in either an increased level of service or a new activity that directly affects the programmatic or operational needs of the courts.

This bill would require the Judicial Council to report all approved allocations and reimbursements to the trial courts in each fiscal year, including funding received through augmentations for costs resulting from the implementation of statutory changes, as described above, to the chairs of the Senate and Assembly Committees on Budget and the Judiciary on or before September 30 following the close of each fiscal year. The bill would specify the information to be included in the report, and would require the Administrative Office of the Courts to summarize that information by court and report it to the chairs of the Senate and Assembly Committees on Budget and the Judiciary on or before November 1, 2009, and each November 1 thereafter. The bill would require the trial courts to report to the Judicial Council on or before September 15 of each year all court revenues, expenditures, reserves, and fund balances from the prior fiscal year, as specified, and would require the Judicial Council to summarize and report that information to the chairs of those committees, and to post that information on a public Internet Web site, on or before December 31 of each year.

(10) Existing law imposes a fee of $20 upon every conviction for a criminal offense, other than parking offenses, for funding of court security.

This bill would increase that court security fee to $30 until July 1, 2011.

(11) Existing law authorizes the Department of Corrections and Rehabilitation to contract with providers of emergency health care services. The department is prohibited from reimbursing a noncontracting hospital or provider of ambulance or other emergency or nonemergency response service at a rate that exceeds the reasonable and allowable costs of the hospital or other provider for those services. The department is required to work with the State Department of Health Care Services in order to establish the costs allowable under these provisions.

This bill, instead, would authorize the Department of Corrections and Rehabilitation to contract with providers of health care services and health care network providers, subject to maximum reimbursement rates, except as specified. The bill would authorize the department to reimburse a noncontract provider of hospital or physician services, or ambulance or any other emergency or nonemergency response service, only at a rate equal to or less than the amount payable under the Medicare Fee Schedule. The bill would authorize the Secretary of the Department of Corrections and Rehabilitation to adopt regulations to implement these provisions, and to change the maximum reimbursement rates, as specified.

(12) Existing law establishes the Youthful Offender Block Grant Program to enhance the capacity of county departments to provide appropriate rehabilitative and supervision services to youthful offenders. Existing law requires the Director of Finance to determine for each fiscal year the total amount of the Youthful Offender Block Grant pursuant to a specified formula and the allocation for each county, and to report those findings to the

Controller to make an annual allocation to each county from the Youthful Offender Block Grant Fund. Existing law requires each county, on or before January 1, 2008, to prepare and submit to the Corrections Standards Authority for approval a Juvenile Justice Development Plan for youthful offenders that includes a description of the programs, placements, services, or strategies to be funded by the block grant allocation.

This bill instead would require the allocation amount for each county from the Youthful Offender Block Grant Fund to be allocated in 4 equal installments, to be paid in September, December, March, and June, pursuant to the existing formula. The bill would require each county, on or before May 1 of each year, to prepare and submit to the Corrections Standards Authority for approval a Juvenile Justice Development Plan on its proposed expenditures for the next fiscal year of block grant funds that includes a description of the programs, placements, services, or strategies to be funded by the block grant allocation and other specified information. The bill would require each county receiving block grant funds, by October 1 of each year, to submit an annual report to the authority on its utilization of the block grant funds in the preceding fiscal year. By increasing the duties of local officials, the bill would impose a state-mandated local program.

This bill would require the Corrections Standards Authority to develop and provide a format for the Juvenile Justice Development Plan, and would authorize the authority to develop and provide a dual format for counties for the submission together of that plan and the county multiagency juvenile justice plan, as specified. The bill would require the authority to prepare and make available to the public on its Internet Web site summaries of the annual county reports on the utilization of block grant funds, and would require the authority, by March 15 of each year, to prepare and submit to the Legislature a report summarizing county utilizations of block grant funds in the preceding fiscal year.

(13) This bill would provide that its provisions are severable.

(14) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on July 1, 2009.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on July 1, 2009, pursuant to the California Constitution.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(16) This bill would declare that it is to take effect immediately as an urgency statute.

(A) The degree to which the project is within approved scope, cost, and schedule.

(B) Project issues, risks, and corresponding mitigation efforts.

(C) The current estimated schedule and costs for project completion.

SEC. 7. Section 69926 of the Government Code is amended to read:

69926. (a) This section applies to the superior court and the sheriff or marshal's department in those counties in which either of the following apply:

(1) The sheriff's department was otherwise required by law to provide court security services on and after July 1, 1998.

(2) Court security was provided by the marshal's office on and after July 1, 1998, the marshal's office was subsequently abolished and succeeded by the sheriff's department, and the successor sheriff's department is required to provide court security services as successor to the marshal.

(b) The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel.

(c) The sheriff or marshal shall provide information as identified in the contract law enforcement template by April 30 of each year to the superior court in that county, specifying the nature, extent, and basis of the costs, including negotiated or projected salary increases of court law enforcement services that the sheriff proposes to include in the budget of the court security program for the following state budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. It is the intent of the Legislature that proposed court security expenditures submitted by the Judicial Council to the Department of Finance for inclusion in the Governor's Budget shall be as defined in the contract law enforcement template.

(d) If the superior court and the sheriff or marshal are unwilling or unable to enter into an agreement pursuant to this section on or before August 1 of any fiscal year, the court or sheriff or marshal may request the continuation of negotiations between the superior court and the sheriff or marshal for a period of 45 days with mediation assistance, during which time the previous law enforcement services agreement shall remain in effect. Mutually agreed upon mediation assistance shall be determined by the Administrative Director of the Courts and the president of the California State Sheriffs' Association.

SEC. 8. Section 69927 of the Government Code is amended to read:

69927. (a) It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 10.810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 10.810 of the California Rules of Court, as it read on January 1, 2007, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff's or marshal's court law enforcement budget not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

(1) The Judicial Council shall adopt a rule establishing a working group on court security. The group shall consist of six representatives from the judicial branch of government, as selected by the Administrative Director of the Courts, two representatives of the counties, as selected by the California State Association of Counties, and three representatives of the county sheriffs, as selected by the California State Sheriffs' Association. It is the intent of the Legislature that this working group may recommend modifications only to the template used to determine that the security costs submitted by the courts to the Administrative Office of the Courts are permitted pursuant to this article. The template shall be a part of the trial court's financial policies and procedures manual and used in place of the definition of law enforcement costs in Function 8 of Rule 10.810 of the California Rules of Court. If the working group determines that there is a need to make recommendations to the template that specifically involve law enforcement or security personnel in courtrooms or court detention facilities, the membership of the working group shall change and consist of six representatives from the judicial branch of government selected by the Administrative Director of the Courts, two representatives of the counties selected by the California State Association of Counties, two representatives of the county sheriffs selected by the California State Sheriffs' Association, and two representatives of labor selected by the California Coalition of Law Enforcement Associations.

(2) The Judicial Council shall establish a working group on court security to promulgate recommended uniform standards and guidelines that may be used by the Judicial Council and any sheriff or marshal for the implementation of trial court security services. The working group shall consist of representatives from the judicial branch of government, the California State Sheriffs' Association, the California State Association of Counties, the Peace Officer's Research Association of California, and the California Coalition of Law Enforcement Associations, for the purpose of developing guidelines. The Judicial Council, after requesting and receiving recommendations from the working group on court security, shall promulgate and implement rules, standards, and policy directions for the trial courts in

order to achieve efficiencies that will reduce security operating costs and constrain growth in those costs.

(3) When mutually agreed to by the courts, county, and the sheriff or marshal in any county, the costs of perimeter security in any building that the court shares with any county agency, excluding the sheriff's or marshal's department, shall be apportioned based on the amount of the total noncommon square feet of space occupied by the court and any county agency.

(4) "Allowable costs for equipment, services, and supplies," as defined in the contract law enforcement template, means the purchase and maintenance of security screening equipment and the costs of ammunition, batons, bulletproof vests, handcuffs, holsters, leather gear, chemical spray and holders, radios, radio chargers and holders, uniforms, and one primary duty sidearm.

(5) "Allowable costs for professional support staff for court security operations," as defined in the contract law enforcement template, means the salary, benefits, and overtime of staff performing support functions that, at a minimum, provide payroll, human resources, information systems, accounting, or budgeting.

Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable costs for law enforcement security personnel services in courts with total allowable costs for law enforcement security personnel services less than ten million dollars ($10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts with total allowable costs for law enforcement security personnel services exceeding ten million dollars ($10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services.

The working group established pursuant to paragraph (1) of subdivision (a) may periodically recommend changes to the limit for allowable costs for professional support staff for court security operations based on surveys of actual expenditures incurred by trial courts and the court law enforcement provider in the provision of law enforcement security personnel services. Limits for allowable costs as stated in this section shall remain in effect until changes are recommended by the working group and adopted by the Judicial Council.

(6) "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service

credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, workers' compensation paid to an employee in lieu of salary, workers' compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

(A) The Administrative Office of the Courts shall use the average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.

(B) Courts and court security providers shall manage their resources to minimize the use of overtime.

(7) "Allowable costs for vehicle use for court security needs," as defined in the contract law enforcement template, means the per-mile recovery cost for vehicles used in rendering court law enforcement services, exclusive of prisoner or detainee transport to or from court. The standard mileage rate applied against the miles driven for the above shall be the standard reimbursable mileage rate in effect for judicial officers and employees at the time of contract development.

(b) Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 10.810 of the California Rules of Court, as it read on January 1, 2007, or that meets the definition of any new law enforcement component developed pursuant to this article.

SEC. 9. Section 69957 of the Government Code is amended to read:

69957. (a) Whenever an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use and shall only be purchased for use as provided by this section. A court shall not expend funds for or use electronic recording technology or equipment to make an unofficial record of an action or proceeding, including for purposes of judicial notetaking, or to make the official record of an action or proceeding in circumstances not authorized by this section.

(b) Notwithstanding subdivision (a), a court may use electronic recording equipment for the internal personnel purpose of monitoring judicial officer

30061 of the Government Code. A county may elect to submit both plans using the dual format and under guidelines established by the Corrections Standards Authority.

(c) Each county receiving an allocation from the Youthful Offender Block Grant fund described in Section 1951 shall, by October 1 of each year, submit an annual report to the Corrections Standards Authority on its utilization of the block grant funds in the preceding fiscal year. The report shall be in a format specified by the authority and shall include all of the following:

(1) A description of the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, and an accounting of all of the county's expenditures of block grant funds for the preceding fiscal year.

(2) Performance outcomes for the programs, placements, services, and strategies supported by block grant funds in the preceding fiscal year, including, at a minimum, the following:

(A) The number of youth served including their characteristics as to offense, age, gender, race, and ethnicity.

(B) As relevant to the program, placement, service, or strategy, the rate of successful completion by youth.

(C) For any program or placement supported by block grant funds, the arrest, rearrest, incarceration, and probation violation rates of youth in any program or placement.

(D) Quantification of the annual per capita cost of the program, placement, strategy, or activity.

(d) The authority shall prepare and make available to the public on its Internet Web site summaries of the annual county reports submitted in accordance with subdivision (c). By March 15 of each year, the authority also shall prepare and submit to the Legislature a report summarizing county utilizations of block grant funds in the preceding fiscal year, including a summary of the performance outcomes reported by counties for the preceding fiscal year.

(e) The authority may modify the performance outcome measures specified in paragraph (2) of subdivision (c) if it determines that counties are substantially unable to provide the information necessary to support the measures specified. Prior to making that modification, the authority shall consult with affected county and state juvenile justice stakeholders. In the event that any adjustment of the performance outcome measures is made, the outcome measures shall, to the extent feasible, remain consistent with the performance outcome measures specified in subparagraph (C) of paragraph (4) of subdivision (b) of Section 30061 of the Government Code for programs receiving juvenile justice grants from the Supplemental Law Enforcement Services Fund.

SEC. 35. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 36. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 37. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 38. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement provisions related to public safety and the courts in the Budget Act of 2009, it is necessary for this act to take effect immediately.

O

Senate Bill No. 1396

CHAPTER 1010

An act to add Article 8.5 (commencing with Section 69920) to Chapter 5 of Title 8 of, and to repeal Sections 26603 and 77212.5 of, the Government Code, relating to judicial security.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1396, Dunn. Judicial security.

The California Rules of Court, as adopted by the Judicial Council, provide a framework for the operation of the courts, including the respective costs deemed necessary for court security. Existing law requires the sheriff's office or marshal's department of any county to provide court security services.

This bill would enact the Superior Court Law Enforcement Act of 2002, which would require the sheriff or marshal and presiding judge of any county to develop a court security plan to be utilized by the court, as specified, and require the sheriff or marshal to provide specified information to the court by April 30 of each year, with actual court security allocations subject to the approval of the Judicial Council. The bill would require the superior court and the sheriff or marshal of any county to enter into an annual or multiyear memorandum of understanding specifying the level of court security services, costs of services, and terms of payment, and permit the court to contract for those services, as specified. The bill would permit, if no agreement is reached, the court, sheriff, or marshal to request mediation assistance, as specified, for a period of 45 days. The bill would further permit the court to use court attendants, as defined. The bill would also define related terms, declare the intent of the Legislature to modify Function 8 of Rule 810 of the California Rules of Court, and impose various duties on the Judicial Council.

Existing law requires a sheriff to attend all superior courts within the county, whenever required, as specified, and obey all lawful orders and directions of the courts. Existing law, as of July 1, 1998, and under specified circumstances, requires a sheriff to provide court security.

This bill would revise and recast those provisions, and require a sheriff to attend a noncriminal, nondelinquency action, under a specified circumstance. The bill would permit the use of court attendants, as defined, in a court hearing those actions.

This bill would impose additional duties on local employees, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that the Legislature finds there is no mandate contained in the bill that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to these constitutional and statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Article 8.5 (commencing with Section 69920) is added to Chapter 5 of Title 8 of the Government Code, to read:

Article 8.5. Superior Court Security

69920. This article shall be known and may be cited as the Superior Court Law Enforcement Act of 2002.

69921. For purposes of this article:

(a) "Contract law enforcement template" means a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927.

(b) "Court attendant" means a nonarmed, nonlaw enforcement employee of the superior court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or a public safety officer.

(c) "Court security plan" means a plan that is provided by the superior court to the Administrative Office of the Courts that includes a law enforcement security plan and all other court security matters.

(d) "Law enforcement security plan" means a plan that is provided by a sheriff or marshal that includes policies and procedures for providing public safety and law enforcement services to the court.

(e) "Superior court law enforcement functions" means all of the following:

(1) Bailiff functions, as defined in Sections 830.1 and 830.36 of the Penal Code, in criminal and noncriminal actions, including, but not limited to, attending courts.

(2) Taking charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure.

(3) Patrolling hallways and other areas within court facilities.

(4) Overseeing prisoners in holding cells within court facilities.

(5) Escorting prisoners in holding cells within court facilities.

(6) Providing security screening within court facilities.

(7) Providing enhanced security for bench officers and court personnel, as agreed upon by the court and the sheriff or marshal.

69921.5. The duties of the presiding judge of each superior court shall include the authority to contract, subject to available funding, with a sheriff or marshal, for the necessary level of law enforcement services in the courts.

69922. Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court held within his or her county. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions. Notwithstanding any other provision of law, the presiding judge or his or her designee may provide that a court attendant take charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure. The sheriff shall obey all lawful orders and directions of all courts held within his or her county.

69925. On and after July 1, 2003, the sheriff or marshal, in conjunction with the presiding judge, shall develop an annual or multiyear comprehensive court security plan that includes the mutually agreed upon law enforcement security plan to be utilized by the court. The Judicial Council shall provide for the subject areas to be addressed in the plan and specify the most efficient practices for providing court security services. The Judicial Council shall establish a process for the review of court security plans by the Judicial Council in the California Rules of Court. The Judicial Council shall annually submit to the Senate Judiciary Committee and Assembly Judiciary Committee a report summarizing the court security plans reviewed by the Judicial Council, including, but not limited to, a description of each plan, the cost involved, and whether each plan complies with the rules for the most efficient practices for providing court security services.

69926. (a) This section applies to the superior court and the sheriff or marshal's department in those counties in which either of the following apply:

(1) The sheriff's department was otherwise required by law to provide court security services on and after July 1, 1998.

(2) Court security was provided by the marshal's office on and after July 1, 1998, the marshal's office was subsequently abolished and succeeded by the sheriff's department, and the successor sheriff's department is required to provide court security services as successor to the marshal.

(b) The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment.

(c) The sheriff or marshal shall provide information as identified in the contract law enforcement template by April 30 of each year to the superior court in that county, specifying the nature, extent, and basis of the costs, including negotiated or projected salary increases of court law enforcement services that the sheriff proposes to include in the budget of the court security program for the following state budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. It is the intent of the Legislature that proposed court security expenditures submitted by the Judicial Council to the Department of Finance for inclusion in the Governor's Budget shall be as defined in the contract law enforcement template.

(d) If the superior court and the sheriff or marshal are unwilling or unable to enter into an agreement pursuant to this section on or before August 1 of any fiscal year, the court or sheriff or marshal may request the continuation of negotiations between the superior court and the sheriff or marshal for a period of 45 days with mediation assistance, during which time the previous law enforcement services agreement shall remain in effect. Mutually agreed upon mediation assistance shall be determined by the Administrative Director of the Courts and the president of the California State Sheriffs' Association.

69927. (a) It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget may not be reduced as a result of this article. Any new court

security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

(1) The Judicial Council shall adopt a rule establishing a working group on court security. The group shall consist of six representatives from the judicial branch of government, as selected by the Administrative Director of the Courts, two representatives of the counties, as selected by the California State Association of Counties, and three representatives of the county sheriffs, as selected by the California State Sheriffs' Association. It is the intent of the Legislature that this working group may recommend modifications only to the template used to determine that the security costs submitted by the courts to the Administrative Office of the Courts are permitted pursuant to this article. The template shall be a part of the trial court's financial policies and procedures manual and used in place of the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court. If the working group determines that there is a need to make recommendations to the template that specifically involve law enforcement or security personnel in courtrooms or court detention facilities, the membership of the working group shall change and consist of six representatives from the judicial branch of government selected by the Administrative Director of the Courts, two representatives of the counties selected by the California State Association of Counties, two representatives of the county sheriffs selected by the California State Sheriffs' Association, and two representatives of labor selected by the California Coalition of Law Enforcement Associations.

(2) When mutually agreed to by the courts, county, and the sheriff or marshal in any county, the costs of perimeter security in any building that the court shares with any county agency, excluding the sheriff or marshal's department, shall be apportioned based on the amount of the total noncommon square feet of space occupied by the court and any county agency.

(3) "Allowable costs for equipment, services, and supplies," as defined in the contract law enforcement template, means the purchase and maintenance of security screening equipment and the cost of ammunition, batons, bulletproof vests, handcuffs, holsters, leather gear, chemical spray and holders, radios, radio chargers and holders, uniforms, and one primary duty sidearm.

(4) "Allowable costs for professional support staff for court security operations," as defined in the contract law enforcement template, means the salary, benefits, and overtime of staff performing support functions that, at a minimum, provide payroll, human resources, information systems, accounting, or budgeting.

Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services is less than ten million dollars ($10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services exceeds ten million dollars ($10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services.

The working group established pursuant to paragraph (1) of subdivision (a) of Section 69927 may periodically recommend changes to the limit for allowable costs for professional support staff for court security operations based on surveys of actual expenditures incurred by trial courts and the court law enforcement provider in the provision of law enforcement security personnel services. Limits for allowable costs as stated in this section shall remain in effect until changes are recommended by the working group and adopted by the Judicial Council.

(5) "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

(A) The Administrative Office of the Courts shall use the actual salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.

(B) Courts and court security providers shall manage their resources to minimize the use of overtime.

(6) "Allowable costs for vehicle use for court security needs," as defined in the contract law enforcement template, means the per mile recovery cost for vehicles used in rendering court law enforcement services, exclusive of prisoner or detainee transport to or from court. The standard mileage rate applied against the miles driven for the above shall be the standard reimbursable mileage rate in effect for judicial officers and employees at the time of contract development.

(b) Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996, or that meets the definition of any new law enforcement component developed pursuant to this article.

SEC. 2. Section 26603 of the Government Code is repealed.

SEC. 3. Section 77212.5 of the Government Code is repealed.

SEC. 4. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Assembly Bill No. 92

CHAPTER 764

An act to add Section 77212.5 to the Government Code, relating to courts.

[Approved by Governor September 22, 1998. Filed with Secretary of State September 23, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 92, Cardoza. Courts: security services.

(1) Existing law requires the sheriff in certain counties to provide security services to the trial courts.

This bill would require the trial courts in such a county, commencing July 1, 1999, and thereafter, to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services, thereby imposing a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 77212.5 is added to the Government Code, to read:

77212.5. Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of

the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

O

2010 California Rules of Court

Rule 10.810. Court operations

(a) Definition

Except as provided in subdivision (b) and subject to the requirements of subdivisions (c) and (d), "court operations" as defined in Government Code section 77003 includes the following costs:

(1) *(judicial salaries and benefits)* salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers;

(2) *(nonjudicial salaries and benefits)* salaries, benefits, and public agency retirement contributions for superior and municipal court staff whether permanent, temporary, full- or part-time, contract or per diem, including but not limited to all municipal court staff positions specifically prescribed by statute and county clerk positions directly supporting the superior courts;

(3) salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function;

(4) court-appointed counsel in juvenile dependency proceedings, and counsel appointed by the court to represent a minor as specified in Government Code section 77003;

(5) *(services and supplies)* operating expenses in support of judicial officers and court operations;

(6) *(collective bargaining)* collective bargaining with respect to court employees; and

(7) *(indirect costs)* a share of county general services as defined in subdivision (d), Function 11, and used by the superior and municipal courts.

(Subd (a) amended effective July 1, 1995; previously amended effective January 1, 1989, July 1, 1990, and July 1, 1991.)

(b) Exclusions

Excluded from the definition of "court operations" are the following:

(1) law library operations conducted by a trust pursuant to statute;

(2) courthouse construction and site acquisition, including space rental (for other than court records storage), alterations/remodeling, or relocating court facilities;

(3) district attorney services;

(4) probation services;

(5) indigent criminal and juvenile delinquency defense;

(6) civil and criminal grand jury expenses and operations (except for selection);

(7) pretrial release services;

(8) equipment and supplies for use by official reporters of the courts to prepare transcripts as specified by statute; and

(9) county costs as provided in subdivision (d) as unallowable.

(Subd (b) amended effective July 1, 1995; adopted effective July 1, 1988 as subd (c); previously amended effective January 1, 1989, and July 1, 1990.)

(c) Budget appropriations

Costs for court operations specified in subdivision (a) shall be appropriated in county budgets for superior and municipal courts, including contract services with county agencies or private providers except for the following:

(1) salaries, benefits, services, and supplies for sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts;

(2) salaries, benefits, services, and supplies for county clerk activities directly supporting the superior court; and

(3) costs for court-appointed counsel specified in Government Code section 77003.

Except as provided in this subdivision, costs not appropriated in the budgets of the courts are unallowable.

(Subd (c) amended effective July 1, 1995; adopted as subd (d) effective July 1, 1990.)

(d) Functional budget categories

Trial court budgets and financial reports shall identify all allowable court operations in the following eleven (11) functional budget categories. Costs for salary, wages, and benefits of court employees are to be shown in the appropriate functions provided the individual staff member works at least 25 percent time in that function. Individual staff members whose time spent in a function is less than 25 percent are reported in Function 10, All Other Court Operations. The functions and their respective costs are as follows:

Function 1. Judicial Officers

Costs reported in this function are
Salaries and state benefits of

Costs reported in this function are
Arbitrators' fees in mandatory judicial arbitration programs
Salaries, wages, and benefits of court staff providing child custody and visitation mediation and related investigation services, e.g., Director of Family Court Services mediators conciliators investigators clerical support staff
Contract mediators providing child custody and visitation mediation services
Salaries, wages, benefits, fees, and contract costs for other arbitration and mediation programs (programs not mandated by statute), e.g., arbitration administrators clerical support staff arbitrators' fees and expenses
Costs not reported in this function include
Related data processing (Function 9)
Any other related services, supplies, and equipment (Function 10)

Function 7. Court-Appointed Counsel (Noncriminal)

Costs reported in this function are
Expenses for court-appointed counsel as specified in Government Code § 77003

Function 8. Court Security

Court security services as deemed necessary by the court. Includes only the duties of (a) courtroom bailiff, (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities.
Costs reported in this function are
Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e., bailiffs weapons-screening personnel

Salary, wages, and benefits (including overtime) of court staff performing court security, e.g., court attendants
Contractual security services
Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function
Sheriff, marshal, and constable employee training
Purchase of security equipment
Maintenance of security equipment
Costs not reported in this function include
Other sheriff, marshal, or constable employees (unallowable)
Court attendant training (Function 10)
Overhead costs attributable to the operation of the sheriff and marshal offices (unallowable)
Costs associated with the transportation and housing of detainees from the jail to the courthouse (unallowable)
Service of process in civil cases (unallowable)
Services and supplies, including data processing, not specified above as allowable
Supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties less than .25 FTE time (unallowable)

Function 9. Information Technology

Costs reported in this function are
Salaries, wages, and benefits of court employees who plan, implement, and maintain court data processing and information technologies, e.g., programmers analysts

Contract and consulting services associated with court information/data processing needs and systems
County Information Systems/Data Processing Department charges made to court for court systems, e.g., jury-related systems court and case management, including courts' share of a criminal justice information system accounts receivable/collections systems
Related services, supplies, and equipment, e.g., software purchases and leases maintenance of automation equipment training associated with data processing systems' development
Costs not reported in this function include
Information technology services not provided directly to the courts (i.e., services used by other budget units)
Data processing for county general services, e.g., payroll, accounts payable (Function 11)

Function 10. All Other Court Operations

Costs reported in this function are
Salaries, wages, and benefits (including any pay differentials and overtime) of court staff (a) not reported in Functions 2-9, or (b) whose time cannot be allocated to Functions 2-9 in increments of at least 25 percent time (.25 FTE);
Judicial benefits, county-paid
Allowable costs not reported in Functions 2-9.
(Nonjudicial staff) Cost items may include, for example, juvenile traffic hearing officer mental health hearing officer court-appointed hearing officer (pro tem) executive officer court administrator clerk of the court administrative assistant personnel staff legal research personnel; staff attorney; planning and research staff secretary courtroom clerk clerical support staff calendar clerk deputy clerk accountant cashier counter clerk microfilming staff management analyst probate conservatorship and guardianship investigators probate examiner training staff employed by the court

Personnel costs not reported in this function:
Any of the above not employed by the court
(Services and supplies) Cost items may include, for example, office supplies printing postage communications publications and legal notices, by the court miscellaneous departmental expenses books, publications, training fees, and materials for court personnel (judicial and nonjudicial) travel and transportation (judicial and nonjudicial) professional dues memberships and subscriptions statutory multidistrict judges' association expenses research, planning, and program coordination expenses small claims advisor program costs court-appointed expert witness fees (for the court's needs) court-ordered forensic evaluations and other professional services (for the court's own use) pro tem judges' expenses micrographics expenses public information services vehicle use, including automobile insurance equipment (leased, rented, or purchased) and furnishings, including interior painting, replacement/maintenance of flooring, and furniture repair maintenance of office equipment janitorial services legal services for allowable court operations (County Counsel and contractual) fidelity and faithful performance insurance (bonding and personal liability insurance on judges and court employees) insurance on cash money and securities (hold-up and burglary) general liability/comprehensive insurance for other than faulty maintenance or design of facility (e.g., "slip and fall," other injury, theft and damage of court equipment, slander, discrimination) risk management services related to allowable insurance space rental for court records county records retention/destruction services county messenger/mail service court audits mandated under Government Code § 71383
Service and supply costs not reported in this function include Civic association dues (unallowable) Facility damages insurance (unallowable) County central service department charges not appropriated in the court budget (unallowable)

Function 11. County General Services ("Indirect Costs")

General county services are defined as all eligible accounting, payroll, budgeting, personnel, purchasing, and county administrator costs rendered in support of court operations. Costs for included services are allowable to the extent the service is provided to the court. The following costs, regardless of how characterized by the county or by which county department they are performed, are reported in this function only and are subject to the statutory maximum for indirect costs as specified in

Government Code § 77003. To the extent costs are allowable under this rule, a county's approved Cost Plan may be used to determine the specific cost although the cost categories, or functions, may differ.
Cost items within the meaning of rule 10.810(a)(7) and the county departments often performing the service may include, for example, County Administrator budget development and administration interdepartmental budget unit administration and operations personnel (labor) relations and administration Auditor-Controller payroll financial audits warrant processing fixed asset accounting departmental accounting for courts, e.g., fines, fees, forfeitures, restitutions, penalties, and assessments; accounting for the Trial Court Special Revenue Fund accounts payable grant accounting management reporting banking Personnel recruitment and examination of applicants maintenance and certification of eligible lists position classification salary surveys leave accounting employment physicals handling of appeals Treasurer/Tax Collector warrant processing bank reconciliation retirement system administration receiving, safeguarding, investing, and disbursing court funds Purchasing Agent process departmental requisitions issue and analyze bids make contracts and agreements for the purchase or rental of personal property store surplus property and facilitate public auctions
Unallowable costs Unallowable court-related costs are those (a) in support of county operations, (b) expressly prohibited by statute, (c) facility-related, or (d) exceptions of the nature referenced in Functions 1-11.
Unallowable cost items, including any related data processing costs, are not reported in Functions 1-11 and may include, for example, Communications central communication control and maintenance for county emergency and general government radio equipment Central Collections processing accounts receivable for county departments (not courts) County Administrator legislative analysis and activities preparation and operation of general directives and operating procedures responses to questions from the Board, outside agencies, and the public executive functions: Board of Supervisors county advisory councils Treasurer/Tax Collector property tax determination, collection, etc. General Services rental and utilities support coordinate county's emergency services Property Management negotiations for the acquisition, sale, or lease of property, except for space rented for storage of court records making appraisals negotiating utility relocations assisting County Counsel in

condemnation actions preparing deeds, leases, licenses, easements collecting rents building lease management services (except for storage of court records) Facility-related construction services right-of-way and easement services purchase of land and buildings construction depreciation of buildings/use allowance space rental/building rent (except for storage of court records) building maintenance and repairs (except interior painting and to replace/repair flooring) purchase, installation, and maintenance of H/V/A/C equipment maintenance and repair of utilities utility use charges (e.g., heat, light, water) elevator purchase and maintenance alterations/remodeling landscaping and grounds maintenance services exterior lighting and security insurance on building damages (e.g., fire, earthquake, flood, boiler and machinery) grounds' liability insurance parking lot or facility maintenance juror parking

(Subd (d) amended effective January 1, 2007; previously amended and relettered effective July 1, 1995.)

Rule 10.810 amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995.

Advisory Committee Comment

Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule.

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FACT SHEET

July 2009

Court Security

"Courthouses must be a safe harbor to which members of the public come to resolve disputes that often are volatile. Once courthouses themselves are perceived as dangerous, the integrity and efficacy of the entire judicial process is in jeopardy."

Hon. Ronald M. George
Chief Justice of California

Introduction—Securing Our Courts

Per the Superior Court Law Enforcement Act of 2002 (Gov. Code, §§ 69920–69927), the presiding judge of each court contracts with a sheriff or marshal for the necessary level of law enforcement services (subject to the court's available funding). Working with court leaders and the sheriffs and marshals, the Administrative Office of the Courts (AOC) also plays an important role in enhancing security throughout California's court system. Our goal is ensuring that all courts provide a safe and secure environment.

Security Funding

During its 2003 session, the California Legislature expressed concern with the ongoing rise in court security expenditures and looked for a means to cooperatively establish standards for providing court security services. To facilitate the development and implementation of these uniform standards and guidelines, Government Code section 69927 was amended to form two working groups related to court security.

The first, authorized under Government Code section 69927(a)(2) and established under rule 10.170 of the California Rules of Court, is called the Working Group on Court Security. It is composed of 15 members (representatives from the judicial branch, sheriffs, counties, and law enforcement labor organizations) and a nonvoting chair. It is staffed by AOC and charged with recommending uniform standards and guidelines for the implementation of trial court security services.

Cost-saving methods

To advance cost savings, some courts use multiple security staff classification levels. For example, civilian court employees such as court attendants are used to provide security in certain noncriminal cases. This allows lower salary and benefit expenses.

- Government Code section 69921 defines a court attendant as "a nonarmed, nonlaw enforcement employee of the superior court who performs those functions specified by the court, except those functions that may only be performed by armed sworn personnel. A court attendant is not a peace officer or a public safety officer." Courts may use court attendants in courtrooms hearing noncriminal and nondelinquency actions, when the presiding judge finds that having the sheriff present is not necessary.
- Courtroom attendant duties include reporting security violations to the appropriate law enforcement agency, taking charge of juries, accepting legal documents, and serving as a liaison between judicial officers, court staff and attorneys, witnesses, and parties. In some courts, the court attendant is the only person charged with maintaining security in the courtroom, while in others, attendants are used to supplement the sheriff's security staff both in the courtroom and at weapons screening stations.

Unanticipated costs

High-profile or multiple-defendant cases often require a higher level of court security services than most trial courts can pay for out of existing funds. Additional security costs arise from transporting defendants, providing security for the jury and media, and managing the public.

- Security for high-profile and high-security cases reduces the amount of funding and staff resources available for a court's ongoing security needs and also reduces funding for other areas of court operations.
- Trial courts may apply for a reimbursement of extraordinary costs associated with homicide trials. This limited funding is intended to address the impact of individual homicide trials that, because of special circumstances, result in costs that exceed the limited funds available in small courts for such programs. Reimbursement can be requested for temporary help, overtime, and one-time costs such as witness fees, court reporter fees, transcript preparation charges, court interpreter costs, and security costs. High-profile nonhomicide cases that result in extraordinary court security costs are, however, not eligible for reimbursement.

Security Needs

Results from surveys and needs assessments show that the use of outdated and inadequate court facilities cause courts and sheriffs alike to implement security procedures that were expensive and failed to meet the courts' security needs.

Examples of costly or unsafe court security procedures resulting from inadequate facilities include:

- *Lack of weapons screening.* Initial assessments indicated that some courts, particularly those located in historic or small buildings, did not have the physical capacity to accommodate the x-ray machine, magnetometer, and staff required to operate a weapons screening station. Other court facilities had multiple entrances, making it difficult to implement weapons screening at a reasonable cost. Measures have been taken toward rectifying this situation.
- *Lack of holding cells.* Many court facilities lack on-site holding cells for in-custody defendants transferred from the jail for court appearances. As a result, some courts must hold such defendants in empty courtrooms, monitored by several security staff. In other courts, the in-custody defendants are brought to the courthouse in small groups and held in the courtroom or hallway, while monitored by deputy sheriffs.
- *Insufficient hallway space and waiting areas.* Many courts also do not have sufficient hallway and waiting areas to allow for reasonable separation between defendants, victims, jurors, and the public. As a result, court security staff is needed to keep order in public areas outside the courtroom.
- *Unsafe circulation areas.* Many court facilities do not have adequate separate circulation areas for inmates, judges, and staff. This can result in security staff using inefficient or unsafe paths to transport in-custody inmates. The internal circulation patterns for a general-purpose court facility in which in-custody cases are heard should include three separate and distinct zones: for public, private, and secured circulation. The public circulation zone provides access from each public point of entry into the building. The private circulation zone provides limited-access corridors between specific functions for court staff, judicial officers, escorted jurors, and security personnel. The secured circulation zone for in-custody defendants should be completely separate from the public and private circulation zones and should provide access between the secured in-custody entrance (sally port), central holding and intake areas, attorney interview rooms, courtroom holding areas, and the courtrooms themselves.

court security plan should address, the process for plan submission and review, and efficient practices for providing court security services. The Judicial Council approved rule 10.172, which became effective on January 1, 2009. An optional online planning tool was created by OERS to assist courts in creating comprehensive plans.

OERS staff and the Working Group on Court Security also proposed a rule of court regarding standing court security committees, which was approved as rule 10.173 and made effective on January 1, 2009. They continue collaboration on recommendations for uniform standards and guidelines that may be used for the implementation of trial court security services, recommendations to achieve efficiencies that will reduce court security operating costs and constrain growth, and recommendations regarding security considerations for court facilities.

Planning for the Future

OERS is working on security-related issues with several groups in addition to the Working Group on Court Security:

- The Court Emergency Response and Security Task Force, which evaluates court security issues and develops recommendations for the Judicial Council to manage, maintain, and improve security in the courts through statewide systems and progressive initiatives to increase efficiency.
- The Appellate Court Security Committee, an informal committee comprised of justices from the Courts of Appeal with representatives from the California Highway Patrol, which works to identify necessary security improvements for the appellate courts and establishes milestones for achieving those improvements.
- The Court Security Education Committee, one of several committees staffed by the AOC Education Division/Center for Judicial Education and Research, which helps to develop curriculum to improve the knowledge of presiding judges, judicial officers, court executive officers, and managers about safety and security in and outside the courtroom.

As the AOC is committed to ensuring the safety of all employees, court personnel, and the public, OERS will continue to develop a comprehensive emergency planning and security program that seeks to provide the highest level of protection for the individuals, facilities, and property of the AOC and all California courts.

Contact:
AOC Office of Emergency Response and Security, 415-865-8991 or oers@jud.ca.gov

Test Claim Certification
Los Angeles County Test Claim
Sheriff Court-Security Services

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Wendy L. Watanabe
Authorized Official

Auditor-Controller
Title

Wendy L. Watanabe
Signature of Authorized Official

6/29/2010
Date

Original List Date: 7/1/2010
Last Updated:
List Print Date: 07/02/2010
Claim Number: 09-TC-03
Issue: Sheriff Court-Security Services

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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August 13, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
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Re: Response to Test Claim Filed by the County of Los Angeles
Sheriff Court-Security Services, 09-TC-02

Dear Ms. Higashi:

We submit the following response to the test claim filed by the County of Los Angeles regarding reimbursement for sheriff retiree health benefits.

Summary

This response is divided into two parts. The first part discusses the background of the requirement that sheriffs provide security to the superior courts and the impact that state funding of trial courts, which developed over the course of the 1980s and 1990s, had on responsibility for court security. Specifically, the counties were responsible for and funded court security for over a hundred years until the state agreed to undertake funding that responsibility as part of assuming general responsibility for trial court funding in 1998. Reimbursement of the sheriffs for retiree health benefits was never clearly specified in statute and was the subject of debate.

The second part of the response discusses the relevant legal authorities on state mandates. It takes the position that the amendment to Government Code section 69926 in SB X4 13[1] that is the subject of the County of Los Angeles' test claim does *not* constitute an unfunded state

[1] Stats. 2009, ch. 22, § 7.

mandate under article XIIIB, section 6 of the California Constitution. We reach this conclusion because there is no state law that requires the County of Los Angeles to pay for sheriff retiree health benefits and because the County of Los Angeles actively supported recent legislation requiring sheriffs to provide security to the superior courts. To the extent the costs associated with sheriff retiree health benefits are not related to the current provision of services to the courts, (i.e., the money is being used to provide benefits for retirees rather than to fund future benefits for employees who currently provide court security services), they are not allowable costs to the superior courts under Government Code section 69927(a)(4).

Background: Court Security and Trial Court Funding

The requirement that the sheriffs provide security services to the superior courts dates to the 19th century. In 1883, California law required a sheriff to "[a]ttend all Courts, except Justices' and Police Courts, held within his county, and obey their lawful orders and directions."[2] At that time, trial courts, like the sheriff, were funded by their respective counties, so it was natural that a county officer would provide security for the superior courts in the same way the county provided facilities, employees, and operating funds for the superior courts.

The world has changed since 1883. Sheriffs are still required to provide bailiff and security services for superior courts, but the state is now responsible for funding the trial courts, including paying for court operations, court facilities, and court employees. Counties expect, and the law requires, that the trial courts pay counties with state-appropriated funds for court security services.

In examining whether the enactment of SB X4 13 qualifies under article XIIIB, section 6, as a transfer from the state to the County of Los Angeles for financial responsibility for sheriff retiree health benefits, it is important to note how the cost of court security was initially shifted from the counties to the state.

A. Sheriffs Have Been Required by Statute to Provide Security for the Superior Courts Continuously since 1883.

As noted above, the sheriffs' obligation to provide security for the superior courts dates from at least 1883 and the obligation to "attend" court has remained in statute in some form until the present day.[3] That language is currently found in Government Code section 69921, although it is subject to certain qualifications:

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[2] Stats. 1883, ch. 75, § 93, p. 320.

[3] Sheriffs were required to "attend" the trial courts under the following successors to Stats. 1883, ch 75, § 93, p 320: (1) Stats. 1891, ch 216, § 93, p 319; (2) Stats. 1893, ch. 234, § 93, p. 372; (3) Stats. 1897, ch. 277, § 89, p. 479; (4) former Pol. Code, § 4176; (5) former Pol. Code, § 4157; (6) former Government Code section 26603.

> Except as otherwise provided by law, whenever required, **the sheriff shall attend all superior court held within his or her county**. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. . . .The sheriff shall obey all lawful orders and directions of all courts held within his or her county.

(Bold added.) Thus, the obligation of the sheriffs to provide security for the superior courts is not new, but it has undergone modification over the years. The obligation to "attend" court has generally been understood as providing bailiff and other security services for the courts.

B. Trial Court Funding

1. The Brown-Presley Act

A significant development that impacted the sheriffs' mandate to provide superior court security was the shift to state funding of the trial courts, known as "trial court funding." The evolution of trial court funding occurred through legislation enacted in the mid-1980s to the late 1990s. Before 1988, counties were primarily responsible for paying for court operations.[4] But in the 1980s the Legislature began to recognize that funding of the trial courts was most logically a function of the state; it saw that counties were increasingly unable to meet the funding requirements of the trial courts such that the quality and timeliness of justice were threatened in some counties.[5] The state began assuming a greater portion of the burden of funding trial courts with enactment of the Brown-Presley Trial Court Funding Act (Brown-Presley Act) in 1988.[6]

Under the Brown-Presley Act, each county had the option of receiving state funding for trial court operations instead of relying solely on revenues raised within the county.[7] As part of the Brown-Presley Act, the Legislature statutorily defined "court operations" in Government Code section 77003. The purpose of this definition was to establish the costs that a participating trial court could permissibly fund with the block grants it received from the state. The definition of "court operations" included the costs of deputy marshals and sheriffs that courts deemed necessary.[8] In July 1988, the Judicial Council adopted rule 10.810[9] of the California Rules of

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[4] In the 1982—1983 fiscal year, for example, the state contributed approximately 11 percent to the funding of the trial costs, with the counties bearing the rest. (Judicial Council of California, 1983 Report to the Governor and the Legislature, Part 1, Chapter 8, Trial Court Costs and Revenue, pp. 35, 41, and 43.) (Ex. 1.)

[5] Stats. 1997, ch. 850, §§ 2(a) & 2(f).

[6] Stats. 1988, chs. 944 & 945.

[7] This system was first enacted into law with the Trial Court Funding Act of 1985 (Stats. 1985, ch. 1607) but was not implemented until the Brown-Presley Act was enacted and sufficient funding was appropriated in 1988.

[8] Former Gov. Code, § 77003 as enacted in 1988. The definition of "court operations" found today in Government Code section 77003(a)(3) still includes "[t]hose marshals and sheriffs as the court deems necessary for court operations."

[9] The rule was originally adopted as rule 810, but it was renumbered in 2007 as rule 10.810, and it will be referred to by that number throughout this letter.

Court to implement the Brown-Presley Act; the rule provides greater detail than that found in section 77003. Function 8 of rule 10.810 outlined what court security costs could be paid for with block grant money. Note that Government Code section 77003, as enacted in 1988, and function 8 of rule 10.810, as adopted in 1988, did *not* constitute a shift of responsibility for payment of court security expenses. Rather, it was acknowledged that the county had the responsibility to pay for the court security services required by the trial courts, but that counties that opted to accept block grants could use money provided by the state to defray those expenses.[10]

2. The Lockyer-Isenberg Act

Nine years after passage of the Brown-Presley Act, the state assumed almost complete responsibility for funding trial court operations under the Lockyer-Isenberg Trial Court Funding Act of 1997 (Lockyer-Isenberg Act).[11] Section 3 of the Lockyer-Isenberg Act, which was uncodified, provides a relevant summary of the Legislature's purpose:

> The Legislature declares its intent to do each of the following:
>
> (a) Provide state responsibility for funding of trial court operations commencing in the 1997—98 fiscal year.
>
> (b) Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994—95 fiscal year with adjustments to the cap, as specified.
>
> (c) Provide that the State of California shall assume full responsibility for any growth in costs of trial court operations thereafter.
>
> (d) Continue to define "court operations" as currently established in law; provided, however, that the Legislature recognizes that there remain issues regarding which items of expenditure are properly included within the definition of court operations. Therefore, the Legislature intends to reexamine this issue during the 1997—98 fiscal year, in the hopes of reflecting any agreed upon changes in subsequent legislation.
>
> (e) Provide that the obligation of counties to contribute to trial court costs shall not be increased in any fashion by state budget action relating to the trial courts.

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[10] The use of funds from the state reflected a county's election to transfer funding responsibility to the state for the services funded by the proceeds, for the period the county accepted the funding. (Former Gov. Code, § 77206, as enacted in Stats. 1998, ch. 945.)

[11] Assem. Bill 233; Stats. 1997, ch. 850.

* * *

Government Code section 77201 codifies both the responsibility of the state to pay for all court operations and the obligation of larger counties to make annual maintenance of effort (MOE) payments to the state, which payments were based on each county's contribution to trial court operations in the 1994—1995 fiscal year.[12] So, for example, it was determined that the County of Los Angeles had spent $291,872,379 on trial court operations in fiscal year 1994-1995 and was required to pay that amount to the state annually.[13] Despite that requirement, the state has reduced the amount of that payment by over $93 million over the last 10 years; thus, the County of Los Angeles now pays $198,858,596 annually to the state,[14] even though nothing in the calculation of the original amount had changed and the state continued to relieve the county of responsibility for any increases in trial court operations costs. To give a sense of the financial burden the state assumed from the County of Los Angeles, the budget for the 2007—2008 fiscal year for the operations of the Superior Court of Los Angeles County was over $840 million,[15] most of which is paid for with state appropriated funds.[16] This amount does not include funds spent by the state on court facilities.

The Legislature expected, however, that counties would not assert unfunded mandate claims arising from the state's assumption of responsibility for trial court funding. Section 64 of the Lockyer-Isenberg Act, which also was uncodified, states:

> No provision of this act shall be deemed to constitute a mandate upon a county because the state's assumption of increased funding support for the trial courts, pursuant to Section 77001 of the Government Code, effectively relieves a county of the responsibility to provide otherwise increasing funds to the trial courts to help finance their operations.

Section 64 makes a simple point: if the state is taking over financial responsibility for a county expense, then— in equity—a county cannot turn around and claim an unfunded mandate arising from that transfer of financial responsibility.

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[12] Originally there was a required MOE payment from each of the 58 counties. One year after enactment of the Lockyer-Isenberg Act, however, the Legislature eliminated the payment requirement for the smallest counties (those with populations of less than 70,000) and significantly reduced the amounts for all other counties. (Former Gov. Code, § 77201(a)(1), as enacted in Stats.1998, ch. 406 (AB1590), § 3, eff. Aug. 26, 1998.)

[13] Gov. Code, § 77201(a)(1).

[14] Gov. Code, § 77201.3(a)(1).

[15] Judicial Council of California, In the Name of Justice: Report of the California Courts, Judicial Branch Resources, p. 31. (Ex. 2.)

[16] Letter dated December 7, 2009, from William C. Vickrey, to Senators Ducheny and Corbett and Assembly Members Evans and Feuer, attachment 1. (Ex. 3.)

C. AB 92 Maintained the Status Quo: Sheriffs Required to Provide Court Security Before Trial Court Funding Were Required to Continue Providing Court Security.

As the Legislature noted in section 3 of the Lockyer-Isenberg Act:

> [T]here remain issues regarding which items of expenditure are properly included within the definition of court operations. Therefore, the Legislature intends to reexamine this issue during the 1997—98 fiscal year, in the hopes of reflecting any agreed upon changes in subsequent legislation.

One of the issues that the Legislature considered subsequently was court security. The fact that the state had relieved the counties of responsibility for funding court security apparently was not subject to question. Some sheriffs' groups believed, however, that the Lockyer-Isenberg Act was unclear as to how trial court services would be provided[17] and that the courts could contract with other agencies or vendors for security services.[18] To address these concerns, the California State Sheriffs' Association, the Peace Officers Research Association of California, and the Association for Los Angeles Deputy Sheriffs supported a bill[19] to maintain the status quo, so that sheriffs who provided security to a court would be entitled to continue doing so. AB 92[20] added section 77212.5 to the Government Code, which provided:

> Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998.

Section 77212.5 did not impose a new funding mandate upon counties; it only required those sheriffs that had previously provided security services "as otherwise provided by law"[21] to continue doing so. According to the Senate Rules Committee Bill Analysis of AB 92, there was an agreement[22] that security services would not be transferred from the

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[17] Assem. Analysis of AB 92 (1997—1998 Reg. Sess.), as amended Aug. 24, 1998. (Ex. 4.)
[18] Dept. of Fin., Enrolled Bill Report, Bill Analysis of AB 92 (1997—1998 Reg. Sess.), Comments. (Ex. 5.)
[19] Gov. Office of Planning and Research, Enrolled Bill Report on AB 92 (1997—1998 Reg. Sess.), Support and Opposition. (Ex. 6.)
[20] Stats. 1998, ch. 764.
[21] In 1998, Government Code section 26603, which was first enacted in 1982, and was repealed effective January 1, 2003, provided the general authority for sheriffs to provide security in the superior courts:

> Except as otherwise provided by law, whenever required, the sheriff shall attend all superior courts held within his county provided, however, that a sheriff shall attend a civil action only if the presiding judge or his designee makes a determination that the attendance of the sheriff at such action is necessary for reasons of public safety. The sheriff shall obey all lawful orders and directions of all courts held within his county.

Note that there were also county-specific statutes and that some counties used marshal services, as explained in section B of the Discussion section that follows.
[22] The analysis does not report who made that agreement.

counties to another provider and that the bill "simply reflect[s] that agreement, restate[s] existing law, and codif[ies] existing practice."[23] Thus, AB 92 reaffirmed the status quo and represents just one more step in the trial court funding process whereby the state assumed responsibility for what had been county costs.[24]

D. SB 1396 Clarified the Scope of Court Security Costs and Provided a Process for Further Defining those Costs.

After enactment of the Lockyer-Isenberg Act, Government Code section 77003 and rule 10.810 took on a new purpose. Previously, the statute and rule had circumscribed the expenses on which a county could spend block grant money received from the state. After trial court funding, because most of the money a trial court had available was appropriated from state funds, Government Code section 77003 and rule 10.810 established a dividing line between what was a court expense and what was a county expense; it thus limited how a superior court could spend the funds received. In the context of court security, function 8 of rule 10.810 dictated what a court could permissibly pay to a county for services from the sheriff. By extension, therefore, all other "expenses" of providing court security were the responsibility of the county.

Both superior courts and sheriffs found the definition of allowable and unallowable court security costs in function 8 of rule 10.810 to be insufficient because it lacked detail, leading to significant variations statewide in what items were being reimbursed to the sheriffs.[25] The Judicial Council and the California State Sheriffs' Association collaborated on sponsoring SB 1396.[26] The sponsors had considered amending function 8, but concluded that because rule 10.810 had been adopted prior to full state funding, it would be more efficient to replace it with legislation that reflected the reality of the post-trial court funding operational and funding environment confronted by the courts and sheriffs.[27]

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[23] Sen. Rules Comm., Analysis of AB 92 (1997—1998 Reg. Sess.), as amended Aug. 24, 1998, p. 2. (Ex. 7.)
[24] The County of Los Angeles asserts that the Legislature acknowledged in uncodified language in AB 92 and that Legislative Counsel opined in the digest or that bill that AB 92 imposed a state-mandated local program. (Test Claim, pp. 2—3.) In fact, the uncodified language of the statute only included boiler plate language regarding costs which would be reimbursed if the Commission determined a mandate existed. Section 2 of AB 92 provided "if the Commission on State Mandates determines this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made . . . ." (Underline added.) We note that a legislative finding that a state mandate exists is irrelevant to the Commission's determination of whether a state mandate exists. (*County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818. In fact, the Department of Finance opined in its analysis that the bill "would not be a reimbursable state mandated cost." (Dept. of Finance Enrolled Bill Report, p. 1, Governor's Chaptered Bill File for AB 92, *supra,* Fiscal Summary, underline added.) (Ex. 5.) In either case, the question of whether a statute, repealed effective January 1, 2003, constitutes an unfunded mandate is not before the Commission.
[25] Gov. Office of Planning and Research, Enrolled Bill Report on SB 1396 (2001—2002 Reg. Sess.), Analysis, p. 2. (Ex. 8.)
[26] Stats. 2002, ch. 1010.
[27] Gov. Office of Planning and Research, Enrolled Bill Report on SB 1396, *supra,* Analysis, p. 2. (Ex. 8.)

SB 1396, like AB 92, reaffirmed the obligations of the sheriff and court to maintain the status quo with respect to the sheriff providing security to the superior courts. It repealed Government Code section 26603—the successor to 100 years of statutes requiring the sheriff to attend the superior court (unless otherwise provided by law)–and repealed Government Code section 77215.5, which was enacted as part of AB 92. It then obligated the sheriffs who were required to provide security to superior courts to enter into contracts with the superior court. But, it also borrowed the language and substance of sections 26603 and 77215.5 and incorporated their principles into a new article of the Government Code called the Superior Court Law Enforcement Act of 2002 (SCLEA).[28]

In addition to maintaining the status quo in terms of the permissible service providers for court security, SB 1396 addressed the lack of clarity in allowable costs in function 8 of rule 10.810. It did this in a unique way, however. The SCLEA does not simply define allowable security costs *per se*. Rather, it replaces function 8 of rule 10.810 with the "Contract Law Enforcement Template" (Template).[29] The SCLEA provides that the Template is to be adopted by the Judicial Council based on recommendations made by the Working Group on Court Security.[30] The composition of the working group is set by Government Code section 69927(a) and includes representatives from the judicial branch, the California State Association of Counties, the California State Sheriffs' Association, and other sheriffs' organizations.[31] The SCLEA divides allowable costs into four categories: (1) equipment, services and supplies;[32] (2) professional support staff;[33] (3) security personnel services;[34] and (4) vehicle use.[35] The definition of each of these categories is qualified by the phrase "as defined in the contract law enforcement template." So, for example, Government Code section 69927(a)(6) begins:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template means the salary and benefits of an employee, including but not limited to . . . .

This is an odd construction given that the Template did not exist at the time SB 1396 was enacted. It appears that the Legislature established the category, but gave the working group and the Judicial Council the authority to fill in the details in the Template. Thus, the Legislature provided greater direction than was previously found in rule 10.810, but also established a

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[28] SCLEA is article 8.5, chapter 5, title 8 of the Government Code, beginning at Government Code section 69920, et seq. The language of former Government Code section 26603 is now in Government Code section 69922 and the language formerly in Government Code section 77215.5 is now in Government Code section 69926.
[29] Gov. Code, § 69927(a)(1).
[30] Gov. Code, §§ 69927, 69921(a).
[31] *Ibid.*
[32] Gov. Code, § 69927(a)(4).
[33] Gov. Code, § 69927(a)(5).
[34] Gov. Code, § 69927(a)(6).
[35] Gov. Code, § 69927(a)(7).

process (the working group's recommendations to the Judicial Council) and a more refined tool (the Template) for working out the details of allowable security costs.

The California State Sheriffs' Association and the Judicial Council were both sponsors of SB 1396 and submitted letters to the Governor in support, knowing that they would appoint representatives to a working group to make a recommendation on the Template and a definitive definition of allowable costs. That definition would be subject to change every time the working group deemed it appropriate to make a new recommendation to the Judicial Council.[36] The County of Los Angeles, likewise, submitted a letter in support of SB 1396, knowing that the bill itself did not finally determine which security personnel costs were allowable and not allowable.[37]

E. Reimbursement of Sheriff Retiree Health Benefits under SB 1396

The lack of specificity in SB 1396 led to conflicting views on whether sheriff retiree health benefits were allowable costs. The issue first arose during training sessions conducted jointly by the California State Sheriffs' Association and the Administrative Office of the Courts (AOC). Responses to questions raised were distributed in a memorandum as part of a preliminary response, pending preparation of a draft Template by the Working Group on Court Security and adoption of the Template by the Judicial Council.[38] The memorandum set forth the following question and answer:

> *Question: Is the payment of premiums for lifetime health benefits in retirement an allowable cost?*
>
> Yes. Payment of retirement benefits, such as health insurance should be locally negotiated.

Although sheriff retiree health benefits are not specifically identified in the list of allowable costs identified in Government Code section 69927(a)(6), the working group could have determined they were allowable because the use of the words "including, but not limited to" preceding the list of allowable items indicates that the Legislature intended the list to be illustrative and not exclusive.[39] The first version of the Template,[40] however, did not allow payment of sheriff

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[36] Letter dated September 12, 2002, from Eraina Ortega, Legislative Advocate, Administrative Office of the Courts to the Hon. Gray Davis (Ex. 9); Letter dated August 30, 2002, from Nick Warner, Legislative Director, California State Sheriffs' Association to the Hon. Gray Davis. (Ex. 10) The letter from the California State Sheriffs' Association specifically notes that SB 1396 authorizes a "working group on court security that may recommend modifications to the implementation of these provisions."

[37] Letter dated August 31, 2003, from Steve Zehner, Principal Deputy County Counsel, County of Los Angeles to the Hon. Gray Davis. (Ex. 11.)

[38] Memorandum dated July 10, 2003, from Michael Roddy, Regional Administrative Director, AOC, and Doug Storm, Assistant Sheriff, Orange County Sheriff's Department. (Ex. 12.)

[39] See *Coast Oyster Co. v. Perluss* (1963) 218 Cal.App.2nd 492, 501-502 (holding that the use of the phrase "includes, but is not limited to" usually reflects a legislative intent to enlarge and not to limit).

retiree health benefits. Section I of the Template, titled "Allowable Cost Narratives," allows for the payment of "Salary, wages and benefits" for sheriff employees. Section III of the Security Template, entitled "Addendum Narratives," includes a table that states "this is a list of *the* allowable employer-paid labor-related employee benefits." (Italics added.) This wording, in contrast to the use of the phrase "including but not limited to" in Government Code section 69927(a)(6), makes the list exclusive.[41] *Retiree health benefits are not included in the list.* Given that the Legislature made the Template the final word on what was an allowable cost, with its adoption, retiree health benefits were not allowable costs.

Reimbursement of such expenses did not arise as an issue until 2006. Before 2006, the survey the AOC circulated to the trial courts to identify security costs did not require the category of benefits to be reimbursed to be specified individually. In 2006, however, requests for security funding from the trial courts for fiscal year 2006—2007 increased by 11 percent over the previous fiscal year. Lacking sufficient funding for such a significant increase, AOC staff requested additional information from the trial courts, including a breakdown of the benefits category to determine the cause of the increase. It became apparent that some trial courts *had* in fact paid for sheriff retiree health benefits in the past. The AOC took the position that retiree health benefit costs should be disallowed because they were not authorized by the Template.[42]

A number of trial courts took issue with the disallowance of sheriff retiree health benefits. In particular, the Superior Court of Los Angeles County raised the issue in a January 2007 letter to the Administrative Director of the Courts.[43] The Administrative Director of the Courts responded in a letter noting that sheriff retiree health benefit costs are subject to approval as a specific cost pursuant to the procedures in the Government Code, i.e., the Working Group on Court Security must review that cost and make a recommendation to the Judicial Council on whether to amend the Template. The letter also noted that reimbursement was appropriate if a superior court could provide documentation that it had paid for these benefits in the past and that the cost of the benefits had been included in the calculation of the amount of a county's maintenance of effort payment. The letter noted that the method for calculation of such costs was subject to review to ensure that they represented actual costs and could also be affected by subsequent legislation.[44]

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[40] A copy of the Template is attached as exhibit 13.
[41] In this context the SB X4 13 amendment to Government Code section 69926 that limits allowable benefits to those specifically enumerated in Government Codes section 69927(a)(6), ("For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to any costs associated with retiree health benefits."), is not new law, but simply codifies the law as previously stated in the Template.
[42] Report to the Judicial Council, dated October 18, 2006, pp. 6—7. (Ex. 14.)
[43] Letter dated January 10, 2007 from John A. Clarke, Executive Officer/Clerk, Superior Court of Los Angeles County, to William C. Vickrey, Administrative Director of the Courts. (Ex. 15)
[44] Letter dated January 30, 2007 from William C. Vickrey, Administrative Director of the Courts, to John A. Clarke, Executive Officer/Clerk, Superior Court of Los Angeles County. (Ex. 16.)

The AOC required documentation of prior payment because Government Code section 69927(a)(1), provides: "Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature." Thus, even if sheriff retiree health benefits are an allowable cost under SCLEA, the AOC is not authorized to reimburse a superior court that does not demonstrate that it was paying for sheriff retiree health benefits before enactment of SB 1396, unless the Legislature authorizes additional funding for that cost item. Five superior courts submitted documentation that they had previously been paying the sheriff for the costs of retiree health benefits.[45] Based on this documentation, these five courts were reimbursed for the costs of sheriff retiree health benefits in fiscal year 2008—2009, although they had not been reimbursed in the two previous years.[46]

Discussion

A. SB X4 13 Imposes No Reimbursable Mandate on the County of Los Angeles.

Article XIIIB, section 6 of the California Constitution provides that "[w]henever 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 . . . ." The amendment to Government Code section 69926(b) in SB X4 13 that bars reimbursement for the cost of sheriff retiree health benefits does not constitute such a mandate. It merely clarifies what costs are allowable when a sheriff provides court security services. As there is no state law requiring the sheriff to pay retiree health benefits to its deputies, there is no reimbursable mandate.

The County of Los Angeles argues that under *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, SB X4 13 constitutes a new "program" because it represents a transfer of a state cost to the counties. (Test Claim, pp. 12—13.) That portion of the holding in *Lucia Mar* was codified by initiative in 2004[47] as subdivision (c) of Article XIIIB, section 6, which provides

> A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

Under either *Lucia Mar* or subdivision (c), to be reimbursable the cost transferred must nonetheless be *mandated* by the state. Here, the cost the county alleges was transferred was discretionary, not mandatory.

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[45] Report to the Judicial Council, dated October 8, 2008, *Court Security Retiree Health Costs in MOEs,* p. 16. (Ex. 17.) The five are the superior courts of Contra Costa, Kern, Los Angeles, Sacramento, and Santa Clara Counties.

[46] *Ibid.*

[47] Proposition 1A, approved by the voters on November 2, 2004.

In the recent case *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, the Court of Appeal examined a line of cases in which courts have determined that there is no reimbursable mandate because the additional costs were incurred by the local government agency voluntarily, not as the result of a state mandate.

- In *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, the Court of Appeal held that an amendment of the eminent domain law requiring compensation for business good will is not reimbursable as an unfunded state mandate.[48] It reasoned that the city was free to choose other methods of acquiring real property and would only incur additional expense if it chose to use eminent domain powers.

- In *Dept. of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, the claimant school district asserted that new laws imposing notice requirements on certain meetings constituted a reimbursable mandate. The Supreme Court held that they did not because the districts were not legally compelled to hold the meetings in the first place and would not be under threat of penalty if they did not hold them. The school district had argued that as a practical matter it was compelled to conduct the meetings. The Supreme Court acknowledged that a "de facto" reimbursable mandate was possible, but that facts before it did not present such a mandate.

- In *San Diego School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, the Supreme Court considered whether state requirements for expulsion hearings were a reimbursable mandate and concluded they were not because the costs were incurred due to federal due process requirements. But it offered dicta on the *Merced* case, suggesting that its holding should not be extended to achieve an extreme result, e.g., a mandate to provide protective clothing for firefighters should not be deemed unreimbursable solely because a city can decide how many firefighters to hire.

Based on these cases the Court of Appeal concluded that enactment of a bill that gave certain procedural and due process rights to peace officers did not constitute a reimbursable mandate as to school districts that employed peace officers.[49] The court reasoned that, although state law authorized school districts to employ peace officers, school districts were not compelled by state law to employ them. The court acknowledged that providing police protection was one of the most essential and basic functions of a city or county, and such requirements were a reimbursable mandate for those entities, but distinguished school districts because they had alternatives to retaining their own peace officers.[50]

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[48] Under former Revenue and Taxation Code section 2231, the predecessor to article XIIIB, section 6.
[49] *Dept. of Finance, supra,* 170 Cal.App.4th at 1365—1368.
[50] *Ibid.*

In each of these cases, where the claimant had the *legal* choice not to participate in a program, the court found that any additional costs associated with that program were not a reimbursable mandate. Here the analysis is a little different, but the principle is the same. While the Los Angeles County Sheriff is compelled by Government Code section 69922 to provide security services to the Superior Court of Los Angeles County, there is no state law compelling sheriffs to pay their deputies retiree health benefits. Accordingly, the amendment to Government Code section 69926 barring reimbursement of that cost does not constitute a reimbursable mandate.

We do not want to trivialize the payment of retiree health benefits to sheriffs' deputies. It is a benefit paid to many, but not all, government employees. The County of Los Angeles may have incurred a contractual obligation to pay the benefit in its memorandum of understanding with sheriff's deputies. But for purposes of determining whether the benefit constitutes a reimbursable mandate under California law, the payment of this benefit by the County of Los Angeles is wholly voluntary, just as hiring peace officers for school districts, exercising the right of eminent domain, and holding meetings in schools, were deemed voluntary by the courts in the cases summarized above. These may be important functions of local agencies, but they are not reimbursable mandates.

Even if the cost were not voluntary, increases in cost—as opposed to increases in the level of services—do not create a reimbursable mandate. As the Supreme Court observed after summarizing several older cases:

> [S]imply because a state law or order may increase the costs borne by local government in providing services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting 'service to the public' under article XIIIB, section 6, and Government Code section 17514.[12]

[12] Indeed, as the court in *City of Richmond, supra*, 64 Cal.App.4th 1190, 75 Cal.Rptr.2d 754, observed: "Increasing the cost of providing services cannot be equated with requiring an increased level of service under [article XIIIB,] section 6 . . . . A higher cost to the local government for compensating its employees is not the same as a higher cost of providing [an increased level of] services to the public." (*Id.*, at p. 1196, 75 Cal.Rptr.2d 754; *accord, City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, 235 Cal.Rptr. 101 [temporary increase in PERS benefit to retired employees, resulting in higher contribution rate by local government, does not constitute a higher level of service to the public].)[51]

[51] *San Diego School District, supra.*, 33 Cal.4th, at 877.

Here, there has been no change in the sheriffs' obligation to provide security to the superior courts, but those sheriffs' offices that choose to pay for retiree health benefits for their deputies cannot be reimbursed for that expense under the guise of providing a higher level of service.

The County of Los Angeles quotes the following paragraph from the *Lucia Mar* case for the proposition that the transfer of a state cost to the county constitutes a reimbursable mandate:

> The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not "new." Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or by compelling them to accept financial responsibility in whole or in part for a program which was funded entirely by the state **before the advent of article XIIIB**, the result seems equally violative of the fundamental purpose underlying section 6 of that article. We conclude, therefore, that because section 59300 shifts partial financial responsibility for the support of students in the state-operated schools from the state to school districts—**an obligation the school districts did not have at the time article XIIIB was adopted**—it calls for plaintiffs to support a "new program" within the meaning of section 6.[52]

But, as the bolded language quoted above makes quite clear, the court based its holding on the conclusion that a transfer constituted an unreimbursable mandate if, and only if, the cost had been borne by the state **before adoption of article XIIIB in 1988.** As outlined in the background section of this response, however, court security was entirely the responsibility of the counties before 1988; the state did not assume responsibility for funding trial courts and their attendant security until enactment of the Lockyer-Isenberg Act, effective January 1, 1998—10 years after the adoption of article XIIIB. If the expense of sheriff retiree health benefits was not transferred from the county until after article XIIIB, the alleged transfer is not subject to article XIIIB, section 6 and no reimbursable mandate exists under the *Lucia Mar* analysis.

In this context it is worth revisiting section 64 of the Lockyer-Isenberg Act, which states:

> No provision of this act shall be deemed to constitute a mandate upon a county because the state's assumption of increased funding support for the trial courts, pursuant to Section 77001 of the Government Code, effectively relieves a county of the responsibility to provide otherwise increasing funds to the trial courts to help finance their operations.

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[52] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d at 36, bold added, footnotes omitted.

While the county's test claim does not arise directly from the Lockyer-Isenberg Act, it is related to that legislation, because SB 1396, which was amended by SB X4 13, is part of the development of trial court funding and the transition from county to state funding of the trial courts. Having been relieved of a financial responsibility for supporting the Superior Court of Los Angeles County that now comes close to over 800 million dollars a year (excluding facilities costs), it is unreasonable for the county now to claim an unfunded mandate over the disallowance of an alleged 5 million dollar a year expense.

B. There is No Reimbursable Mandate Because the County of Los Angeles Requested the Legislative Authority that Requires the Sheriff to Provide Court Security.

Under article XIIIB, section 6, "the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. . . ." The County of Los Angeles did not request or support the enactment of SB X4 13, but, as explained in the section above, that bill does not constitute a reimbursable mandate or a transfer of a state expense to the counties. The county has a long history of requesting, independently, through its sheriff, and through organizations to which the county and sheriff are party, legislative mandates that the sheriff be required to provide security to the superior courts. This occurred when the county elected to use the sheriff to provide court security over the marshal in 1993, when the sheriff supported the enactment of AB 92 in 1998, and when the sheriff and county supported the enactment of SB 1396 in 2002.

1. In 1993, the County of Los Angeles Abolished the Marshal's Office and Required the Use of the Sheriff for Court Security Services.

Before trial court unification,[53] in addition to the superior court there was at least one municipal court in each county. Sheriffs were generally the primary security providers for the superior courts, while marshals provided security in municipal courts.[54] With trial court unification and a single unified superior court in each county, the need for two separate security providers diminished. Most county marshals' offices were thus abolished—essentially being consolidated with the sheriffs' offices—and sheriffs became the primary security providers in most unified courts.[55] Legislation related to this consolidation process was enacted to account for many county-specific circumstances.[56] Today, only the Superior Courts of Shasta and Trinity Counties utilize a marshal for court security.

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[53] The Constitution was amended in 1998 to permit the municipal and superior courts in each county to unify. (Former Cal. Const., art. VI, § 5(e).) By February 8, 2001, the courts in all 58 counties had unified as superior courts.

[54] Cal. Law Revision Com., Memorandum 2001-9 (Study J-1400) Statutes Made Obsolete by Trial Court Restructuring: Sheriffs and Marshals (Jan. 16, 2001), p. 1. (Ex. 18.)

[55] Cal. Law Revision Com., Memorandum 2001-9 (Study J-1400), *supra*, pp. 1—4. (Ex. 18.)

[56] See, e.g., Gov. Code, §§ 26625–26672, 72110–72116, 73665–73666, 73757–73758, 74784.

In Los Angeles County the process of court consolidation was governed by Government Code section 26639, et seq. This statute allowed the judges of the Municipal and Superior Courts in Los Angeles to provide an advisory recommendation to the Board of Supervisors of Los Angeles County as to which agency it preferred to provide court security; it granted to the board the sole authority to make the decision.[57]

In October 1993, the judges submitted their advisory vote to the board as required by section 26639. Two hundred ninety-eight judges voted to have court security services provide by the marshal; only 63 voted for the sheriff. Despite the judges' overwhelming recommendation that the marshal be selected, the board determined that the courts would receive security services from the sheriff.[58] The Superior Court of Los Angeles County and the Municipal Court Judges' Association challenged that result by filing a law suit challenging the board's decision,[59] but the Marshal's office was abolished and the Sheriff became the sole provider of security services to the trial courts in Los Angeles County.

2. In 1998, the Los Angeles County Sheriff, through the California State Sheriffs' Association, Supported AB 92.

In 1998, when some sheriffs had doubts about whether they were entitled to continue providing security services to the superior courts, or whether courts would be able to use another agency or vendor for those services to address these concerns, the California State Sheriffs' Association, the Peace Officers Research Association of California, and the Association for Los Angeles Deputy Sheriffs supported a bill to maintain the status quo, i.e., to require sheriffs to continue providing security services to those superior courts where they were already providing such services.[60] While the legislative history does not reflect any letters of support submitted by the County of Los Angeles or by the Los Angeles County Sheriff, that support can be inferred from the support of the California State Sheriffs' Association, whose membership is comprised of the sheriffs from all 58 counties, and the Association for Los Angeles Deputy Sheriffs, which is a labor organization for the Los Angeles County Sheriff's deputies.

3. In 2002, the County of Los Angeles Supported the Enactment of SB 1396.

The California State Sheriffs' Association and the Judicial Council were both sponsors of SB 1396 and submitted letters in support of the bill to the Governor.[61] The County of Los Angeles,

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[57] AB 1587 was sponsored by the Association for Los Angeles Deputy Sheriffs, and supported by the County of Los Angeles, the California State Sheriffs' Association, and others. It was opposed by the Los Angeles County Municipal Court Presiding Judges Association and the Municipal Court Judges Association, among others. (Gov. Office of Planning and Research, Enrolled Bill Report on AB 1587 (1993-1994 Reg. Sess.) Support and Opposition, p. 5. (Ex. 19).)

[58] *Board of Supervisors of the County of Los Angeles* (1995) 32 Cal.App.4th 1616, 1620.

[59] *Ibid.*

[60] Gov. Office of Planning and Research, Enrolled Bill Report on AB 92, *supra,* Support and Opposition. (Ex. 6.)

[61] Letter dated September 12, 2002, from Eraina Ortega, Legislative Advocate, Administrative Office of the Courts to the Hon. Gray Davis (Ex. 9); Letter dated August 30, 2002 from Nick Warner, Legislative Director, California

likewise, submitted a letter in support of SB 1396.[62] In expressing its support for a bill that did not finally determine which costs were allowable and which were *not* allowable, the County of Los Angeles acquiesced to just the kind of adjustment that was made regarding the disallowance of retiree health benefits. Although SB 1396 authorized the Working Group on Court Security and the Judicial Council to make such adjustments, the Legislature can certainly exercise that authority itself and limit allowable expenses by amendments to the SCLEA.[63] In reporting the intent of the Legislature, SB 1396 explicitly states that the purpose of the bill is to "identify allowable law enforcement security costs *after* the operative date of this article."[64] It was never anticipated that all allowable costs had been determined by the bill itself. Having supported SB 1396 knowing that allowable costs would be determined and adjusted later by some other entity, the County of Los Angeles cannot now reasonably allege a reimbursable mandate.

The entire structure of SB 1396 includes both fixed and open-ended limitations on what a sheriff may charge for court security services. For example, Government Code section 69927(a)(4) provides an exclusive list of equipment for which a sheriff can bill a superior court. The list is fixed by statute and cannot be changed without amendment by the Legislature; if the sheriff chooses to use equipment not identified in the statutory list, it must do so at its own expense. Likewise, Government Code section 69927(a)(5) limits the costs for professional support staff to six percent of total allowable costs for smaller courts and to four percent for larger courts. But it also specifies that these limits can be changed by the Judicial Council following a recommendation by the Working Group on Court Security.

These limitations and potential adjustments were all built into SB 1396 for a simple reason: while SB 1396 affirmed the status quo that sheriffs were to continue providing security to the superior courts, the trial courts and the Legislature did not wish to write a blank check. On the contrary, SB 1396 makes references to controlling costs and achieving efficiencies. It represented a compromise between the judicial branch, the sheriffs, and the counties whereby the sheriffs would continue to provide security without imposing an unreasonablea burden on state finances. The amendment in SB X4 13 that clarifies that sheriff retiree health benefits are excluded is consistent with that compromise. Having supported that compromise, the County of Los Angeles is precluded from asserting that it constitutes a reimbursable mandate in its favor.

State Sheriffs' Association (Ex. 10). The letter from the California State Sheriffs' Association specifically notes that SB 1396 authorizes a "working group on court security that may recommend modifications to the implementation of these provisions."

[62] Letter dated August 31, 2003, from Steve Zehner, Principal Deputy County Counsel, County of Los Angeles to the Hon. Gray Davis. (Ex. 11.)

[63] Indeed, as noted in footnote 41, above, the SB X4 13 amendment to Government Code section 69926 that limits reimbursement for benefits not specifically identified in Government Code section 69927(a)(6) simply codifies the approach to such benefits already in the Template adopted by the Judicial Council.

[64] Gov. Code, § 69927(a)(1), italics added.

C. The County of Los Angeles Cannot Claim Reimbursement for Expenses Associated with Retiree Health Benefits for Sheriff's Deputies Not Currently Providing Services to the Superior Court.

Although the issue would get much more attention at the parameters and guidelines stage if the Commission approves the County of Los Angeles' test claim, it is important to note at this point that to the extent the county seeks reimbursement for costs associated with sheriffs' deputies who are already retired, such reimbursement would not be authorized under SB 1396.

In the past many government entities paid for retiree health benefits on a "pay-as-you-go" basis, i.e., paying for health benefits for employees after they retire. The "pay-as-you-go system" is in contrast to the "pre-funded" system typically used for pension benefits, under which a government entity deposits money for each current employee into a fund maintained for purposes of paying future pension benefits for those employees once they retire. The contrast between "pay-as-you-go" and pre-funded systems has been highlighted by recent changes in accounting practices. This occurred when the Governmental Accounting Standards Board (GASB) issued Statement No. 45 (GASB 45), which required all government entities to start documenting in their financial statements any unfunded liabilities for post-employment benefits, including retiree health benefits, by December 15, 2008. GASB 45 does not obligate government entities to fund these liabilities; it simply requires that they be reported on financial statements.

Under SB 1396, trial courts are only authorized to pay for benefits for current employees of the sheriff. "'Allowable costs for security personnel services,' . . . means the salary and benefits of an employee . . . ."[65] Thus, SB 1396 only authorizes courts to pay benefits for current employees providing court security services, not for former—i.e. retired—county employees. It is unclear from the test claim how the amounts sought were calculated. To the extent that they represent costs that are not related to the current provision of security services they are not reimbursable under SB 1396.

Respectfully submitted,

Michael I. Giden
Attorney

MIG/dag
Attachments

[65] Gov. Code, § 69927(a)(6).

cc: William C. Vickrey, Administrative Director of the Courts
Ronald G. Overholt, Chief Deputy Director, Administrative Office of the Courts
Mary M. Roberts, General Counsel, AOC Office of the General Counsel

DECLARATION

(California Code of Regulations, Title 2, Section 1183.02(d))

I am informed and believe and on that basis declare under penalty of perjury that the information in this response is true and complete to the best of my knowledge and that the exhibits to the response are true and correct copies of the relevant portions of public records.

8-13-10
Date

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PROOF OF SERVICE BY MAIL

I, Francesca Smith-Archiapatti, declare that I am employed in the County of Los Angeles, over the age of 18 years, and not a party to nor interested in the within matter, and my business address is 2255 North Ontario Street, Suite 200, Burbank, California 91504.

I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence would be deposited with the United States Postal Service the same day in the ordinary course of business.

On **August 13, 2010**, I placed a copy of the Administrative Office of the Court's Response to Test Claim Filed by the County of Los Angeles (*Sheriff Court-Security Services, 09-TC-02)* dated August 13, 2010, in an envelope which was then sealed and placed for collection and mailing on this date following ordinary business practices, and addressed to the person listed as follows:

See attached mailing list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in the County of Los Angeles, State of California, on **August 13, 2010**.

Francesca Smith-Archiapatti

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EXHIBIT LIST

Ex. 1. Judicial Council of California, 1983 Report to the Governor and the Legislature, Part 1, Chapter 8, Trial Court Costs and Revenue

Ex. 2. Judicial Council of California, In the Name of Justice: Report of the California Courts, Judicial Branch Resources.

Ex. 3. Letter dated December 7, 2009, from William C. Vickrey, to Senators Ducheny and Corbett and Assembly Members Evans and Feuer.

Ex. 4. Assem. Analysis of AB 92 (1997–1998 Reg. Sess.), as amended Aug. 24, 1998.

Ex. 5. Department of Finance, Enrolled Bill Report, Bill Analysis of AB 92 (1997–1998 Reg. Sess.).

Ex. 6. Governor's Office of Planning and Research, Enrolled Bill Report on AB 92 (1997–1998 Reg. Sess.).

Ex. 7. Senate Rules Comm. Third Reading Analysis of AB 92 (1997–1998 Reg. Sess.), as amended Aug. 24, 1998.

Ex. 8. Governor's Office of Planning and Research, Enrolled Bill Report on SB 1396 (2001–2002 Reg. Sess.).

Ex. 9. Letter dated September 12, 2002, from Eraina Ortega, Legislative Advocate, Administrative Office of the Courts, to the Hon. Gray Davis.

Ex. 10. Letter dated August 30, 2002, from Nick Warner, Legislative Director, California State Sheriffs' Association.

Ex. 11. Letter dated August 31, 2003, from Steve Zehner, Principal Deputy County Counsel, County of Los Angeles to the Hon. Gray Davis.

Ex. 12. Memorandum dated July 10, 2003, from Michael Roddy, Regional Administrative Director, Administrative Office of the Courts, and Doug Storm, Assistant Sheriff, Orange County Sheriff's Department.

Ex. 13. Contract Law Enforcement Template.

Ex. 14. Report to the Judicial Council, dated October 18, 2006.

EXHIBIT LIST

Ex. 15. Letter dated January 10, 2007, from John A. Clarke, Executive Officer/Clerk, Superior Court of Los Angeles County, to William C. Vickrey, Administrative Director of the Courts.

Ex. 16. Letter dated January 30, 2007, from William C. Vickrey, Administrative Director of the Courts, to John A. Clarke, Executive Officer/Clerk, Superior Court of Los Angeles County.

Ex. 17. Report to the Judicial Council, dated October 8, 2008.

Ex. 18. California Law Revision Commission, Memorandum 2001-9 (Study J-1400) Statutes Made Obsolete by Trial Court Restructuring: Sheriffs and Marshals (Jan. 16, 2001).

Ex. 19. Governor's Office of Planning and Research, Enrolled Bill Report on AB 1587 (1993-1994 Reg. Sess.)

EXHIBIT 1

1983·ANNUAL·REPORT

PART I: 1983 Judicial Council Report to the Governor and the Legislature

PART II: Annual Report of the Administrative Office of the California Courts

JUDICIAL·COUNCIL OF·CALIFORNIA

Exhibit 1

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PART II. ADMINISTRATIVE OFFICE REPORT

APPENDIX TABLES

Chapter 8
TRIAL COURT COSTS AND REVENUES

This report estimates California trial court costs and revenues for fiscal year 1982–83. The information was compiled by the Administrative Office of the Courts to estimate the fiscal impact of court-related legislative proposals.

The report defines court costs, explains the six major expense categories, and discusses the development of original cost estimates and how they will be updated. Also, the results of a three-county verification of the 1982–83 estimates are summarized, followed by a brief description of trial court revenues. Included in the appendix is a Court Financing Summary that details state assistance to trial courts and the cost of state judicial operations.

I. DEFINITION OF COURT COSTS

Trial court costs, as defined here, include costs designated in county budgets for superior, municipal and justice courts and the county clerk and bailiffing functions. Countywide indirect costs attributable to these budget activities have been calculated and applied. Indirect costs include county government functions, such as a personnel or purchasing office; these costs are attributed to the courts by local prorated estimates. Also included within the total cost is the state's contribution to the trial courts in the form of superior court judges' salaries, block grants, and judges' retirement. Therefore, these costs represent the total operational costs of the trial courts. The only category of costs not included are capital outlay expenditures for such purposes as site acquisition and construction of new court facilities.

The trial courts are only one part of justice system costs at the county level. Other activities that interact with the courts but are not included in court costs are public defender, district attorney and probation sevices.

II. COST PER JUDICIAL POSITION

The cost data are arranged so that total trial court costs are apportioned among total judicial positions for superior and municipal courts. Total judicial positions includes judges, referees, and commissioners. Therefore, each judicial position represents an equal share of total trial court costs. The cost per judicial position includes not only the salary and benefits for the judicial position itself, but also a proportionate share of all costs of nonjudicial positions, services and supplies and countywide indirect costs attributable to the courts. Finally, the cost of a bailiff and a court reporter position are added to the above to provide the total costs assignable to each judicial position.

The division of trial court costs into annual costs per judicial position allows for a further breakdown into costs per judicial case-related minute, hour and day. This is possible because of data accumulated by Judicial Council weighted caseload studies, such as the minutes per year and days per year that are available for case-related work for the average judicial position. This type of detail is useful when estimating the additional court costs that may be required by a legislative proposal that would add minutes or hours of time to a judicial proceeding or impose a new judicial duty.

Justice court costs are not presented in the same detail as superior and municipal court costs because they account for only a small portion of the workload of the trial courts. Also, nearly all justice court judges are part-time and a cost per judicial position would not be applicable. Therefore, justice court costs are presented as a lump sum amount, approximately equivalent to their share of the lower court workload.

III. COST COMPONENTS

In 1974 budget expenditure data were collected from 15 municipal courts and 14 superior courts.[1] These 29 courts were the same courts that were the basis of the 1974 judicial and nonjudicial staffing studies conducted by the Judicial Council. The expenditure data were segregated into six cost categories: judicial salaries and benefits; nonjudicial salaries and benefits; services and supplies; indirect costs; and costs for court reporters and bailiffs. A brief description of these court cost components follows.

[1] The procedures followed in gathering the original trial court cost data are explained in detail in the 1975 Judicial Council publication, *Guidelines for Determining the Impact of Legislation on the Courts.*

A. Judicial Salaries and Benefits

Judicial salaries are the annual statutory salaries for municipal and superior court judges as of the latest authorized adjustment. The state share of superior court judges' salaries is included, currently ranging from $53,767 to $57,767, depending on the size of the county.

Salaries for full-time court commissioners and referees are calculated at 25 percent below the salary of a judge in municipal courts and 15 percent below the salary of a judge in superior courts. Compensation figures for this quasi-judicial personnel are included in this category because these court officers are available to handle matters otherwise requiring an equivalent number of judges.

The cost of benefits for judges, such as health and welfare benefits, is calculated at 11 percent of salary, which includes 8 percent for retirement and 3 percent for health insurance premiums. Benefits for commissioners and referees are the same rate as for non-judicial employees.

B. Nonjudicial Salaries and Benefits

Nonjudicial personnel includes all positions that provide support to the judicial function. In superior courts it includes court-related positions in the county clerk's budget as well as those positions budgeted directly for the superior court. A partial list of support personnel includes court administrators, jury commissioners, secretaries, stenographers, courtroom clerks, calendar clerks, data processing and microfilming personnel, deputy clerks, clerk typists, accountants, cashiers and counter clerks.

The positions of court reporter and bailiff are listed as separate costs so they remain identifiable from other nonjudicial position costs. Costs of these positions are discussed later.

Nonjudicial personnel costs were originally gathered from each of the survey courts. These amounts were then extrapolated to a statewide municipal court and superior court total. This total was then divided by total judicial positions in municipal and superior courts to arrive at a nonjudicial personnel cost per judicial position.

Benefits for nonjudicial personnel were calculated at 18.5 percent for municipal courts and 18.8 percent for superior courts as reported in the Judicial Council 1974 Nonjudicial Staffing Study.

C. Services and Supplies

The "services and supplies" category of trial court expenditures includes traditional operating expenses, such as office supplies, printing, postage, telephone, and travel. Other costs unique to court operations include jury expenses, expert witness fees and professional services of court-appointed counsel and doctors. "Services and supplies" for most counties typically include direct charges for some central service costs such as data processing, vehicle use, and occasionally building rent, including costs for security and maintenance. Other countywide central service costs are considered indirect costs and are discussed as a separate cost component below.

In 1974 total cost of services and supplies was gathered from each of the 29 survey courts, extrapolated to a statewide total and divided by the number of judicial positions. This procedure was followed for both the superior and municipal courts.

Also included within the cost component of services and supplies are expenditures for office equipment and furnishings. These costs are categorized as "fixed assets" in most county budgets and are identified separately from services and supplies. However, because these amounts are a minor part of total annual expenditures and tend to fluctuate from year to year, this report includes these costs within the larger category of services and supplies. As noted previously, however, major capital outlay expenditures for such purposes as courthouse construction and site acquisition are not included in these trial court costs.

D. Indirect Costs

This expenditure category allows for a share of centralized county services used by the courts to be included in the total operational costs of the courts. Although counties direct charge some countywide central service costs, as noted above, the majority of these costs are incorporated into a countywide cost allocation plan and charged to the courts as indirect costs.

The countywide central service plans, as applied to the courts, may include such costs as purchasing, stores, personnel, auditing, disbursements, payroll, budget preparation and execution, messenger service, grant coordination, office machine maintenance, communications, parking lot maintenance, records retention, liability and bonding insurance, and rent, security and maintenance of court facilities.

It must be noted, however, that there are significant variations among counties as to which items are considered indirect costs and which items are considered direct charges and thus appear as budgeted expenditures. The 1974 survey sample was sufficiently large to arrive at a representative distribution of these costs.

An indirect cost rate is developed by obtaining the latest actual indirect annual costs charged to the courts, including the county clerk function and any other court-related budget units by the county auditor. The actual indirect cost amounts related to all municipal and superior courts are totaled and the percentage or rate of total court expenditures is determined.

Generally, this overhead rate is derived by using salaries and wages as the base. However, for ease of calculation, an equivalent rate based on total court expenditures has been developed. The rate, based on 1974 data, is 21.99 percent for municipal courts and 18.38 percent for superior courts.

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E. Court Reporters

The annual cost of a court reporter in superior courts is based on average salaries and benefits of full-time reporters in the original superior courts surveyed. Costs are based on a ratio of one full-time court reporter for each judicial position in the superior court.

In municipal courts, court reporters are often paid on a per diem basis. Prevailing per diem rates were obtained from the survey courts and an equivalent annual salary was computed. Supplemental studies conducted by the Judicial Council were used to determine the average time devoted to the reporting of proceedings in the municipal courts. These studies indicated that court reporters were involved in approximately 40 percent of the daily activities of municipal courts.

The benefit rate for court reporters was calculated the same as for other nonjudicial employees.

F. Bailiffs

Bailiffing costs are computed by a ratio of one bailiff for each judicial position for both superior and municipal courts. It is recognized that coverage for vacations, illnesses and other time off would require an increase in this ratio. However, some courts are operating without bailiffs in attendance at all sessions or they utilize "court attendants" at a lesser salary. Consideration of these factors justifies maintaining the ratio of one bailiff per judge for cost purposes.

Average salaries and benefits for bailiffs were based on a review of salary ordinances and telephone inquiries of survey courts.

IV. ANNUAL COST ADJUSTMENTS

Trial court cost estimates were first calculated for the 1974–75 fiscal year. For the years 1975–76, 1976–77 and 1977–78 each category of expenditures—except judicial positions—was adjusted by the full cost-of-living percentage increase as represented in the California Consumer Price Index published by the Department of Industrial Relations. Judicial positions were increased by the amount of the actual statutory increase for those salaries.

After the passage of Proposition 13 in June 1978, the Governor created the Commission on Government Reform (Post Commission). The commission's task force, charged with studying the court system, gathered trial court costs for 1976–77, and estimated a 15 percent increase for 1977–78 and a 10 percent increase for 1978–79. The Post Commission cost estimates were admittedly "ballpark figures" but still represented current estimates published by an official state body. Therefore, the AOC staff reconciled its trial court cost data with Post Commission figures whenever possible as a check on the data's validity.

The reconciled amounts were adjusted for fiscal year 1979–80 and thereafter by an annual increase of 7.5 percent except for judicial salaries which have been increased by the actual statutory amounts. The 7.5 percent general increase was supported by recent trends in expenditures of selected trial courts as reported in the Controller's *Annual Report of Financial Transactions Concerning Counties.* In 1982–83 other factors were evaluated before selecting a 7.5 percent increase, including the Department of Finance's California cost-of-living estimate of 8.3 percent; a projected increase in the Governor's 1982–83 general fund budget for state operations of 5.8 percent and a projected increase in the general fund local assistance budget of 4.3 percent. These factors together supported a 7.5 percent estimated increase for 1982–83 in court operation expenses.

V. THREE-COUNTY BUDGET COMPARISON

To determine whether the estimated 1982–83 trial court costs were reasonable, based on the 1974 methodology, recent court costs were surveyed in three counties and the results were extrapolated to statewide totals. This comparison provided an independent check on the estimates. The survey counties selected were Alameda, Los Angeles and Sacramento. Current budgets from these counties were obtained and carefully reviewed. Supplemental data were obtained from county budget, personnel and auditor offices.

There were 31 municipal courts in the three survey counties with 248 authorized judicial positions comprising 44.5 percent of the total judicial positions in all municipal courts. The sum total of the approved 1981–82 municipal court budgets in these counties plus amounts for state judicial retirement contributions, bailiffing costs, and indirect costs was $97.9 million. When extrapolated statewide, the total becomes $219.9 million. An adjustment of 7.5 percent for 1982–83 increases the estimate to $236.4 million. This compares to the AOC estimate of $219.6 million, a difference of about 7.6 percent.

The superior courts in the three survey counties had 322 authorized judicial positions comprising 45.2 percent of the total superior court judicial positions in the state for 1981–82. The approved 1981–82 budgets in these three counties for superior courts and county clerks plus the state share of judicial salaries and retirement, plus bailiffing costs and indirect costs, totaled $127.5 million. This amounts to $282.4 million when extrapolated statewide. The 1982–83 adjustment of 7.5 percent brought this total to $303.5 million statewide. This compares to $291.2 million in the original AOC estimate, a difference of about 4.2 percent.

VI. FUTURE ANNUAL COST ADJUSTMENTS

The three-county comparison indicates that the original 1982–83 estimates of total trial court costs are reasonable. However, to assure that the annual totals remain valid and to allow for more careful analysis of the various cost components within the total, this type of comparison could be conducted annually. A somewhat larger sample of perhaps five or six representative counties would add to the verification's validity. This type of analysis provides continued assurance of the reasonableness of the estimates.

VII. TRIAL COURT REVENUES

The final page of the appendix to this report contains 1982–83 estimates of trial court revenues. The estimates are based on 1979–80 actual amounts. The 1979–80 "actuals" are from two sources. The revenue for counties and cities is from the State Controller's *Annual Report of Financial Transactions.* Revenues for the state are from the *Governor's Budget* as reported in various penalty assessment funds and the Judges' Retirement Fund. A minor amount in fines is received by the state as miscellaneous revenue and an estimate is included for this item.

The revenues are projected from 1978–79 to 1982–83 using annual estimates of state general fund revenue increases as a guideline. The percentage increases for the three intervening years are estimated as follows: 1980–81, 6 percent; 1981–82, 10. 3 percent; 1982–83, 9.8 percent.

APPENDIX

1982–83

SUMMARY OF TOTAL ESTIMATED TRIAL COURT COSTS [a]

	Estimated Average Annual Cost Per Judicial Position	*Judicial Positions*	*Estimated Total Trial Court Costs*
Superior Courts			
Judicial Position ($63,267+11%)	$70,226		
Nonjudicial Personnel	114,558		
Services and Supplies	100,546		
Subtotal	$285,330		
Indirect Costs (18.38%)	52,444		
Total Costs Excluding Court Reporters and Bailiff	$337,774		
Total Costs Including Court Reporter and Bailiff	$402,917	725 jud. pos. (627 judges)	$291,184,800[b]
Municipal Courts			
Judicial Position ($57,776+11%)	$64,131		
Nonjudicial Personnel	140,203		
Services and Supplies	74,242		
Subtotal	$278,576		
Indirect Costs (21.99%)	61,259		
Total Costs Excluding Court Reporter and Bailiff	$339,835		
Total Costs Including Court Reporter and Bailiff	$389,157	567 jud. pos. (495 judges)	$219,612,051[c]
Justice Courts		98 pt jud. pos.	$15,480,000
Total All Trial Courts			$526,276,851[d]

[a] Adjusted 7.5% for 1982–83 except for judges' salaries which are shown at the January 1, 1982 level.
[b] Total adjusted for "other judicial" salaries calculated at 15% less than salary of judge.
[c] Total adjusted for "other judicial" salaries calculated at 25% less than salary of judge.
[d] Included in this amount is the state's contribution to the trial courts. See page A-4 of this appendix for detail of state's share of costs.

1982–83
SUPERIOR COURTS TOTAL ESTIMATED COSTS PER JUDICIAL POSITION

Cost Category	*Estimated Average Annual Cost Per Judicial Position*	*Average Cost Per Case-Related Minute*[a]	*Average Cost Per Case-Related Hour*[a]	*Average Cost Per Case-Related Day*[a]
Judicial Position (1-1-82 $63,267 + 11%)	$70,226	$0.9673	$58.04	$325
Nonjudicial Personnel	$114,558	$1.5779	$94.67	$531
Services & Supplies	$100,546	$1.5779	$83.09	$465
Subtotal	$285,330	$3.9301	$235.80	$1,321
Indirect Costs (18.38%)	$52,444	$0.7224	$43.34	$243
Total Cost Apportioned to Each Judicial Position (court reporter and bailiff *excluded*)	$337,774	$4.6525	$279.14	$1,564
Total Cost Apportioned to Each Judicial Position (court reporter and bailiff *included*)	$402,917	$5.5498	$332.99	$1,865

[a] An estimated 216 days per year or 72,600 minutes per year (74,000 Los Angeles) is available for court-related activity for each judicial position in the superior courts.

1982–83
MUNICIPAL COURTS TOTAL ESTIMATED COSTS PER JUDICIAL POSITION

Cost Category	*Estimated Average Annual Cost Per Judicial Position*	*Average Cost Per Case-Related Minute*[a]	*Average Cost Per Case-Related Hour*[a]	*Average Cost Per Case-Related Day*[a]
Judicial Position (1-1-82 $57,776 +11%)	$64,131	$0.8846	$53.00	$297
Nonjudicial Personnel	$140,203	$1.9338	$116.03	$649
Services & Supplies	$74,242	$1.0240	$61.44	$344
Subtotal	$278,576	$3.8424	$230.54	$1,290
Indirect Costs (21.99%)	$61,259	$0.8450	$50.70	$284
Total Cost Apportioned to Each Judicial Position (court reporter and bailiff *excluded*)	$339,835	$4.6874	$281.24	$1,574
Total Cost Apportioned to Each Judicial Position (court reporter and bailiff *included*)	$389,157	$5.3677	$322.06	$1,802

[a] An estimated 216 days per year or 72,500 minutes per year (78,000 Los Angeles) is available for court-related activity for each judicial position in the municipal courts.

1982–83
PROPOSED STATE JUDICIAL BUDGET
(Million $)

Supreme Court		$5.1	
Courts of Appeal		21.7	
Judicial Council		11.4	
Commission on Judicial Performance		0.3	
Judges Retirement Fund (Appellate Courts)		0.9	
Total State Operations			$39.4
Legislative Mandates		$2.6	
Superior Court Judges' Salary		35.8	
Superior Court Block Grants		9.1	
Judges' Retirement Fund			
Municipal Courts, estimated	$5.4		
Superior Courts, estimated	7.5	12.9	
Total Local Assistance			60.4[a]
Total 1982–83 State Judicial Budget			$99.8

[a] These items, totaling $60.4 million, are the state's contribution to the funding of the trial courts. This amount is included within the total estimated trial costs for 1982–83 as displayed on page A-1 of this appendix.

TION

	Average Cost Per Case-Related Day*
	$325
	$531
	$465
	$1,321
	$243
	$1,564
	$1,865

osition in the superior

TION

	Average Cost Per Case-Related Day*
	$297
	$649
	$344
	$1,290
	$284
	$1,574
	$1,802

sition in the municipal

TRIAL COURT REVENUES
ACTUAL 1979–80
ESTIMATED 1982–83*

	1979–80 Actual	*1982–83 Estimated*
TO COUNTIES[a]		
Fines, Forfeitures, Penalties		
Vehicle Code Fines	$77,544,769	$99,548,845 [c]
Other Court Fines	30,477,353	39,125,595
Forfeitures and Penalties	10,571,642	13,571,448
Charges for Current Services		
Civil Process Services	8,027,262	10,305,074
Court Fees and Costs	38,323,332	49,197,947
TOTAL	$164,944,358	$211,748,909
TO CITIES[a]		
Fines and Penalties		
Vehicle Code Fines	$78,037,635	$100,181,566 [d]
Other Fines	34,339,690	44,083,907
Other Penalties	211,303	271,134
TOTAL	$112,588,628	$144,536,607
TO STATE OF CALIFORNIA[b]		
Assessments on Fines	$50,318,168	$67,023,000 [e]
Court Fees (Judges Retirement Fund)	3,194,341	3,795,000
Court Fines (estimates of state share of specific violations of Bus. and Prof. Code and Health and Safety Code)	2,131,114	2,735,838
TOTAL	$55,643,623	$73,553,838
SUMMARY		
To Counties	$164,944,358	$211,748,909
To Cities	112,588,628	144,536,607
To State	55,643,623	73,553,838
TOTAL	$333,176,609	$429,839,354

[a] Source: State Controller's Reports—Financial Transactions Concerning Counties and Cities. (Adjustment made to reflect San Francisco County under "Counties" instead of "Cities.")

[b] Governor's Budget and Judicial Council estimates.

[c] 50% Vehicle Code Fines restricted as to use per Vehicle Code § 42201.

[d] All Vehicle Code Fines restricted as to use per Vehicle Code § 42200.

[e] Fine assessments are designated by statute for specific purposes. The 1982–83 distribution and amounts are as follows: Peace Officers Standards and Training (POST) $19,744,000; Driver Training $24,500,000; Fish and Game Preservation $310,000; Victims of Crime $18,352,000; and Corrections and Probation Training $4,117,000.

* Revenue increased 6% for 1980–81, 10.3% for 1981–82 and 9.8% for 1982–83 based on estimates of increase in State General Fund revenues for these three years.

1982–83
COURT FINANCING SUMMARY

Total Court Costs by Funding Source (State and Local)		
State Judicial Operations [a]	$39.4 million	6.8%
State Assistance to Trial Courts [b]	60.4	10.7
Total State Costs	$99.8 million	17.5%
County Costs (Trial Courts)	465.9	82.5
Total Court Costs (est.)	$565.7 million	100.0%
Total Court Costs as Percent of Total Budget Expenditures		
State's Share of Total Court Costs as Percent of Total State General Fund Budget [c]		0.4%
Total Court Costs as Percent of Total State General Fund Budget [d]		2.4%
Total Court Costs as Percent of Total Estimated State and Local Budget Expenditures [e]		1.5%
Trial Court Costs by Level of Court		
Superior Courts	$291.2 million	55.3%
Municipal Courts	219.6	41.7
Justice Courts	15.5	3.0
Total Trial Court Costs (est.)	$526.3 million	100.0%
Trial Court Costs by Funding Source (State and Local)		
Superior Courts		
County Costs	$236.2 million	81.1%
State Assistance [f]	55.0	18.9
Total Superior Court Costs (est.)	$291.2 million	100.0%
Municipal Courts		
County Costs	$214.2 million	97.5%
State Assistance [g]	5.4	2.5
Total Municipal Court Costs (est.)	$219.6 million	100.0%
Justice Courts		
County Costs	$15.5 million	100.0%
State Assistance	—	—
Total Justice Court Costs (est.)	$15.5 million	100.0%
Total All Trial Courts		
County Costs	$465.9 million	88.5%
State Assistance	60.4	11.5%
Total Trial Court Costs (est.)	$526.3 million	100.0%

Costs Per Additional Superior Court Judgeship		
County Costs	$274,728	
State Assistance [b]	128,189	
Cost Per Judgeship (est.)	$402,917	
Costs Per Additional Municipal Court Judgeship		
County Costs	$379,211	
State Assistance [i]	9,946	
Cost Per Judgeship (est.)	$389,157	
Trial Court Revenue By Type		
Fines, Forfeitures and Penalties	$299.5 million	
Assessments on Fines	67.0	
Civil Filing Fees and Costs	53.0	
Civil Process Services	10.3	
Total Revenue (est.)	$429.8 million	
Distribution of Trial Court Revenue		
To Counties	$211.7 million	
To Cities	144.5	
To State	73.6	
Total Revenue (est.)	$429.8 million	

[a] State judicial operations includes the Supreme Court, Courts of Appe Judicial Council, and Commission on Judicial Performance.

[b] State assistance to the trial courts includes contributions to the Judg Retirement Fund, a major portion of superior court judges' salaries, a a $60,000 annual block grant towards the support cost for each n superior court judgeship created since January 1973, and reimbur ments for legislative mandates.

[c] States share of total court costs is $99.8 mill. State general fund budge $23.2 bill. Thus, $99.8 mill./$23.2 bill. = 0.4%

[d] Total court expenditures are $565.7 mill. State general fund budge $23.2 bill. Thus $565.7 mill./$23.2 bill. = 2.4%

[e] The Controller's Office reports the following local government exper tures:

1979–80 county expenditures exclusive of enterprise and bond funds	$8.14 billi
1979–80 city expenditures exclusive of enterprise and bond funds	6.34
1979–80 special district expenditures non-enterprise activities only	1.53
1979–80 school district expenditures	11.38
Total local expenditures	$27.39 billi
Application of 7.5% per year average increase for 80–81, 81–82, and 82–83	$34.03 bill
Add state budget less local assistance	4.86
Total state and local expenditures	$38.89 bill
Thus, $565.7 million/$38.9 billion =	1.5%

Exhibit 1

[f] State assistance to superior courts includes:

(1) Contribution to judges' salary	$35.8 million
(2) Block grants ($60,000)	9.1
(3) Judges' Retirement Fund (8% of salary plus additional appropriation to meet liabilities	7.5
(4) Legislative Mandates	2.6
	$55.0 million

[g] State assistance to municipal courts is limited to Judges' Retirement Fund contribution of 8% of salary plus an additional appropriation to meet liabilities. Total contribution is $5.4 million for 1982–83.

[h] The calculation of state assistance for each *new* superior court *judgeship* is as follows:

(1) 8% of salary to Judges' Retirement Fund ($63,267 @ 8% = $5,061) plus a pro rata share of the budget act appropriation made each year to meet liabilities of the fund ($5,775) for a total of $10,836.

(2) State pays salary except for fixed county share of $9,500 for counties over 250,000 population, $7,500 for counties between 40,001–249,999 population, and $5,500 for counties 40,000 population or under. The calculation here is based on the larger sized county. Thus, the current annual salary of $63,267 less $9,500 = $53,767 as the state share.

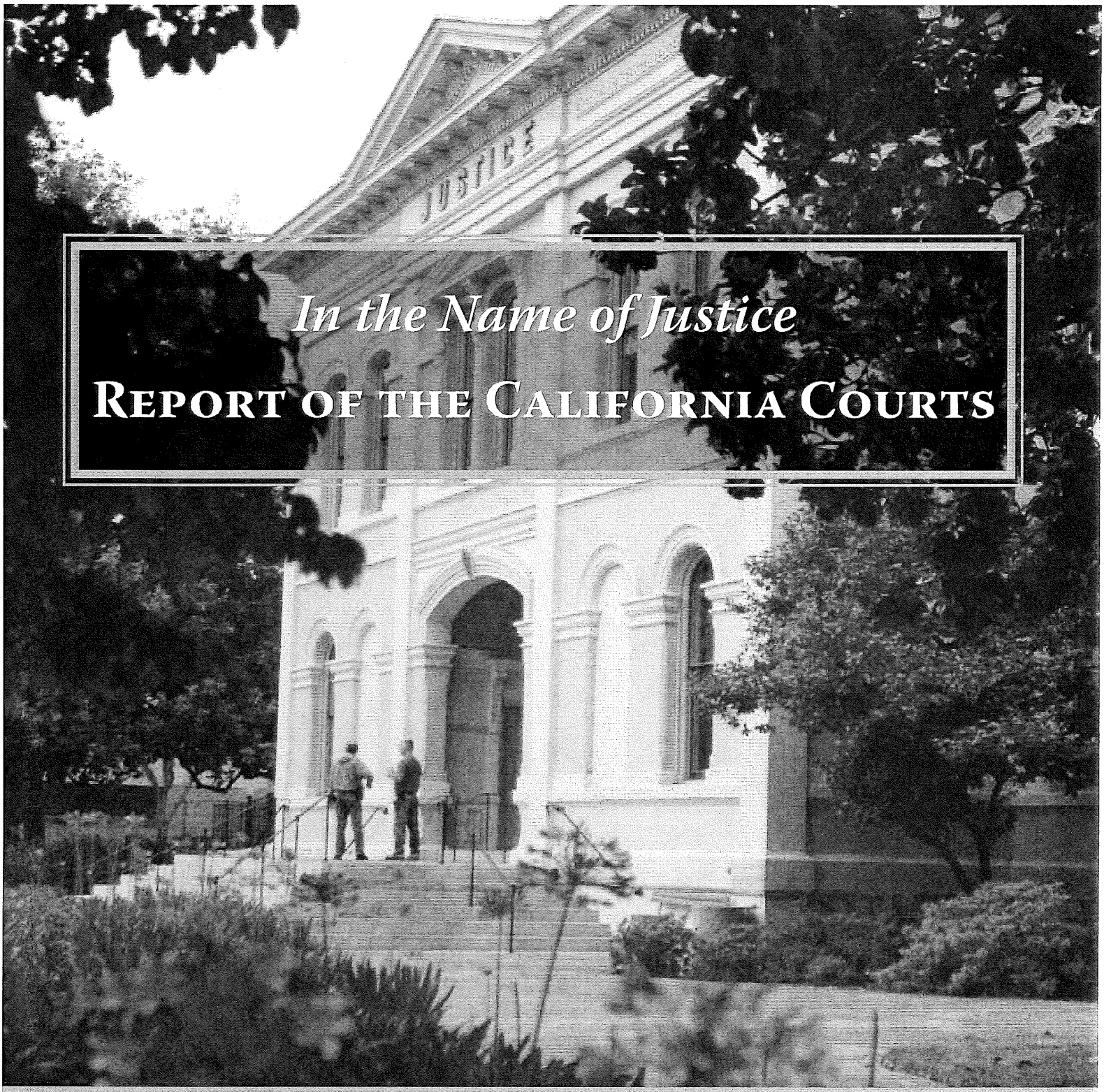
(3) Annual block grant of $60,000 for support costs.

(4) Pro rata share of legislative mandates @ $3,586.

In summary, total assistance per *new* superior court *judgeship* as calculated here includes $10,836 retirement, plus $53,767 salary, plus $60,000 annual block grant, plus $3,586 legislative mandates for a total of $128,189 per judgeship.

[i] The calculation of state assistance for each *new* municipal court *judgeship* consists of contributions to the Judges' Retirement Fund of 8% of salary ($57,776 @ 8% = $4,622) plus a pro rata share of the budget act appropriation made each year to meet liabilities of the Fund ($5,324) for a total of $9,946 per judgeship.

EXHIBIT 2



In the Name of Justice

REPORT OF THE CALIFORNIA COURTS

JANUARY 1, 2007–JUNE 30, 2008

JUDICIAL COUNCIL OF CALIFORNIA

In the Name of Justice
REPORT OF THE CALIFORNIA COURTS

January 1, 2007–June 30, 2008

JUDICIAL COUNCIL
OF CALIFORNIA

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In the Name of Justice: Report of the California Courts: January 1, 2007–June 30, 2008, summarizes the achievements of the California judicial branch in the latter half of the 2006–2007 fiscal year and the entire 2007–2008 fiscal year. A companion online publication, the *Court Statistics Report,* provides detailed 10-year statistical caseload and trend data on a wide variety of court business as well as caseload data for each superior court, the Courts of Appeal, and the Supreme Court.

Revised June 1, 2009

Cover: The historic Napa County Courthouse, completed in 1879, is on the National Register of Historic Places. It is still in use.

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JUDICIAL COUNCIL OF CALIFORNIA

January 1, 2007–June 30, 2008, Report

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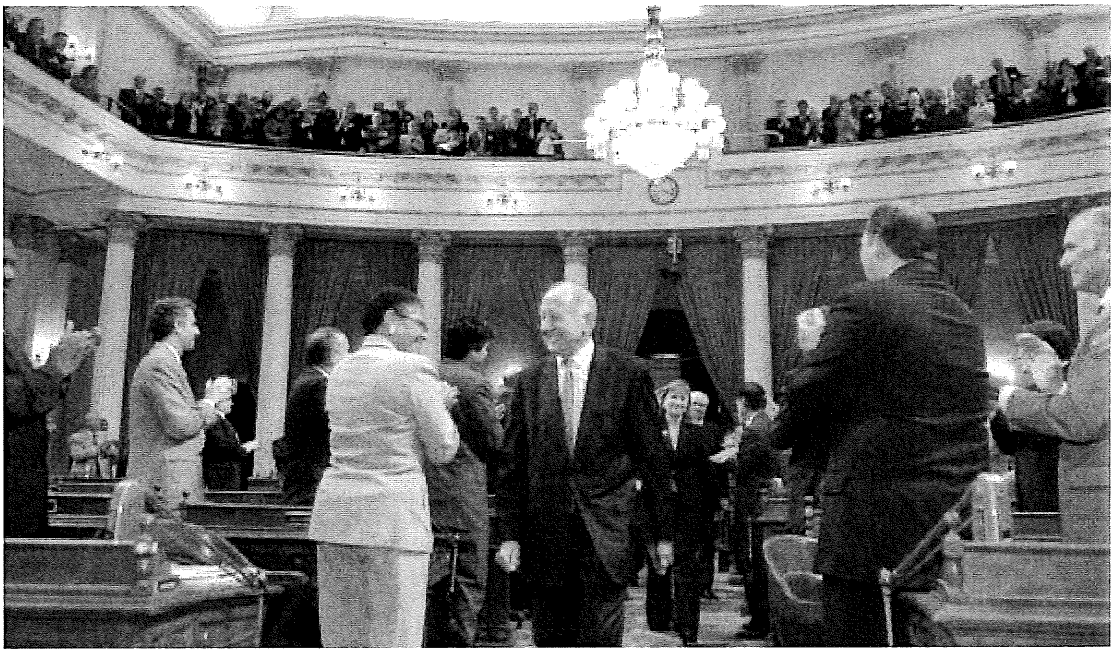


Chief Justice Ronald M. George arrives for the State of the Judiciary address to the Legislature, March 25, 2008.

Judicial Branch Resources

On August 24, 2007, the Governor signed the Budget Act of 2007. Overall, this represented a very positive budget for the judicial branch that marked another key step forward in ensuring stable and predictable funding through the application of the state appropriations limit (SAL) adjustment to the trial courts. In addition to fully funding the SAL allocation, this budget increased the discretionary funding provided to the trial courts by over 50 percent, as compared to fiscal year 2006–2007. Between 2005 and 2007, the SAL allocation provided more than $370 million in ongoing funding to support increased operational costs, changes in employee compensation and benefits, and enhanced services to the public. Important funding was provided to secure new entrance security stations and enhance self-help programs. This budget also continued the significant investment in court infrastructure with over $1 billion committed for new trial court facilities.

While this budget conveyed positive news for the courts—the final, approved State Budget contained over $233.8 million in new General Fund monies for the judicial branch, including nearly $194.5 million for the trial courts—the judicial branch was not left totally unscathed. As part of the agreement reached by the Legislature and the Governor, over $700 million in funding was reduced by the Governor, including some items affecting the courts. As part of the Governor's veto package, more than $17 million in funding for the implementation of the Omnibus Conservatorship and Guardianship Reform Act of 2006 was eliminated. This was

HOW WAS THE JUDICIAL BRANCH FUNDED IN FISCAL YEAR 2007–2008?

In millions of dollars, from all sources

STATEWIDE JUDICIAL PROGRAMS

Supreme Court	$45
Courts of Appeal	201
Judicial Council / AOC	131
Judicial Branch Facility Program	70
Habeas Corpus Resource Center	14
Total—Statewide Judicial Programs	**$461**

TRIAL COURTS

General Fund	$1,826
Trial Court Trust Fund	1,213
Trial Court Improvement Fund	115
Modernization Fund	39
Federal Trust Fund	2
Reimbursements	53
Total—Trial Courts	**$3,248**
Judicial Branch Total	**$3,709**
Total State Budget	**$145,543**

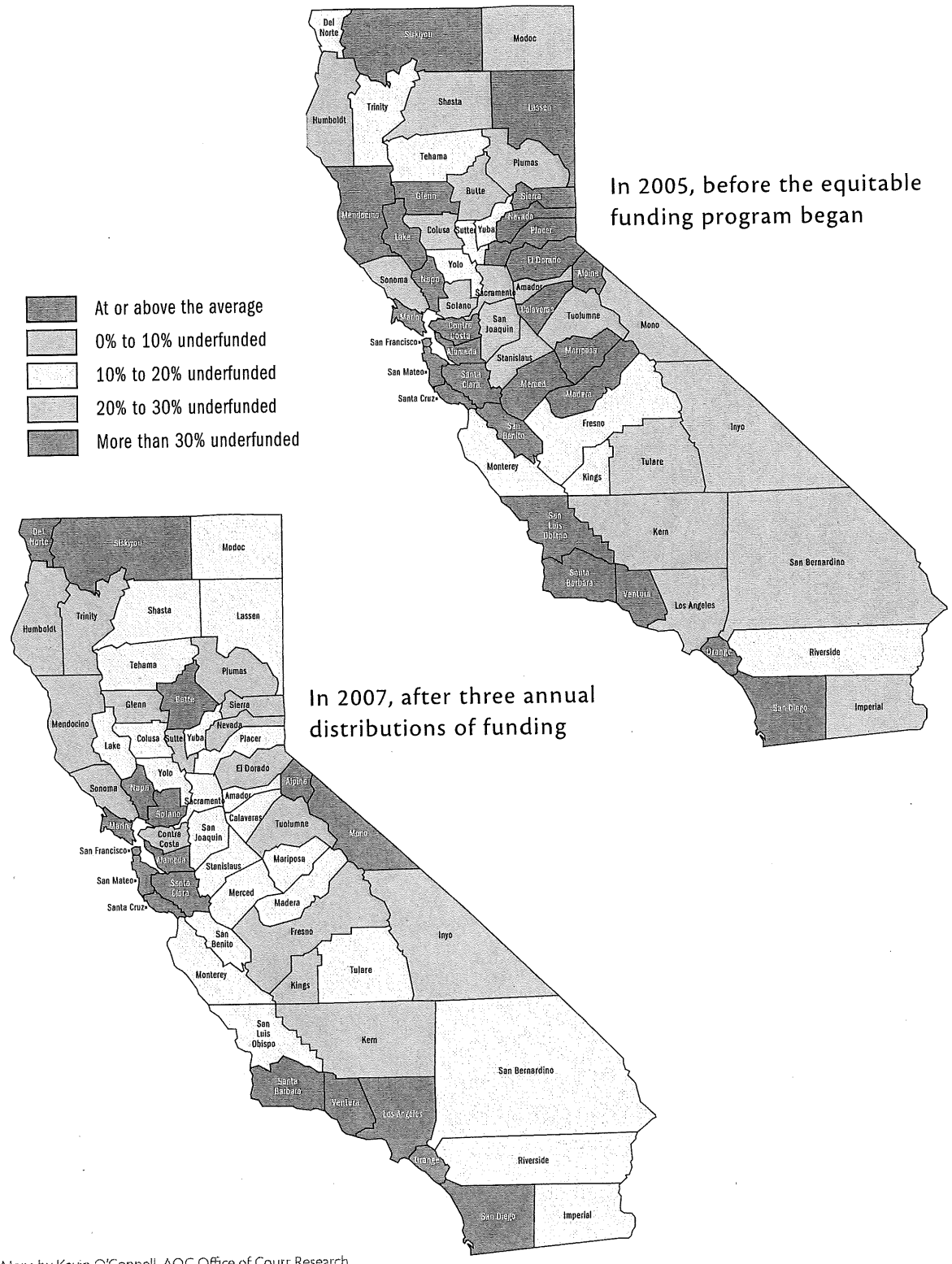
Figures represent comparison of budgets, not actual expenditures. Data from FY 2008–2009 Proposed Governor's Budget.

the second consecutive year that this funding had been reduced, despite the statutory mandate in place to implement the requirements of the act.

Fiscal year 2007–2008 also was the third consecutive year of designated funding for historically underfunded courts. During this period, the Judicial Council allocated approximately $32 million to create more equitable funding across the courts. When this program began in 2005, a total of 18 trial courts were considered severely underfunded (with budgets 20 percent or more below their projected resource need). After three years of dedicated funding, only 2 courts met this criteria (see page 27). This achievement is another example of the success of state funding.

As 2008 dawned over the state court system, fissures began showing in the state and national economies, foreshadowing difficult times ahead. With the state likely to experience dramatic declines in tax revenue tied to the financial and housing market crises that are exercising a double whammy on state government revenue sources, the courts will be particularly susceptible to interruptions in funding. Several key statewide infrastructure projects involving court facilities and technology systems are under way. Critical needs, including much-needed new judgeships, as well as dedicated funding for court security and appointed counsel in dependency cases, will remain of paramount interest to the branch during the fiscal hardship ahead.

ASSISTANCE FOR UNDERFUNDED COURTS

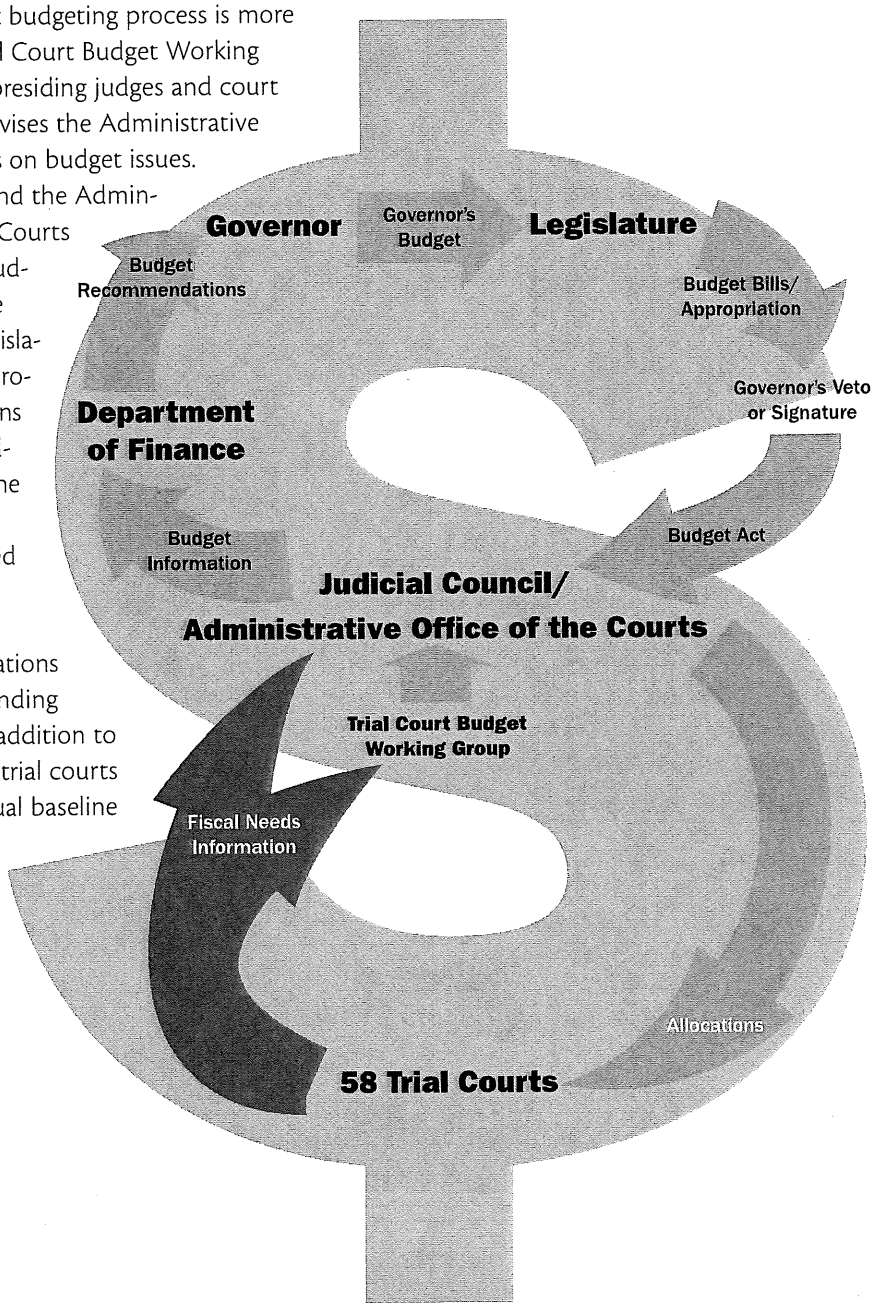


Maps by Kevin O'Connell, AOC Office of Court Research

THE TRIAL COURT BUDGETING PROCESS

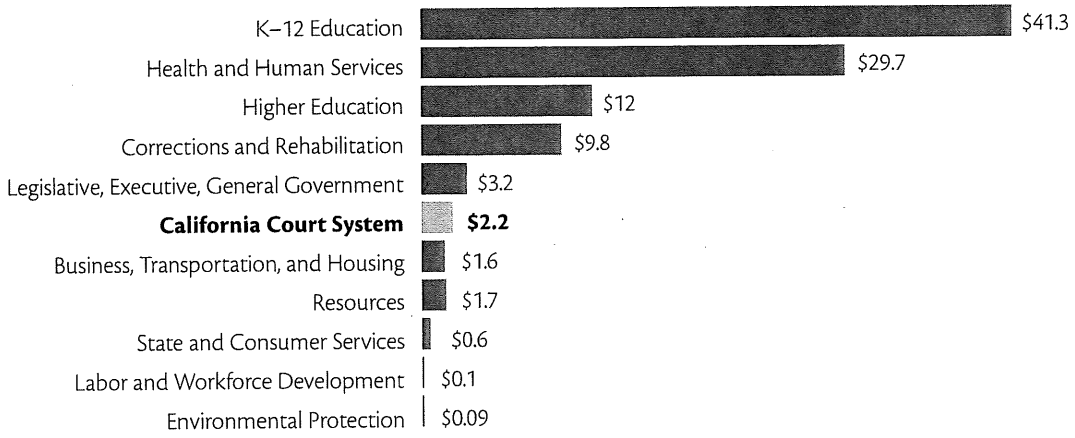
Before the arrival of state funding in 1998, funding for trial courts was unpredictable and subject to a county's fiscal health. Court budgets were patched together from county and state contributions. Budget cuts affected municipal and superior courts differently. Municipal courts brought in revenue with filing fees, fines, forfeitures, and other charges, and they could offset the cuts somewhat with their own revenues. The superior courts never had that flexibility.

The current trial court budgeting process is more collaborative. The Trial Court Budget Working Group—made up of presiding judges and court executive officers—advises the Administrative Director of the Courts on budget issues. The Judicial Council and the Administrative Office of the Courts deliver the branch's budget information to the Governor and the Legislature. The Legislature produces an appropriations bill that contains funding for the courts. If the Governor approves it, funding is appropriated to the council, which in turn provides final approval on the allocations and distributes the funding to the trial courts. In addition to any new funding, the trial courts have received an annual baseline funding for their ongoing operating costs since 2005.



HOW DID SPENDING FOR CALIFORNIA'S COURT SYSTEM COMPARE WITH OTHER BUDGET CATEGORIES?

*Dollars in billions**

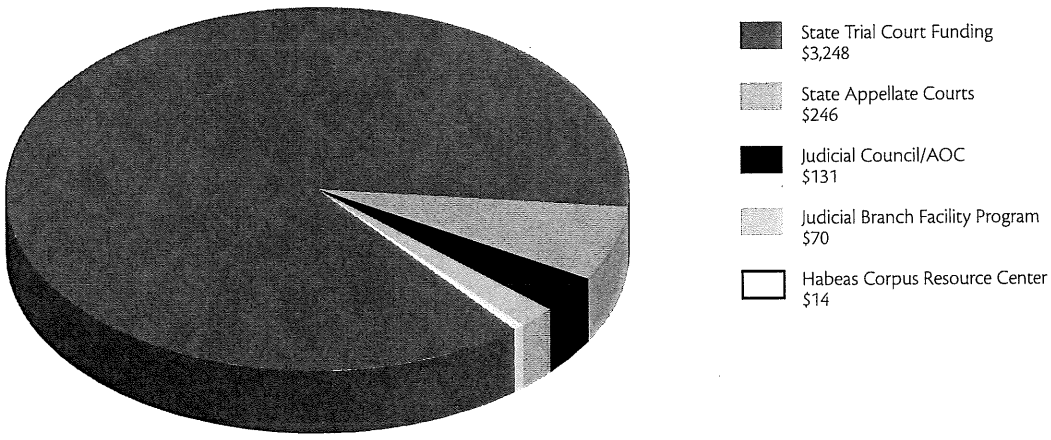


*General Fund expenditures

Data from Department of Finance, State Budget Highlights 2007–2008.

WHAT WAS THE BREAKDOWN OF FISCAL YEAR 2007–2008 FUNDING FOR CALIFORNIA'S COURT SYSTEM?

Dollars in millions

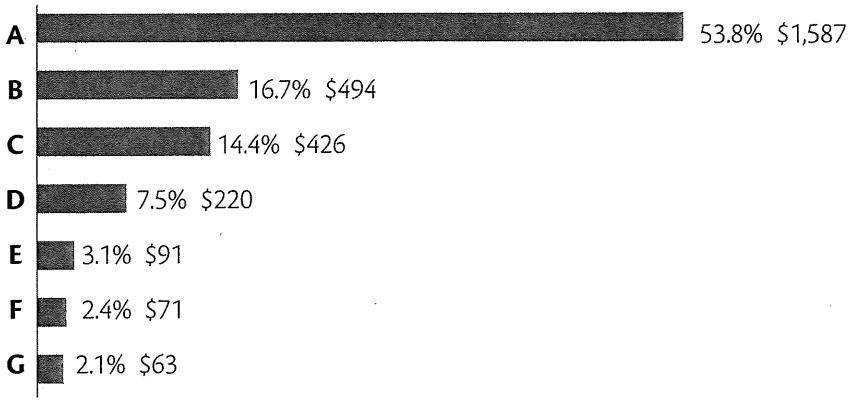


Data from FY 2008–2009 Proposed Governor's Budget.

Exhibit 2
114

HOW WAS THE TRIAL COURTS' BUDGET SPENT IN FISCAL YEAR 2007–2008?

*Includes Trial Court Trust Fund (TCTF) and non-TCTF expenditures. Dollars in millions**



A: Salaries and Benefits

B: Security (contract and staff—includes estimated salary and benefit expenditures for court attendants and marshals)

C: Other (includes miscellaneous expenses such as rent, janitorial services, phone and telecommunications, printing and postage, equipment, travel and training, legal subscriptions and memberships, and fees for consultative and professional services)

D: Court Reporters (contract and staff—includes estimated salary and benefit expenditures for court reporter employees)

E: Court Interpreters (contract and staff—includes estimated salary and benefit expenditures for staff interpreters, coordinators, and program staff)

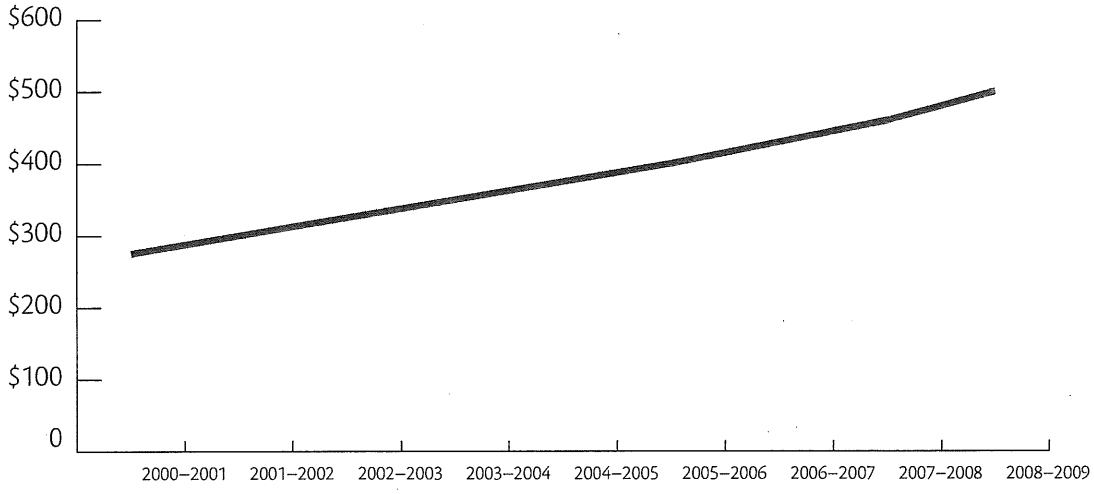
F: Electronic Data Processing

G: County Charges

*Dollar amounts rounded to the nearest million.

HOW MUCH WAS SPENT ON COURT SECURITY?

Dollars in millions



Data for FY 2000–2001 through FY 2007–2008 from Quarterly Financial Statements (fourth quarter) of the trial courts. Data for FY 2008–2009 from court security budget approved by the Judicial Council.

STAFFING* AND EXPENDITURES** BY TRIAL COURT SYSTEM

This table reflects the allocation of resources and utilization of funding for fiscal year 2007–2008.

**FY 2007–2008 Total Authorized FTEs (as of July 1, 2007); data includes permanent and temporary nonjudicial employees, both Trial Court Trust Fund (TCTF) and non-TCTF court employees. The subordinate judicial officer (SJO) category includes commissioners and referees, as reported by the trial courts.*

***Combined Trial Court Trust Fund and non-TCTF expenditures. Data from FY 2007–2008 Quarterly Financial Statements (fourth quarter); includes Trial Court Improvement Fund and Judicial Administration Efficiency and Modernization Fund expenditures.*

COURT	POPULATION	JUDGESHIPS†	SJOs	AUTHORIZED FTEs (W/OUT SJOS)	EXPENDITURES
Alameda	1,543,000	69	16.0	901	$134,685,912
Alpine	1,222	2	0.3	5	679,648
Amador	37,943	2	0.3	34	3,520,824
Butte	220,407	12	2.0	137	15,044,852
Calaveras	46,127	2	0.3	31	3,397,649
Colusa	21,910	2	0.3	16	1,798,985
Contra Costa	1,051,674	38	9.0	438	72,203,381
Del Norte	29,419	3	0.8	31	2,947,632
El Dorado	179,722	6	3.0	96	12,172,008
Fresno	931,098	44	9.0	547	71,532,946
Glenn	29,195	2	0.3	33	3,586,853
Humboldt	132,821	7	1.0	100	10,244,435
Imperial	176,158	9	2.4	132	13,226,370
Inyo	18,152	2	0.3	21	2,866,105
Kern	817,517	38	8.0	498	56,649,025
Kings	154,434	8	1.5	90	10,945,466
Lake	64,059	4	0.8	42	5,372,002
Lassen	35,757	2	0.3	38	3,868,952
Los Angeles	10,363,850	436	150.3	5,441	841,399,448
Madera	150,887	10	0.3	108	9,815,428
Marin	257,406	10	4.5	172	23,574,640

COURT	POPULATION	JUDGESHIPS†	SJOs	AUTHORIZED FTEs (W/OUT SJOS)	EXPENDITURES
Mariposa	18,406	2	0.3	15	$1,531,722
Mendocino	90,163	8	0.4	82	8,829,930
Merced	255,250	10	4 .0	144	16,533,480
Modoc	9,702	2	0.3	12	1,446,969
Mono	13,759	2	0.3	16	1,959,309
Monterey	428,549	20	2.0	224	24,877,393
Napa	136,704	6	2.0	88	12,335,287
Nevada	99,186	6	1.6	68	8,201,804
Orange	3,121,251	112	33.0	1,933	259,121,634
Placer	333,401	12	4.5	177	25,931,502
Plumas	20,917	2	0.3	18	2,933,474
Riverside	2,088,322	64	19.0	1,116	145,561,819
Sacramento	1,424,415	64	14.5	880	124,418,926
San Benito	57,784	2	0.5	30	3,481,777
San Bernardino	2,055,766	78	13.0	1,064	125,926,501
San Diego	3,146,274	130	24.0	1,783	235,413,465
San Francisco	824,525	51	14.0	571	95,075,923
San Joaquin	685,660	32	4.5	340	44,573,315
San Luis Obispo	269,337	12	3.0	156	20,703,415
San Mateo	739,469	26	7.0	384	53,659,200
Santa Barbara	428,655	19	5.0	290	34,059,439
Santa Clara	1,837,075	79	10.0	904	140,006,739
Santa Cruz	266,519	10	3.5	153	21,436,893
Shasta	182,236	11	2.0	167	16,445,982
Sierra	3,380	2	0.3	6	935,246
Siskiyou	45,971	4	1.0	55	5,790,074
Solano	426,757	19	5.0	255	32,667,118
Sonoma	484,470	19	5.0	221	34,588,761
Stanislaus	525,903	22	4.0	256	29,270,976
Sutter	95,878	5	0.3	67	6,476,717

COURT	POPULATION	JUDGESHIPS†	SJOs	AUTHORIZED FTEs (W/OUT SJOS)	EXPENDITURES
Tehama	62,419	4	0.3	44	$4,737,247
Trinity	13,966	2	0.3	18	1,565,654
Tulare	435,254	20	5.0	271	29,206,779
Tuolumne	56,799	4	0.8	45	5,481,108
Ventura	831,587	29	4.0	406	55,732,699
Yolo	199,066	11	2.4	113	14,856,325
Yuba	71,929	5	0.3	54	6,030,175
Statewide	**38,049,462**	**1,614**	**408**	**21,331**	**$2,951,337,335**

Data Sources:
Population data from State of California, Department of Finance, E-1 City/County Population Estimates With Annual Percent Change, January 1, 2007 and 2008.

Authorized judgeships and SJOs from Judicial Council, *2009 Court Statistics Report* (FY 2007–2008). Total for SJOs may be rounded.

Authorized FTEs from AOC Schedule 7A, *Salary and Position Worksheet* for FY 2007–2008.

† Includes 50 FY 2007–2008 new judgeships deferred until July 2010.

California Judicial Branch

- Largest court system in the nation, serving 37.7 million[1] people—12.5 percent of the U.S. population
- 451 court locations
- 2,022 authorized judicial positions[3]
- 21,331 authorized court employees
- Estimated 4.5 million Californians represent themselves
- Approximately $3.76 billion—2.6 percent of the State Budget—allocated for the judicial branch in FY 2008–2009

The Courts

SUPREME COURT

- 1 Chief Justice, 6 associate justices
- Hears oral arguments in San Francisco, Los Angeles, and Sacramento
- Has discretionary authority to review decisions of the Courts of Appeal and direct responsibility for automatic appeals after death penalty judgments
- 8,988 filings; 113 dispositions by written opinion[2]

COURTS OF APPEAL

- 105 justices
- 6 districts, 19 divisions, 9 court locations
- Review the majority of appealable orders or judgments from the superior courts
- 24,934 filings; 10,560 dispositions by written opinion[2]

SUPERIOR COURTS

- 1,614 authorized judgeships and 408 authorized commissioners and referees[3]
- 58 courts, one in each county, with 1 to 55 locations
- Have trial jurisdiction over all felony cases, all general civil cases, juvenile and family law cases, and other case types
- 9,458,064 filings; 7,886,912 dispositions[2]

Branch Administration

JUDICIAL COUNCIL OF CALIFORNIA

Administrative Office of the Courts

- The Judicial Council is the constitutionally created 27-member policymaking body of the California courts.
- The Judicial Council guides fiscal policy and adopts court rules and procedures.
- The Administrative Office of the Courts is the staff agency to the council.

Branch Agencies

COMMISSION ON JUDICIAL APPOINTMENTS

- Confirms gubernatorial appointments to the Supreme Court and appellate courts

COMMISSION ON JUDICIAL PERFORMANCE

- Protects the public by enforcing the standards of the Judicial Council. Investigates complaints of judicial misconduct and incapacity and disciplines judges

HABEAS CORPUS RESOURCE CENTER

- Handles state and federal habeas corpus proceedings; provides training and resources for private attorneys who take these cases

State Bar of California

- Serves the Supreme Court in the admissions and discipline of attorneys and provides administrative support related to attorneys

1. 2007 California Department of Finance estimate
2. Judicial Council, *2008 Court Statistics Report* (FY 2006–2007)
3. Judicial Council, *2009 Court Statistics Report* (FY 2007–2008); includes 50 FY 2007–2008 new judgeships deferred until July 2010

EXHIBIT 3

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

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RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

STEPHEN NASH
Director, Finance Division

December 7, 2009

Hon. Denise Ducheny
California State Senate
Chair, Committee on Budget and Fiscal Review
State Capitol, Room 5035
Sacramento, California 95814

Hon. Ellen Corbett
California State Senate
Chair, Committee on Judiciary
State Capitol, Room 5108
Sacramento, California 95814

Hon. Noreen Evans
California State Assembly
Chair, Committee on Budget
State Capitol, Room 6026
Sacramento, California 95814

Hon. Michael Feuer
California State Assembly
Chair, Committee on Judiciary
State Capitol, Room 2114
Sacramento, California 95814

RE: Report of Allocations and Reimbursements to the Trial Courts for Fiscal Year 2008–2009

Dear Senators Ducheny and Corbett and Assembly Members Evans and Feuer:

In conformance with the provisions of Government Code section 77202.5(a), the Administrative Office of the Courts (AOC) respectfully submits the attached report on allocations and reimbursements provided to the trial courts during fiscal year (FY) 2008–2009, and on the Judicial Council's policy governing trial court reserves.

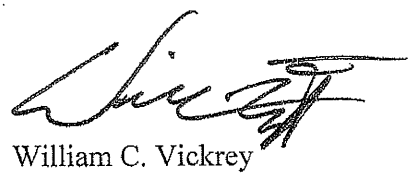
The FY 2008–2009 allocations and reimbursements are through November 10, 2009 and were made from the following funds:

- Trial Court Trust Fund
- Trial Court Improvement Fund
- Judicial Administration Efficiency and Modernization Fund
- General Fund

The council's policy on trial court fund balances is attached (see Attachment 6).

If you have any questions related to this report, please contact Stephen Nash at (415) 865-7584.

Sincerely,



William C. Vickrey
Administrative Director of the Courts

WCV/KP
Attachments:
Attachment 1 – FY 2008–2009 Allocation and Reimbursement to Trial Courts Report – Trial Court Trust Fund
Attachment 2 – FY 2008–2009 Allocation and Reimbursement to Trial Courts Report – Trial Court Improvement Fund
Attachment 3 – FY 2008–2009 Trial Allocation and Reimbursement to Trial Courts Report – Judicial Administration Efficiency and Modernization Fund
Attachment 4 – FY 2008–2009 Allocation and Reimbursement to Trial Courts Report – General Fund
Attachment 5 – Description of Allocations and Reimbursements
Attachment 6 – Fund Balance Policy
cc: Ronald G. Overholt, AOC Chief Deputy Director
Brian Brown, Consultant, Senate Committee on Budget and Fiscal Review
Matt Osterli, Consultant, Senate Republic Caucus
Joe Stephenshaw, Consultant, Assembly Committee on Budget
Allan Cooper, Consultant, Assembly Republican Caucus
Drew Soderborg, Fiscal and Policy Analyst, Legislative Analyst's Office
Jennifer Osborn, Principal Program Budget Analyst, Department of Finance

FY 2008-2009 Trial Court Allocations and Reimbursements

Attachment 1

Court Name	Base Budget	Statewide Unallocated Reduction of $92.24 Million	Statewide $26 Million Reduction to Offset Revenue Shortfall	Retirement - Rate and Plan Changes	Reduction for Appointed Converted SJO Positions	Security	Security for New and Transferring Facilities	Staffing and Operating Expenses- New and Transferring Facilities	Inflation and Workforce Adjustment	New Entrance Screening Stations	Screening Station Replacement	Court Interpreters Program	Annual Salary Reimbursement for Authorized Judges Program	Court-Appointed Counsel	Jury	Elder Abuse	Self-Help Centers	Model Self Help	Family Law Information Center	Civil Case Coordination	Civil Assessments	Automated Record- keeping and Micrographics	Children's Waiting Room	Fee Revenues Returned to Courts
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X
Alameda Superior Court	115,450,365	(4,698,989)	(1,290,977)	(1,715,029)	-	410,736	-	123,083	2,585,824	105,140	11,895	3,188,489	644,751	3,094,182	822,194	33,300	101,959	-	-	-	1,973,720	156,458	260,764	420,515
Alpine Superior Court	655,522	(26,681)	(7,330)	(387)	-	-	-	-	18,874	-	-	1,306	-	0	1,007	-	-	-	-	-	8,297	64	-	7,971
Amador Superior Court	3,166,034	(128,862)	(35,403)	8,435	-	1,867	-	24,724	76,424	-	11,895	39,675	-	71,494	5,709	-	2,565	-	-	-	60,543	1,043	-	18,508
Butte Superior Court	11,742,026	(477,917)	(131,300)	32,190	-	11,238	30,000	-	269,043	-	13,075	180,253	82,705	722,000	45,165	370	14,609	-	-	-	199,780	18,453	-	235,639
Calaveras Superior Court	2,646,814	(107,729)	(29,597)	5,896	-	-	-	-	69,495	-	11,880	31,621	11,000	76,856	3,160	-	3,074	-	-	-	134,776	1,233	-	24,628
Colusa Superior Court	1,854,028	(75,461)	(20,732)	(1,106)	-	-	-	-	50,509	-	-	134,573	9,086	0	932	185	1,447	-	-	-	61,332	430	-	9,380
Contra Costa Superior Court	56,156,419	(2,285,643)	(627,946)	(286,057)	(282,318)	396,000	-	-	1,192,351	-	22,650	1,493,244	339,736	4,002,324	578,014	8,880	84,806	160,004	-	-	1,835,507	107,982	182,961	496,957
Del Norte Superior Court	3,098,198	(126,101)	(34,644)	1,988	-	14,035	-	-	82,847	-	14,270	58,078	-	157,398	1,980	185	3,927	-	-	-	354	572	-	12,242
El Dorado Superior Court	9,856,947	(401,191)	(110,221)	19,237	(31,452)	117,654	-	-	211,712	-	47,580	193,363	-	308,843	23,671	370	11,851	-	-	-	213,557	5,369	26,855	96,310
Fresno Superior Court	53,690,460	(2,185,276)	(600,372)	407,620	-	937,409	-	65,657	1,163,710	152,118	27,621	2,683,294	378,573	3,075,774	299,268	14,985	66,346	145,761	73,067	-	3,279,923	89,397	150,835	371,726
Glenn Superior Court	2,509,734	(102,150)	(28,064)	5,375	-	38,243	-	-	65,085	-	-	104,270	10,503	52,278	522	-	1,927	151,945	-	-	4,077	654	-	21,626
Humboldt Superior Court	7,550,743	(307,326)	(84,433)	(13,638)	-	100,470	-	-	185,341	-	-	120,734	52,377	551,577	109,458	3,885	8,913	-	-	-	356,312	9,219	-	111,628
Imperial Superior Court	9,683,812	(394,144)	(108,285)	35,542	-	52,902	55,092	360,575	231,316	-	-	656,866	60,801	770,314	89,581	4,255	11,204	-	-	-	847,787	15,092	-	135,054
Inyo Superior Court	2,358,800	(96,006)	(26,376)	-	-	-	-	-	61,997	-	-	58,446	11,000	89,664	7,900	-	1,245	-	-	-	21,653	373	-	8,461
Kern Superior Court	43,840,205	(1,784,357)	(490,225)	(986,761)	(38,790)	331,944	89,405	-	990,096	-	46,703	2,331,693	-	2,307,017	381,649	740	52,450	-	-	-	1,733,768	78,490	-	192,179
Kings Superior Court	7,780,440	(316,675)	(87,002)	10,568	-	-	-	-	181,852	-	-	305,005	51,411	179,473	37,225	-	9,936	-	-	-	296,679	11,234	-	48,415
Lake Superior Court	4,359,182	(177,425)	(48,745)	74,528	-	28,431	-	-	106,724	-	14,270	115,136	30,000	45,754	60,182	2,405	5,681	-	-	-	18,361	1,820	-	47,286
Lassen Superior Court	2,878,687	(117,167)	(32,190)	5,657	-	30,655	-	-	72,225	-	-	52,903	-	123,809	3,475	-	2,384	-	-	-	39,017	658	-	10,113
Los Angeles Superior Court	671,432,614	(27,328,231)	(7,508,022)	(4,144,060)	(421,094)	13,876,597	-	-	14,258,988	-	810,947	33,005,168	-	0	5,640,377	41,995	831,154	119,173	165,825	140,341	7,626,845	1,239,972	1,254,361	5,638,041
Madera Superior Court	8,077,274	(328,756)	(90,321)	302,523	-	156,732	-	39,204	202,780	-	-	571,196	-	63,723	25,128	-	15,490	-	-	-	323,252	4,072	-	72,711
Marin Superior Court	19,569,115	(796,490)	(218,824)	(196,889)	-	154,736	-	-	469,512	300,751	-	590,954	36,370	0	109,631	1,110	17,038	-	-	3,922	-	22,012	-	187,879
Mariposa Superior Court	1,336,550	(54,399)	(14,945)	5,223	-	16,954	-	-	34,133	-	-	34,865	11,000	32,570	1,344	-	2,451	-	-	-	33,803	343	-	6,623
Mendocino Superior Court	6,694,561	-	(74,859)	24,359	-	88,925	-	-	151,596	-	1,195	369,110	60,000	0	33,539	-	6,415	-	-	-	229,204	6,624	-	35,047
Merced Superior Court	13,626,262	(554,608)	(152,370)	27,901	(24,113)	105,706	-	-	311,348	71,116	23,760	799,468	59,546	587,492	203,676	1,665	33,190	-	-	-	1,091,430	23,334	-	103,620
Modoc Superior Court	1,294,399	(52,684)	(14,474)	(895)	-	1,000	-	-	34,941	-	10,700	7,927	-	11,729	3,428	-	661	-	-	-	14,203	403	-	1,897
Mono Superior Court	1,890,476	(76,945)	(21,139)	588	-	16,625	-	-	43,181	-	-	34,166	11,000	300	992	-	-	-	-	-	-	235	-	7,596
Monterey Superior Court	21,180,877	(862,091)	(236,847)	(5,971)	-	156,314	-	-	482,112	-	9,791	836,153	168,449	362,417	72,528	1,110	28,573	-	-	-	675,025	34,567	-	248,843
Napa Superior Court	9,683,044	(394,113)	(108,277)	488	-	20,737	-	-	224,493	-	11,895	479,650	45,000	222,770	15,616	555	9,042	-	-	-	506,599	4,101	-	36,405
Nevada Superior Court	6,181,608	(251,600)	(69,123)	(7,963)	-	38,438	-	-	143,221	-	33,926	77,375	45,000	150,213	10,926	-	6,729	-	-	-	389,969	8,537	-	99,345
Orange Superior Court	192,077,936	(7,817,836)	(2,147,833)	(548,321)	(48,225)	1,389,507	199,162	167,497	4,309,210	-	9,728	9,081,850	1,038,703	8,665,397	870,783	49,210	206,630	-	-	43,831	10,188,510	349,381	590,382	1,689,324
Placer Superior Court	17,195,596	(699,884)	(192,283)	32,276	-	184,395	126,973	131,463	398,387	-	24,985	603,364	-	439,827	101,503	3,330	21,287	-	-	-	890,161	34,628	-	235,531
Plumas Superior Court	1,970,121	(80,187)	(22,030)	(1,788)	-	6,066	-	-	52,151	-	-	44,018	-	52,993	7,587	555	2,884	-	-	-	45,827	499	-	9,733
Riverside Superior Court	91,927,953	(3,741,594)	(1,027,947)	257,220	(44,557)	830,022	37,000	3,900	2,145,543	73,831	126,635	3,868,101	-	4,521,249	1,809,445	13,135	131,371	-	-	-	10,262,065	91,109	457,322	436,724
Sacramento Superior Court	97,662,028	(3,974,979)	(1,092,066)	98,372	(141,780)	1,417,549	-	40,445	2,165,749	-	86,834	3,536,072	526,463	1,713,238	1,045,467	18,315	110,759	-	-	-	2,058,426	218,231	363,749	365,801
San Benito Superior Court	3,373,220	(137,295)	(37,720)	-	-	20,558	-	-	92,880	43,015	-	93,334	15,000	30,740	4,824	-	7,752	-	-	-	72,336	1,587	-	32,988
San Bernardino Superior Court	106,941,680	(4,352,673)	(1,195,832)	84,972	-	1,010,160	-	12,919	2,290,822	-	-	4,728,528	668,540	3,744,592	755,933	4,440	133,961	-	-	-	3,700,590	258,115	-	742,063
San Diego Superior Court	189,753,558	(7,723,231)	(2,121,842)	(1,120,744)	(342,964)	1,184,518	-	20,628	4,484,499	-	67,410	6,100,585	-	(354,525)	967,120	72,150	206,259	-	-	53,926	12,088,695	327,808	551,015	1,555,197
San Francisco Superior Court	75,482,621	(3,072,246)	(844,054)	(428,317)	-	624,223	-	-	1,846,164	-	-	2,093,695	460,034	5,093,115	626,197	4,255	53,715	-	-	25,155	1,982,550	125,569	172,548	621,292
San Joaquin Superior Court	36,081,437	-	(403,466)	93,793	-	437,316	223,543	-	817,525	-	17,870	1,436,212	272,949	51,358	359,151	10,730	85,704	-	-	-	621,201	77,221	-	317,165
San Luis Obispo Superior Court	17,624,573	(717,344)	(197,080)	(74,003)	(25,686)	332,239	-	155,898	393,285	328,284	-	404,437	84,493	-	99,457	370	17,705	-	743	-	650,974	21,823	36,418	218,637
San Mateo Superior Court	45,864,838	(1,866,762)	(512,865)	(172,690)	-	288,043	-	-	1,057,617	266,780	-	1,488,050	242,107	325,586	268,872	4,440	48,700	-	-	-	14,327	20,638	105,207	446,318
Santa Barbara Superior Court	26,697,387	(1,086,620)	(298,533)	414,866	-	354,429	-	-	619,086	514,677	-	1,037,701	168,996	-	111,976	3,330	28,356	-	-	-	1,091,750	35,476	60,307	150,869
Santa Clara Superior Court	117,243,232	(4,771,961)	(1,311,025)	2,608,368	-	1,588,011	-	101,616	2,614,028	-	42,800	3,312,402	741,104	3,807,265	478,122	5,735	119,260	-	-	-	2,132,582	146,672	249,055	1,015,936
Santa Cruz Superior Court	15,310,103	(623,142)	(171,199)	18,766	-	216,381	50,651	-	360,134	-	75,294	694,112	-	-	83,167	1,665	17,644	-	-	-	113,238	18,891	-	158,868
Shasta Superior Court	11,608,100	-	(129,803)	9,082	-	201,307	-	-	273,772	91,907	23,790	297,485	135,650	535,280	90,806	3,145	12,205	-	-	-	-	5,872	-	113,724
Sierra Superior Court	706,300	(28,747)	(7,898)	(8,446)	-	5,752	-	-	20,093	-	-	5,362	-	21,785	678	-	236	-	-	-	7,159	113	-	1,244
Siskiyou Superior Court	4,707,778	(191,613)	(52,643)	21,294	-	63,758	-	-	117,788	-	19,118	73,856	20,630	365,225	14,656	185	3,104	-	-	-	231,984	1,165	-	18,401
Solano Superior Court	26,085,223	(1,061,704)	(291,687)	(318,935)	(176,187)	380,469	-	-	589,093	4,630	2,390	398,954	172,986	420,802	127,454	10,360	28,439	-	-	-	2,168,579	50,117	-	166,031
Sonoma Superior Court	29,793,531	(1,212,638)	(333,154)	86,915	-	213,997	-	736,943	657,083	-	44,313	1,174,741	171,260	327,871	158,576	-	32,278	-	-	-	1,025,202	45,360	76,201	194,166
Stanislaus Superior Court	22,225,803	(904,621)	(248,531)	-	-	359,493	-	155,627	509,653	-	61,510	762,315	-	-	133,438	6,290	43,042	-	-	-	1,250,688	55,301	92,179	162,982
Sutter Superior Court	4,928,648	(200,603)	(55,113)	7,115	-	32,365	-	-	122,541	-	43,309	328,277	-	78,932	14,341	740	6,151	-	89,342	-	389,353	3,022	-	28,215
Tehama Superior Court	4,074,309	(165,830)	(45,559)	19,408	-	26,076	-	-	104,219	-	11,895	139,611	30,000	100,400	4,956	1,110	4,139	-	-	-	53,024	1,797	-	24,687
Trinity Superior Court	1,383,010	(56,290)	(15,465)	149	-	81,752	-	-	34,663	35,778	-	33,355	11,000	24,651	17,392	1,110	943	-	-	-	8,795	621	-	3,187
Tulare Superior Court	21,343,677	(868,717)	(238,667)	(72,574)	-	323,077	-	-	468,446	-	23,361	1,158,185	-	663,954	204,472	555	28,289	-	-	-	968,572	36,232	-	151,407
Tuolumne Superior Court	4,090,718	(166,498)	(45,743)	1,717	-	98,716	-	-	94,705	-	-	37,693	30,000	46,517	13,559	370	3,916	-	-	-	118,242	1,474	-	26,992
Ventura Superior Court	42,954,958	(1,748,326)	(480,326)	305,371	-	12,054	-	-	900,553	-	-	1,512,476	-	782,065	391,812	6,105	54,970	-	-	-	455,657	81,650	136,653	475,076
Yolo Superior Court	11,293,065	(459,643)	(126,280)	85,099	(110,313)	167,639	64,251	202,176	241,848	-	11,880	586,109	72,370	346,417	144,610	-	12,802	-	-	-	588,262	14,909	-	69,499
Yuba Superior Court	4,499,568	-	(50,315)	4,343	-	41,150	-	-	114,925	-	4,848	119,519	15,625	196,631	40,751	1,295	9,392	-	-	-	247,584	2,186	-	26,309
Total:	**2,325,146,167**	**(92,240,000)**	**(26,000,000)**	**(4,987,329)**	**(1,687,479)**	**28,995,369**	**876,076**	**2,342,355**	**51,868,193**	**1,988,027**	**1,822,021**	**93,705,378**	**6,996,218**	**49,061,336**	**17,535,382**	**338,920**	**2,766,957**	**576,883**	**328,977**	**267,175**	**75,402,106**	**3,870,213**	**4,766,813**	**18,165,009**

Exhibit 3

FY 2008-2009 Trial Court Allocations and Reimbursements

Attachment 1

Court Name	Replacement of 2% Automation Fund	SB 56 New Judgeship Facilities	County Omitted FY 1996-97 Costs	Forensic Evaluations	Supplemental Funding-Statewide Administrative Infrastructure Initiatives	Asset Replacement	Buyout of 68085.5(a) and (f) Fees Retained by Court in FY 2003-04 and Prior Fiscal Years	Total - Court Operations Allocations
	V	Z	AA	AB	AC	AD	AE	AF
Alameda Superior Court	424,792	-	-	-	-	324,826	-	122,428,001
Alpine Superior Court	2,034	-	-	-	-	2,426	-	663,102
Amador Superior Court	11,006	-	-	3,737	-	12,133	-	3,351,529
Butte Superior Court	59,332	-	-	6,450	-	47,493	-	13,100,605
Calaveras Superior Court	18,652	-	-	2,725	-	9,360	-	2,913,845
Colusa Superior Court	13,708	-	-	-	-	4,853	-	2,043,163
Contra Costa Superior Court	218,186	-	-	-	-	155,653	-	63,949,711
Del Norte Superior Court	11,208	-	-	-	-	11,093	-	3,307,629
El Dorado Superior Court	54,374	-	-	-	-	35,706	-	10,680,534
Fresno Superior Court	181,080	342,336	-	-	-	178,533	-	64,989,845
Glenn Superior Court	19,264	-	-	10,401	-	7,973	-	2,873,665
Humboldt Superior Court	48,160	-	-	44,864	-	36,400	-	8,884,686
Imperial Superior Court	67,678	-	-	-	-	37,440	-	12,612,881
Inyo Superior Court	30,402	-	-	-	-	7,973	-	2,535,531
Kern Superior Court	277,328	-	-	500	-	162,586	-	49,516,619
Kings Superior Court	57,026	-	-	-	-	29,466	-	8,595,053
Lake Superior Court	20,328	-	-	49,572	147,970	14,213	-	4,915,674
Lassen Superior Court	20,156	-	-	19,288	-	8,666	-	3,118,337
Los Angeles Superior Court	3,144,530	-	-	1,173,698	-	2,192,666	-	723,191,885
Madera Superior Court	52,502	184,408	-	-	-	27,386	-	9,699,304
Marin Superior Court	114,766	-	-	-	-	61,360	-	20,426,954
Mariposa Superior Court	3,904	-	-	24,004	-	5,546	-	1,479,967
Mendocino Superior Court	30,068	-	-	-	-	29,813	-	7,685,597
Merced Superior Court	55,652	-	-	54,113	-	37,093	-	16,485,281
Modoc Superior Court	6,134	-	-	-	-	4,506	-	1,323,876
Mono Superior Court	12,446	-	-	-	-	5,893	-	1,925,414
Monterey Superior Court	183,464	65,715	-	-	-	71,760	-	23,472,789
Napa Superior Court	30,550	-	-	-	-	33,973	-	10,822,528
Nevada Superior Court	49,946	-	-	36,975	20,963	24,960	-	6,989,444
Orange Superior Court	923,882	-	-	92,878	-	600,080	6,712,437	228,694,102
Placer Superior Court	77,378	-	-	89,925	-	49,573	-	19,748,413
Plumas Superior Court	9,206	-	-	-	34,493	7,626	-	2,139,753
Riverside Superior Court	532,226	-	-	-	-	294,666	-	113,005,419
Sacramento Superior Court	340,254	-	-	360,270	-	280,453	-	107,199,651
San Benito Superior Court	14,700	-	-	-	-	8,666	-	3,636,584
San Bernardino Superior Court	435,474	-	-	398,802	-	326,906	-	120,689,991
San Diego Superior Court	718,422	-	-	834,049	-	620,880	-	207,943,414
San Francisco Superior Court	272,528	-	-	-	-	210,773	-	85,349,817
San Joaquin Superior Court	201,698	264,252	-	549,230	140,650	109,546	-	41,765,084
San Luis Obispo Superior Court	130,020	-	-	-	-	56,160	-	19,541,403
San Mateo Superior Court	329,518	-	-	-	-	137,626	-	48,356,350
Santa Barbara Superior Court	162,858	-	80,994	-	-	98,800	-	30,246,705
Santa Clara Superior Court	452,782	-	-	-	62,967	317,893	-	130,956,846
Santa Cruz Superior Court	113,210	-	-	-	-	51,653	-	16,489,434
Shasta Superior Court	44,394	74,872	-	92,351	-	59,973	-	13,543,914
Sierra Superior Court	1,830	-	-	2,550	-	2,426	-	730,437
Siskiyou Superior Court	37,000	-	-	2,175	-	22,186	-	5,476,047
Solano Superior Court	119,364	-	-	5,213	-	89,093	-	28,970,685
Sonoma Superior Court	119,004	-	-	47,592	-	74,186	-	33,433,427
Stanislaus Superior Court	88,718	186,168	-	-	-	74,533	-	25,014,589
Sutter Superior Court	37,382	-	-	24,713	-	16,640	-	5,895,371
Tehama Superior Court	28,100	-	-	28,490	-	16,293	-	4,457,123
Trinity Superior Court	7,648	-	-	2,850	-	4,853	-	1,580,002
Tulare Superior Court	204,932	-	-	25,350	-	79,386	-	24,499,937
Tuolumne Superior Court	16,642	-	-	8,426	155,015	13,866	-	4,546,327
Ventura Superior Court	205,304	-	-	32,075	-	131,040	-	46,209,167
Yolo Superior Court	48,556	-	-	-	-	41,253	-	13,294,506
Yuba Superior Court	15,788	-	-	24,359	36,011	18,373	-	5,368,341
Total:	**10,907,494**	**1,117,751**	**80,994**	**4,047,625**	**598,068**	**7,397,151**	**6,712,437**	**2,592,766,287**

Exhibit 3

FY 2008-2009 Allocations/Reimbursements to Trial Courts - Trial Court Improvement Fund							
Court Name	Trial Court Security Grants	Domestic Violence-Family Law Interpreter Program	Self Help Centers	Emergency Funding	20% of Excess 50/50 Split Revenue	Conservatorship and Guardianship	Fund Total
	A	B	C	D	E	F	G
Alameda Superior Court	-	19,380	203,150	-	36,187	376,029	634,746
Alpine Superior Court	22,641	-	0	-	-	141	22,782
Amador Superior Court	1,498	111	5,129	-	4,276	16,694	27,708
Butte Superior Court	8,623	36,747	29,216	-	11,107	140,369	226,062
Calaveras Superior Court	-	-	6,123	-	794	8,726	15,643
Colusa Superior Court	-	-	2,894	-	902	1,400	5,196
Contra Costa Superior Court	61,153	31,539	69,823	-	47,920	220,277	430,712
Del Norte Superior Court	3,502	-	462	-	80	10,522	14,566
El Dorado Superior Court	-	10,126	23,701	-	-	59,305	93,132
Fresno Superior Court	13,300	5,261	120,994	-	11,415	158,290	309,260
Glenn Superior Court	-	14,104	3,854	420,456	9,511	10,891	458,816
Humboldt Superior Court	3,719	-	17,826	-	19,032	37,012	77,589
Imperial Superior Court	36,002	22,599	19,645	-	24,961	8,695	111,902
Inyo Superior Court	-	1,500	2,490	-	-	15,233	19,223
Kern Superior Court	-	28,641	104,900	-	20,366	99,154	253,061
Kings Superior Court	-	4,600	19,870	-	10,728	6,897	42,095
Lake Superior Court	1,352	-	8,515	-	-	10,710	20,577
Lassen Superior Court	-	-	4,768	-	-	13,394	18,162
Los Angeles Superior Court	-	556,309	1,281,268	-	-	2,573,340	4,410,917
Madera Superior Court	125,354	34,020	7,069	-	1,490	26,330	194,263
Marin Superior Court	-	1,493	34,076	-	22,090	78,541	136,200
Mariposa Superior Court	-	-	2,450	-	5,028	11,128	18,606
Mendocino Superior Court	-	3,972	11,195	-	18,957	22,564	56,688
Merced Superior Court	269,718	11,870	14,015	-	14,482	21,958	332,042
Modoc Superior Court	7,500	-	1,248	-	-	5,140	13,888
Mono Superior Court	-	-	0	-	3,998	8,550	12,548
Monterey Superior Court	-	25,384	57,145	-	29,346	106,786	218,661
Napa Superior Court	-	6,782	18,084	-	-	40,190	65,056
Nevada Superior Court	127,040	1,156	13,460	-	9,100	23,348	174,104
Orange Superior Court	151,542	85,759	372,641	-	-	495,377	1,105,319
Placer Superior Court	-	6,030	39,096	1,205,367	9,634	69,749	1,329,876
Plumas Superior Court	-	-	0	-	-	11,596	11,596
Riverside Superior Court	-	121,947	176,697	-	76,557	295,711	670,912
Sacramento Superior Court	112,556	23,780	147,936	-	-	325,342	609,614
San Benito Superior Court	-	-	7,751	-	-	3,460	11,211
San Bernardino Superior Court	-	28,588	267,920	-	117,200	212,418	626,126
San Diego Superior Court	-	125,664	345,465	-	-	853,754	1,324,883
San Francisco Superior Court	-	87,043	107,430	-	-	303,727	498,200

San Joaquin Superior Court	18,452	1,811	40,632	-	513	134,048	195,456
San Luis Obispo Superior Court	-	4,797	35,408	-	2,273	51,466	93,944
San Mateo Superior Court	33,595	15,903	96,762	-	9,728	346,904	502,892
Santa Barbara Superior Court	-	3,500	56,712	-	-	76,298	136,510
Santa Clara Superior Court	-	106,367	238,520	-	-	434,291	779,178
Santa Cruz Superior Court	-	19,092	35,288	-	-	54,552	108,932
Shasta Superior Court	314,912	23,453	24,411	-	-	84,800	447,575
Sierra Superior Court	10,252	1,560	258	-	128	2,815	15,013
Siskiyou Superior Court	-	-	6,207	-	-	17,113	23,320
Solano Superior Court	88,252	8,050	56,878	-	12,206	106,470	271,856
Sonoma Superior Court	144,357	17,750	64,556	-	-	143,598	370,261
Stanislaus Superior Court	89,978	13,561	67,639	-	43,518	86,639	301,335
Sutter Superior Court	-	11,216	12,300	-	12,176	57,311	93,003
Tehama Superior Court	-	-	8,276	-	10,895	14,424	33,595
Trinity Superior Court	40,000	-	1,886	-	2,425	1,659	45,970
Tulare Superior Court	10,813	21,500	56,577	-	25,512	18,604	133,006
Tuolumne Superior Court	-	1,130	7,832	-	-	11,882	20,844
Ventura Superior Court	-	13,329	109,941	-	-	111,660	234,930
Yolo Superior Court	3,669	9,811	25,603	-	-	34,609	73,693
Yuba Superior Court	38,178	2,881	9,392	-	15,322	28,109	93,882
Total	**1,737,956**	**1,570,114**	**4,503,384**	**1,625,823**	**639,857**	**8,500,000**	**18,577,134**

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FY 2008-2009 Allocations/Reimbursements to Trial Courts - Judicial Administration Efficiency and Modernization Fund

Court Name	Alternative Dispute Resolution Centers	Complex Civil Litigation Program	Technical Assistance to Courts	Fund Total
	A	B	C	D
Alameda Superior Court	-	255,400	6,450	261,850
Butte Superior Court	-	-	-	0
Contra Costa Superior Court	-	384,846	-	384,846
Inyo Superior Court	-	-	-	0
Kern Superior Court	-	-	-	0
Lake Superior Court	-	-	-	0
Los Angeles Superior Court	25,000	1,117,000	-	1,142,000
Mariposa Superior Court	-	-	2,275	2,275
Monterey Superior Court	-	-	3,000	3,000
Nevada Superior Court	-	-	-	0
Orange Superior Court	-	420,960	-	420,960
Riverside Superior Court	-	-	8,670	8,670
San Bernardino Superior Court	7,500	-	-	7,500
San Diego Superior Court	20,000	-	-	20,000
San Francisco Superior Court	25,000	-	8,900	33,900
San Luis Obispo Superior Court	7,500	-	-	7,500
Santa Barbara Superior Court	-	-	-	0
Santa Clara Superior Court	-	1,221,369	1,550	1,222,919
Solano Superior Court	-	-	-	-
Sonoma Superior Court	-	-	-	-
Stanislaus Superior Court	-	-	-	0
Tulare Superior Court	-	-	8,900	8,900
Tuolumne Superior Court	-	-	-	0
Ventura Superior Court	17,000	-	7,500	24,500
Yolo Superior Court	-	-	4,000	4,000
Total	**102,000**	**3,399,574**	**51,245**	**3,552,819**

FY 2008-2009 Allocations/Reimbursements to Trial Courts - General Fund									
Court Name	AB 1058	Drug-Collaborative Courts-Substance Abuse	California DUI Court Expansion (Office of Traffic Safety)	Effective Court Practice For Abused Elders	California Justice Corps	Service of Process	Homicide Trials	Prisoners' Hearings	Fund Total
	A	B	C	D	E	F	G	H	I
Alameda Superior Court	1,878,472	30,000	-	-	145,670	38,580	-	-	2,092,722
Amador Superior Court	157,258	17,421	-	-	-	570	-	6,079	181,328
Butte Superior Court	488,460	43,840	72,000	-	-	150	-	-	604,450
Calaveras Superior Court	275,142	17,930	-	-	-	3,570	-	-	296,642
Colusa Superior Court	101,340	-	-	-	-	-	-	-	101,340
Contra Costa Superior Court	1,670,250	39,000	-	56	-	15,350	-	-	1,724,655
Del Norte Superior Court	101,543	12,000	-	-	-	3,390	-	-	116,933
El Dorado Superior Court	414,188	11,063	154,513	-	-	2,430	-	-	582,194
Fresno Superior Court	2,569,893	12,984	-	-	-	11,306	-	6,816	2,600,999
Glenn Superior Court	257,305	26,928	-	-	-	1,740	-	-	285,972
Humboldt Superior Court	235,443	16,000	-	-	-	5,100	-	-	256,543
Imperial Superior Court	260,313	-	-	-	-	7,134	-	27,154	294,601
Inyo Superior Court	149,949	13,966	-	-	-	2,310	-	-	166,226
Kern Superior Court	1,323,732	22,000	-	-	-	29,610	-	57,435	1,432,777
Kings Superior Court	463,957	0	-	-	-	1,410	-	36,751	502,119
Lake Superior Court	240,203	6,021	-	-	-	10,440	-	-	256,664
Lassen Superior Court	234,257	10,225	-	-	-	4,200	-	34,651	283,333
Los Angeles Superior Court	8,532,179	20,000	-	-	224,406	493,906	-	16,790	9,287,281
Madera Superior Court	370,533	26,000	-	-	-	6,870	-	34,035	437,438
Marin Superior Court	300,679	16,000	-	-	-	684	-	2,313	319,676
Mariposa Superior Court	118,037	-	-	-	-	90	-	-	118,127
Mendocino Superior Court	294,128	20,000	-	-	-	240	-	-	314,368
Merced Superior Court	859,388	0	-	-	-	1,140	-	-	860,528
Modoc Superior Court	73,973	11,941	-	-	-	1,500	-	-	87,415
Mono Superior Court	82,760	-	-	-	-	90	-	-	82,850
Monterey Superior Court	608,418	22,000	-	-	-	508	-	40,737	671,663
Napa Superior Court	321,023	14,401	-	-	-	8,876	-	-	344,300
Nevada Superior Court	569,081	23,894	-	-	-	2,938	-	-	595,913
Orange Superior Court	3,229,556	2,477	274,544	-	-	81,300	11,595	-	3,599,472
Placer Superior Court	594,670	29,000	-	-	-	870	-	-	624,540
Plumas Superior Court	153,282	18,318	-	-	-	3,360	-	-	174,960
Riverside Superior Court	2,113,113	32,000	-	-	-	78,340	-	42,640	2,266,093
Sacramento Superior Court	1,522,168	0	-	-	-	49,356	-	68,033	1,639,557
San Benito Superior Court	254,703	-	-	-	-	-	-	-	254,703
San Bernardino Superior Court	3,636,141	44,995	-	-	-	49,676	-	12,787	3,743,599
San Diego Superior Court	3,061,452	45,000	-	-	-	278,430	-	2,614	3,387,496
San Francisco Superior Court	1,332,434	0	-	-	-	3,348	-	-	1,335,782

San Joaquin Superior Court	1,166,400	18,369	-	-	-	27,986	-	27,770	1,240,525
San Luis Obispo Superior Court	377,117	19,385	-	-	-	7,260	-	87,552	491,313
San Mateo Superior Court	697,671	20,000	-	-	-	20,548	-	-	738,219
Santa Barbara Superior Court	829,011	44,000	-	-	-	9,900	-	-	882,911
Santa Clara Superior Court	2,639,063	35,000	-	-	-	45,148	-	-	2,719,211
Santa Cruz Superior Court	285,047	29,000	-	-	-	11,898	-	-	325,945
Shasta Superior Court	729,392	20,542	284,065	-	-	10,020	-	-	1,044,019
Sierra Superior Court	-	12,000	-	-	-	60	-	-	12,060
Siskiyou Superior Court	404,699	19,975	-	-	-	4,650	-	-	429,324
Solano Superior Court	788,076	14,589	-	-	-	33,254	-	27,291	863,211
Sonoma Superior Court	825,230	43,542	319,278	-	-	13,648	-	-	1,201,698
Stanislaus Superior Court	1,038,728	18,571	-	-	-	20,488	-	-	1,077,787
Sutter Superior Court	330,129	-	-	-	-	240	-	-	330,369
Tehama Superior Court	149,488	-	-	-	-	478	-	-	149,966
Trinity Superior Court	32,478	11,387	-	-	-	60	-	-	43,925
Tulare Superior Court	885,811	10,841	-	-	-	14,370	-	-	911,022
Tuolumne Superior Court	301,598	16,371	-	-	-	1,104	-	2,016	321,089
Ventura Superior Court	992,737	20,000	-	4,926	-	31,590	-	-	1,049,253
Yolo Superior Court	348,977	13,155	-	-	-	720	-	-	362,853
Yuba Superior Court	332,801	5,456	-	-	-	210	-	-	338,467
Total	**52,003,876**	**977,589**	**1,104,400**	**4,982**	**370,076**	**1,452,444**	**11,595**	**533,464**	**56,458,425**

Statement of Intended Purpose for Each Allocation or Reimbursement

Attachment 5

Trial Court Trust Fund

Column	Allocation/Reimbursement	Purpose
A	Base Budget	This ongoing base allocation approved by the Judicial Council was provided for trial court operations. It reflects annual funding adjustments since the beginning of state trial court funding, including those related to the State Appropriations Limit and Budget Change Proposals.
B	Statewide-Unallocated Reduction of $92.24 million	This one-time unallocated reduction to trial court funding was based on each court's pro-rated share of the beginning FY 2008–2009 statewide base allocation. The council exempted four courts from being allocated a portion of the reduction.
C	Statewide $26 Million Reduction to Offset Revenue Shortfall	This $26 million allocation reduction was to offset the portion of the $31 million General Fund reduction to the Trial Court Trust Fund not offset by county undesignated fee Maintenance of Effort payments ($5 million).
D	Retirement Rate and Plan Changes	This allocation was for court employee retirement cost changes.
E	Reduction for Appointed Converted SJO Positions	This allocation reduction, pro-rated from the date that the judge takes the oath of office, was for the cost of judges' salary and average calculated benefits for subordinate judicial positions that were converted to judgeships. Monies reduced from the courts' allocation augment the Program 45.25 (Compensation of Superior Court Judges) appropriation.
F	Security	This allocation was for security-related costs: security cost changes, costs in excess of security standards funding, and security retiree health costs historically included in the maintenance of effort (MOE) payments to the State.
G	Security for New and Transferring Facilities	This allocation was for one-time and ongoing security expenses related to new or transferring facilities.
H	Staffing and Operating Expenses for New and Transferring Facilities	This allocation was for ongoing staffing and operating expenses related to new or transferring facilities.
I	Inflation and Workforce Adjustment	This allocation, determined by applying the adjusted CPI change factor of 2.826 percent to each court's FY 2008–2009 beginning base budget excluding security, was for staff compensation, operating expenses, program expansion and other court costs.
J	New Entrance Screening Stations	This allocation was for screening stations that were approved as part of the 97 new entrance screening stations in the Budget Act of 2006 (Stats. 2006, ch. 47).
K	Screening Station Replacement	This allocation was for reimbursement of entrance screening station replacement costs.
L	Court Interpreters Program (CIP)	This allocation was for reimbursement of eligible CIP expenditures, including staff and contract interpreters.
M	Annual Salary Reimbursement for Authorized Judges Program	This allocation is to reimburse the courts/counties for part of the salary that is not paid by the State Controller's Office.
N	Court-Appointed Counsel	This allocation was for reimbursement of court-appointed dependency counsel expenditures.
O	Jury	This allocation was for reimbursement of eligible juror costs.
P	Elder Abuse	This allocation was for reimbursement of costs related to protective orders involving elder or dependent adult abuse.
Q	Self-Help Centers	This allocation was for reimbursement of expenses charged in accordance with each court's MOU for self-help center funding.
R	Model Self Help	This allocation was for pilot self-help centers ("Centers") which would provide various forms of assistance, such as basic legal and procedural information, help with filling out forms, including Spanish language services, and referrals to other community resources, to self-represented litigants. This project is aimed at determining the effectiveness of court-based self-help programs and providing information to the legislature on future funding needs.

Exhibit 3
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S	Family Law Information Center	This allocation was for costs related to projects in the Superior Courts of Los Angeles, Sutter and Fresno counties that assist over 45,000 low-income, self-represented litigants with forms, information, and resources in family law matters.
T	Civil Case Coordination	This allocation was for the cost of handling coordinated cases in one court system.
U	Civil Assessment	This allocation was for civil assessment revenues collected that exceeded the amount of the court's county civil assessment buyout.
V	Automated Record-keeping and Micrographics	This allocation was for automation of record-keeping and micrographics.
W	Children's Waiting Room	This allocation, based on civil first paper filing fees, was for costs of operating a children's waiting room (except capital outlay).
X	Fee Revenues Returned to Courts	This allocation was to return to courts various local court fees charged by courts based on the cost of providing a service or product and then remitted to the Trial Court Trust Fund.
Y	Replacement of 2% Automation Fund	This allocation replaced funding previously provided from the 2% automation revenues deposited into the Trial Court Improvement Fund.
Z	SB 56 New Judgeship Facilities	This allocation was for the cost of lease payments as well as other facility operational costs incurred for the new judgeships and staff authorized by SB 56(Stats. 2006, ch. 390).
AA	County Omitted FY 1996–97 Costs	This allocation was an adjustment for ongoing janitorial expenses incorrectly omitted by one county in the statement of its court's FY 1996–1997 operating expenses used to determine the county's Maintenance of Effort obligation.
AB	Forensic Evaluations	This allocation was for ongoing expenses related to forensic evaluations.
AC	Supplemental Funding – Statewide Administrative Infrastructure Initiatives	This allocation was provided as a means of relief from one-time and ongoing costs associated with statewide administrative infrastructure initiatives.
AD	Asset Replacement	This allocation was for technology asset replacement (e.g., personal computers and printers).
AE	Buyout of 68085.5(a) and (f) Fees Retained by Court in FY 2003-04 (Prior Fiscal Years)	This allocation was for providing courts an ongoing allocation for GC 68085.5 (a) and (f) fees, excluding civil assessment, based on the level a court retained in FY 2003–2004.

Exhibit 3
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Trial Court Improvement Fund

Column	Allocation/Reimbursement	Purpose
A	Trial Court Security Grants	This allocation was for courts to complete various projects, such as installation of video surveillance and/or access systems, weapons screening equipment, security enhancements, and to develop and deliver the mechanism and training necessary for the courts to complete their own Continuity of Operations Plan (COOP).
B	Domestic Violence– Family Law Interpreter Program	This allocation was for courts to provide interpreter services in court hearings, family court services, mediation proceedings, and family law facilitator sessions.
C	Self Help Centers	This allocation was to establish or expand self-help assistance in the areas of family law, domestic violence, and other civil matters, to every county in the State of California.
D	Emergency Funding	This allocation to two courts was for cash flow needs and deficiency funding to meet unanticipated critical financial obligations and needs.
E	20% of Excess 50-50 Split Revenue Distribution	This allocation, in accordance with GC 77205(a) and California Rules of Court 10.105, was to distribute 20 percent of the 50-50 excess split revenue that exceeded the base revenue amount deposited in FY 2002–2003.

F	Conservatorship and Guardianship Distribution	This allocation was a one-time distribution to the trial courts for enhancing the services that are currently being implemented by trial courts pursuant to the requirements of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Judicial Administration Efficiency and Modernization Fund

Column	Allocation/Reimbursement	Purpose
A	Alternative Dispute Resolution Centers	This allocation was for mediation and settlement programs for civil cases.
B	Complex Civil Litigation Program	This allocation was for the reimbursement of costs related to running complex civil litigation departments.
C	Technical Assistance to Courts	This allocation was for small grants and technical assistance to support the courts' efforts in providing training for their management and court employees.

General Fund

Column	Allocation/Reimbursement	Purpose
A	AB 1058	This allocation was to provide funds for legislatively mandated child support commissioner and family law facilitator services in the courts.
B	Drug-Collaborative Courts-Substance Abuse	This allocation was for grants awarded to 80 court projects located in 50 counties to be used to support drug and other collaborative justice court programs.
C	California DUI Court Expansion (Office of Traffic Safety)	This allocation from the National Highway Traffic Safety Administration through the California Office of Traffic Safety was distributed to 5 California courts for the purpose of startup and operating collaborative justice model DUI courts.
D	Effective Court Practice for Abused Elders	This allocation, in the form of grants, was disseminated to two mentor courts to support effective court procedures when processing cases involving elder abuse.
E	California Justice Corps	This allocation was to administer the Justice Corps program in partnership with Los Angeles Superior Court and Alameda Superior Court where students serve as assistants in self-help legal access centers.
F	Service of Process	This allocation was to reimburse courts for the cost of service of stalking and harassment restraining orders and injunctions for which they were billed by the Sheriff's department per Government Code section 6103.2(b)(4).
G	Homicide Trials	This allocation was to reimburse courts for extraordinary costs of homicide trials as specified in Government Code section 15202.
H	Prisoners' Hearings	This allocation was to reimburse trial courts for necessary and reasonable costs connected with state prisons, California Youth Authority institutions, prisoners, and wards, including costs for the preparation of a trial or pretrial hearing, and the actual trial or hearing, consistent with Penal Code Sections 4750–4755 and 6005.

FUND BALANCE POLICY

BACKGROUND

In the Supplemental Report of the 2006 Budget Act, the Legislature specified that the Judicial Council report on court reserves and provide its policy governing trial court reserves. On October 20, 2006, the Judicial Council approved a fund balance policy for trial courts. Financial accounting and reporting standards and guidelines have been established by the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB). The Trial Court Financial Policy and Procedures Manual, in compliance with these standards and guidelines, specifies that the trial courts are responsible for the employment of "sound business, financial and accounting practices" to conduct their operations.

In addition, Government Code section 77203 specifies that the Judicial Council has the authority to authorize trial courts to carry over unexpended funds from one year to the next. Consistent with this provision, this policy provides courts with specific directions for identifying fund balance resources necessary to address statutory and contractual obligations on an accurate and consistent basis as well as maintaining a minimum level of operating and emergency funds. In addition, this policy provides the necessary structure to ensure funds are available to maintain service levels for various situations that confront the trial courts including a late state budget.

PURPOSE

Governmental agencies/entities report the difference between their assets and obligations as fund balance, which is divided into restricted and unrestricted categories. The function of the restricted fund balance is to isolate the portion of fund balance that represents resources required to address statutory and contractual obligations.

The purpose of this policy is to establish uniform standards for the reporting of fund balance by trial courts and to maintain accountability over the public resources used to finance trial court operations.

POLICY

As publicly funded entities, and in accordance with good public policy, trial courts must ensure that the funds allocated and received from the state and other sources are used efficiently and accounted for properly and consistently. The trial courts shall account for and report fund balance in accordance with established standards, utilizing approved categories. Additionally, a fund balance can never be negative.

Fund Balance Categories

When allocating fund balance to the categories and subcategories, allocations are to follow the following prioritization:

1. Statutory fund balance.
2. Contractual commitments to be paid in the next fiscal year.

3. The minimum calculated operating and emergency fund balance.
4. Other Judicial Council mandates to be paid in the next fiscal year.
5. Contractual commitments to be paid in subsequent fiscal years.
6. Other Judicial Council mandates to be paid in subsequent fiscal years.
7. Other designated subcategories and/or the undesignated subcategory.

If there is insufficient fund balance to cover any or all of the first four priorities, the shortfall should be explained in detail in attached footnotes. Also, there are additional reporting requirements when the amount allocated to the operating and emergency fund balance is below the minimum required.

Restricted Fund Balance. This fund balance category is not available for purposes other than statutory or contractual purposes.

Statutory. A restricted fund balance that consists of unspent, receipted revenues whose use is statutorily restricted.

Contractual. A restricted fund balance set aside for executed contractual commitments beyond the current fiscal year (e.g., multi-year contracts).

Unrestricted Fund Balance. This is a fund balance that is comprised of funds that are neither contractually nor statutorily restricted but may, by policy, require minimum amounts be maintained or identified.

Designated. The portion of unrestricted fund balance that is subject to tentative management plans. For each specific plan, courts must select a specific designated sub-category that is listed and provide a detailed description of the planned use of the fund balance. Specific plans that fall under the same designated sub-category must be listed separately.

Undesignated. The portion of fund balance that is neither restricted nor designated.

Designated Fund Balances

For designated fund balances that are based on estimates, particularly the operating and emergency (above the minimum required), leave obligations, and retirement fund balance designated subcategories, explanations of the methodology used to compute or determine the designated amount must be provided. Designations or planned uses include but are not limited to:

1. Operating and Emergency
   Each court shall maintain a minimum operating and emergency fund balance at all times as determined by the following calculation based upon that fiscal year's total unrestricted general fund expenditures (excluding special revenue, debt service, permanent, proprietary, and fiduciary funds), less any material one-time expenditures (e.g., large one-time contracts).

   Annual General Fund Expenditures
   5 percent of the first $10,000,000

4 percent of the next $40,000,000
3 percent of expenditures over $50,000,000

If a court determines that it is unable to identify the minimum operating and emergency fund balance level as identified above, the court shall immediately notify the Administrative Director of the Courts, or designee, in writing and provide a plan with a specific timeframe to correct the situation.

2. One-time facility – Tenant improvements
Examples include carpet and fixture replacements.

3. One-time facility – Other
Examples include amounts paid by the AOC on behalf of the courts.

4. Statewide Administrative Infrastructure Initiatives
Statewide assessment in support of technology initiatives (e.g., California Case Management System and Phoenix) will be identified in this designation.

5. Local Infrastructure (Technology and non-technology needs)
Examples include interim case management systems and non-security equipment.

6. One-time employee compensation (Leave obligation, retirement, etc.)
Amounts included in this category are exclusive of employee compensation amounts already included in the court's operating budget and not in a designated fund balance category.

   a. One-time leave payments at separation from employment. If amounts are not already accounted for in a court's operating budget, estimated one-time payouts for vacation or annual leave to employees planning to separate from employment within the next fiscal year should be in this designated fund balance sub-category. This amount could be computed as the average amount paid out with separations or other leave payments during the last three years. Any anticipated non-normal or unusually high payout for an individual or individuals should be added to at the average amount calculated.

      In a footnote, the court should note the amount of its employees' currently earned leave balance that is more than the established designated fund balance. The amount would be determined by multiplying the hours of earned vacation or annual leave on the payroll records for each employee times his or her current salary rate minus the designated fund balance established.

   b. Unfunded pension obligation. If documented by an actuarial report, the amount of unfunded pension obligation should be included as a designated fund balance. Employer retirement plan contributions for the current fiscal year must be accounted for in the court's operating budget.

      In a footnote, the court should note the amount of the current unfunded pension obligation that is in excess of the established designated fund balance.

c. Unfunded retiree health care obligation. If documented by an actuarial report, the amount of unfunded retiree health care obligation should be included as a designated fund balance.

The current year's unfunded retiree health care obligation contains: (i) the current year Annual Required Contribution (ARC) based on a 30-year amortization of retiree health costs as of last fiscal year-end **and** (ii) the prior year retiree health care obligation **less** (iii) the retiree health care employer contributions and any transfers made to an irrevocable trust set up for this purpose. The current year's unfunded retiree health care obligation is to be added to the prior year's obligation.

Note: The ARC amounts are located in each court's actuarial report, which is entitled "Postretirement Benefit Valuation Report".

In a footnote, the court should note the amount of the cumulative unfunded retiree health care obligation that is in excess of the established designated fund balance.

d. Workers compensation (if managed locally). The amount estimated to be paid out in the next fiscal year.

7. Professional and consultant services
Examples include human resources, information technology, and other consultants.

8. Security
Examples include security equipment, and pending increases for security service contracts.

9. Other (required to provide detail)
Any other planned commitments that are not appropriately included in one of the above designated fund balance sub-categories should be listed here with a description in sufficient detail to determine its purpose and requirements.

EXHIBIT 4

BILL ANALYSIS

CONCURRENCE IN SENATE AMENDMENTS
AB 92 (Cardoza)
As Amended August 24, 1998
Majority vote

ASSEMBLY: (May 5, 1997) SENATE: 38-0 (August 28, 1998)
(vote not relevant)

Original Committee Reference: H. & C.D.

SUMMARY : Requires trial courts to contract with county sheriffs to provide security services.

The Senate amendments delete the Assembly version of the bill, and instead,
require county trial courts to enter into an agreement with the sheriff's department to provide security services for those trial courts where court security services are otherwise required by law to be provided by the sheriff's department as of July 1, 1998.

EXISTING LAW requires the sheriff in certain counties to provide security services to the trial courts.

AS PASSED BY THE ASSEMBLY , this bill established procedures for voting, membership, and due process in the operation of the California Tax Credit Allocation Committee.

FISCAL EFFECT : This bill may be a state-mandated local program.

COMMENTS : AB 233 (Escutia), Chapter 850, Statutes of 1997, provided that funding of trial courts be paid for by the state.

This bill clarifies that the status quo shall be maintained where the sheriff's department currently provides security services (e.g., bailiffs) to the trial courts as of July 1, 1998. The supporters of this bill are concerned that under current trial court funding law it is unclear how security services shall be provided. This bill requires county sheriffs to continue to provide deputies for trial court security under contract.

Currently county sheriffs provide security services for trial courts in 53
counties. Marshals provide security as court employees in the remaining five counties. The trial courts that employ Marshals are not required to hire sheriffs under this bill.

Currently state appellate courts are funded by the state and security is provided by the California Highway Patrol.

Supporters assert that the bill would ensure a continuity of public safety services in California trial courts.

Analysis prepared by : Hubert Bower / algov / (916) 319-3958

FN

Exhibit 4

043683

EXHIBIT 5

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: August 24, 1998
RECOMMENDATION: Sign

BILL NUMBER: AB 92
AUTHOR: D. Cardoza, et al.
RELATED BILLS: AB 2739

ASSEMBLY: 77/0
SENATE: 38/0

BILL SUMMARY: Courts: security services

This bill would require those courts, which are required by current law to have trial court security provided by the sheriff's department, to contract with the sheriff department that provided such services as of July 1, 1998. This bill's requirement would be effective July 1, 1999.

FISCAL SUMMARY

By requiring a trial court to contract with the sheriff's department it was using as of July 1, 1998, this bill would not result in any change to the current security status and contracting in the trial courts. However, this bill would bar any future change in security in the affected counties unless new legislation specifies otherwise.

This bill may result in additional court security costs to the State trial courts; however, it would not be a reimbursable state mandated cost. The affected trial courts could request additional funding through the Administrative Office of Courts (AOC) during the budget development process, the AOC could either ask the trial court to redirect resources or could ask for a budget augmentation. According to the AOC, the county sheriff provides court security in more than 50 counties; marshals provide court security in the remaining counties.

COMMENTS

The Department of Finance recommends that this bill be signed. Current law already requires sheriff's departments to provide courthouse security unless otherwise specified. Those costs associated with such court security are allowable trial court costs under Government Code Section 77003 and Rule of Court 810 and can be currently billed for by the county and paid by the trial court.

Chapter 850, Statutes of 1997 specified that a trial court could choose whether to retain county services already provided to it, or choose a different vendor on July 1, 1998. However, current law also requires a sheriff's department to place personnel in a superior court held within a county unless otherwise provided for by law.

Analyst/Principal	Date	Program Budget Manager	Date
(0556) P. Reyes	9/14/98	Stan Cubanski	9/14/98
Department Assistant Director		Date	
		9/15/98	

COMMENTS (Continued)

This bill would require those counties that have courthouse functions requiring the use of a sheriff to contract with the sheriff's department that provided such services as of July 1, 1998. After that date, the affected trial courts would not be able to change their contract for security to a different vendor at a subsequent point in time. According to the author's office, this bill would address concerns that the trial courts should not alter or change their security practices until the Task Force on Trial Court Employees has made its recommendations, including those pertaining to courthouse security.

The Department of Finance is of the opinion that this bill would address concerns raised by the county sheriffs' offices and by the trial courts. Generally, the sheriffs are concerned that trial courts will seek court security services from other vendors. The trial courts are generally concerned about the costs of court security services and their ability to influence such costs. By requiring that an agreement be established for court security, both parties' concerns could be addressed. The sheriff would provide trial court security services, but the trial court would determine the level of security it is able to pay.

However, it is not clear what would happen if there were disagreement as to the level of security that were needed. For instance, a sheriff's office may have personnel standards that a trial court may not be able to afford given the available resources. Notwithstanding this concern, it would appear that this bill would provide a mechanism by which these two groups may be forced to resolve such disputes at the local level.

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) PROP 98	FC 1998-1999	FC 1999-2000	FC 2000-2001	Fund Code
0450/Trial Court	LA	No	---------- See Fiscal Summary ----------			0001

EXHIBIT 6

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

Enrolled Bill Report

Bill Number	*Author*	*As Amended*
AB 92	CARDOZA	AUGUST 24, 1998

Subject

COURTS: SECURITY SERVICES

SUMMARY

This bill would require counties that are required by law to be provided court security services by their sheriff's departments to enter into an agreement for court security services with the sheriff's department that was providing such services as of July 1, 1998.

ANALYSIS

Existing law provides security to the state appellate courts through the California Highway Patrol. Existing county laws also require county sheriffs to provide court security services for county courts. Only four counties are provided security through marshals who are considered employees of those counties.

AB 92 would, commencing on July 1, 1999, and thereafter, require that the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

COST

No appropriation.

Although this bill claims to contain a state-mandate, the agreements the bill would require counties to enter into would be continuations of existing services for court security. Court security services are allowable costs which the courts are required to pay from resources provided by the state. If an agreement would cost more than was previously provided, the county can request an augmentation of its budget through the Administrative Office of the Courts. This process is not unusual for such services because costs related to sheriffs' department personnel and equipment routinely increase and require budget augmentations.

ECONOMIC IMPACT

This bill would not appear to adversely impact the state's economic or business climate.

Recommendation

SIGN

By

Date

SEPTEMBER 9, 1998

Title

PAUL F MINER
DIRECTOR

LEGAL IMPACT

This bill would not appear to result in any increased liability for the state, nor conflict with any federal or state laws.

LEGISLATIVE HISTORY

This bill is sponsored by the author.

Background

Last year, the Governor signed AB 233 (Escutia and Pringle, Ch. 850, 1997) which required the state to assume most of the responsibility for trial court funding that had previously been paid by the counties. In shifting responsibility for funding the courts to the state, the responsibility for managing local court funds was placed with the presiding judge of the court rather than the county. One of the services that is provided by counties is court security services through contracts with county sheriff's departments. The provisions of AB 233 did not clarify the status of such contracts for security services under the state's funding of trial courts. However, the bill did provide for the creation of a Task Force on Trial Court Employees to study the employment status of court employees and how they should be classified, as well as a Task Force on Court Facilities to study the ongoing financing of court facilities.

Currently, there are 54 counties that utilize sheriff's departments for court security services. Most of these counties require by law that the sheriff's department provide such services. Rather than shelving all of those contracts, this bill would require those counties to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, for continuing the existing court security services. Such agreements would continue until such a time as the Task Forces make their recommendations on the issue of court security services. At that time, changes could be made in services, if necessary.

According to the sponsor, this bill seeks to further the policy goals enacted in AB 233 and would recognize that such funding is necessary to provide sound consistent practices in use by the courts, especially regarding crucial court security services.

Support and Opposition

This bill is supported by the Peace Officers Research Association of California, the Association for Los Angeles Deputy Sheriffs, Inc., and the California State Sheriffs Association.

Proponents believe this bill would provide for a smooth transition for those counties that are provided court security services through sheriffs' departments and that are having their trial court funding responsibilities assumed by the state.

There is no known opposition to AB 92.

VOTES:

Assembly - 05 May 1997	Senate - 28 August 1998
Ayes - 43	Ayes - 38
Noes - 33	Noes - 0

Concurrence - 31 August 1998
Ayes - 77
Noes - 0

The Assembly "no" votes in May do not reflect the current version of the bill.

RECOMMENDATION

The Office of Planning and Research recommends the Governor **SIGN** AB 92.

This bill would require counties that are required by law to be provided court security services by their sheriff's departments to enter into an agreement for court security services with the sheriff's department that was providing such services as of July 1, 1998.

AB 92 would provide for a smooth transition of court security services for those counties that are required by law to have these services provided by the county sheriff's department. The bill clarifies that, despite the state's assumption of trial court funding, these counties must come to an agreement with the same sheriff's department that was providing such services previous to July 1, 1998. This bill would ensure that the current services provided to such counties would not lapse and security in those courts would continue as before the transition of trial court funding to the state. However, pending recommendations by pertinent Task Forces, such security services could be altered to reflect the state's decision on the matter.

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EXHIBIT 7

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

AB 92

THIRD READING

Bill No: AB 92
Author: Cardoza (D)
Amended: 8/24/98 in Senate
Vote: 21

All Prior Votes Not Relevant

SUBJECT: Courts: security services

SOURCE: Author

DIGEST: Senate Floor Amendments of 8/24/98 delete the provisions of the bill dealing with the California Tax Credit Allocation Committee's voting membership and the application and appeals procedures.

This is a new bill. This bill requires a county to enter into an agreement with the sheriff to provide security services for the court.

ANALYSIS: Existing law requires the sheriff in certain counties to provide security services to the trial courts.

This bill would require the trial courts in such a county, commencing July 1, 1999, and thereafter, to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

Background

These amendments insert an non-controversial aspect of AB 468 (Cardoza) relative to court security staffing. AB 468 was heard in the Senate Judiciary

CONTINUED

committee, and passed out on consent. AB 468 was a bill which was intended to allow the state to supply goods and services for courts within the counties which the state has taken over court funding responsibilities. Concern was raised by unions that transfer of "services" currently provided to courts by county employees to state employees had not been well thought out. The sponsors agreed and dropped the bill.

However, there is agreement that security services will not transfer from the counties where Sheriffs currently provide security, to the CHP (which is the state agency which would provide court security if the state supplied the personnel. These amendments simply reflect that agreement, restate existing law, and codify existing practice.

Prior Legislation

AB 468 (Cardoza), on Senate Inactive File.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/24/98)

City of San Jose
Peace Officers Research Association of California
Association for Los Angeles Deputy Sheriffs, Inc.
California State Sheriffs Association

ARGUMENTS IN SUPPORT: The California State Sheriffs Association states, "This legislation requires municipal and superior courts to enter into an agreement with the sheriff's department in each county where the department was providing bailiff and court security services on July 1, 1998. AB 92 will assure a smooth transition of court security services as a result of the state now financing all of the courts of California."

RJG:ctl 8/27/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

EXHIBIT 8

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department:/Board	**Bill Number/Author:** SB 1396/Dunn (LAV 6/17/02)	
Sponsor: Judicial Council California State Sheriff's Association ☐ **Admin Sponsored** **Proposal No.**	**Related Bills** AB 3028 – Committee on Judiciary	**Chaptering Order (if known)** ☐ **Attachment**
Subject:: Judicial Security		

SUMMARY

SB 1396 establishes uniform procedures for contracting for court security services, specifies the types of charges allowed for court security services, and requires the Judicial Council and the Legislature to approve all court security allocations.

PURPOSE OF THE BILL

The bill is intended to provide clarity and consistency in funding for court security services. The bill is designed to replace Function 8 of Rule 810 of the Rules of Court in conformance with the Trial Court Funding processes.

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN -- SB 1396 replaces the ambiguous instructions on court security costs found in Function 8, Rule 810 of the Rules of Court. California's court systems have gone too long without clear direction on providing court security services. This bill will bring uniformity to court security services throughout the state's court system. By detailing the court security costs that are eligible for trial court funding reimbursement, the bill will place all counties on equal footing for reimbursement. With the nation's current concerns over terrorist acts, this bill will help to better prepare our courts for any possible threat, thus strengthening security throughout the court system.

ANALYSIS

According to the sponsors, California's court system relies on ambiguous directions for defining

Departments That May Be Affected: Judicial Council				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☒ State Mandate	☐ Urgency Clause
OPR Position ☑ Sign ☐ Veto ☐ Defer to:				
Legislative Director	Date	OPR Director	Date 8/8/02	

Exhibit 8

allowable expenses for providing court security. Function 8 of Rule 810 of the Rules of court uses broad, general terms for defining expenses, such as stating that "equipment" costs are allowed, but not specifying what types of equipment. The lack of specificity has led to a wide variation in what the various courts see as allowable costs.

The sponsors had considered amending Rule 810, Function 8, to address this issue, but because the rule was adopted prior to full state funding for the trial court system, it would be more effective to develop a remedy that reflects the courts' current operational and funding environment.

Function 8 of Rule 810 of the California Rules of Court specifies that court security services are necessary and include the duties of a bailiff, perimeter security, and supervisory personnel. The rule lists as allowable costs the salary, wages, and benefits of security personnel, court attendants, supervisory staff and contract employees, as well as security equipment and equipment maintenance. The rule disallows salaries for other law enforcement personnel, overhead costs, transportation and housing of inmates, service of process costs, and supervisors of bailiffs and sheriff's security personnel.

This bill supplants Function 8 of Rule 810, Rules of Court.

Existing law, Government Code Section 26603 (added by Chapter 424, 1947; amended by Chapter 381 of 1979 and Chapter 1582 of 1982, stipulates that, unless otherwise provided by law, the county sheriff will attend all superior court proceedings held within the county except for civil actions unless the presiding judge determines the sheriff's attendance is required at civil actions for public safety reasons.

This bill repeals that section.

Existing law, Government Code Section 77212.5. (a) (Chapter 764, 1998), requires from July 1, 1999, on, that any county in which the sheriff is required by law to provide court security services is required to enter into an agreement with the sheriff's department that provided services during the preceding year, to assure the continued provision of court security services. The law also requires that from July 1, 1999, on, trial courts in counties where court security was provided by the marshal's office during the preceding year, shall, if the marshal's office is abolished, enter into an agreement for security services with the successor sheriff's department.

This bill repeals that section.

This bill adds Article 8.5 of the Government Code, creating the Superior Court Law Enforcement Act of 2002 and defining the following terms:

- "contract law enforcement template" refers to a document found in the Administrative Office of the Courts' financial policies and procedures manual to account for and define allowable court security costs;
- "court attendant" is an unarmed, non-law enforcement court employee who performs specific functions for the court for which an armed law enforcement officer is not required;
- "court security plan" is defined as a plan that includes a law enforcement security plan provided by the superior court to the Administrative Office of the Courts;
- "law enforcement security plan" refers to a plan provided by the sheriff or marshal that includes public safety and law enforcement service policies and procedures; and
- "superior court law enforcement functions" are defined with the following meanings:
    1) Bailiff functions;
    2) Taking charge of a jury;
    3) Patrolling hallways and other court facility areas;
    4) supervising prisoners in court holding facilities;
    5) escorting prisoners in holding cells within court facilities;
    6) providing security screening services for the court; and

7) supplying enhanced security services for judges and court personnel, as agreed by the courts.

This bill adds language, specifying that the presiding superior court judge's duties include having the authority to contract with the sheriff or marshal for court security services, subject to the availability of funding.

SB 1396 specifies that, unless otherwise provided by law, a sheriff will attend all superior court proceedings for which his or her presence is required. The bill requires the sheriff to attend non-criminal, non-delinquency actions only if the presiding judge determines the sheriff's attendance is required for public safety reasons. The bill authorizes the use of court attendants during non-criminal and non-delinquency actions, and specifies that the presiding judge or his or her designee are authorized to place a court attendant in charge of a jury, in accord with Sections 613 and 614 of the Code of Civil Procedure. The section specifies that the sheriff is required to obey all lawful court orders and directions.

Note: The preceding provision replaces provisions of Government Code Section 26603, which is repealed by this bill.

The bill requires, starting on July 1, 2003, that the presiding judge and the sheriff or marshal will work together to develop a comprehensive yearly or multi-year court security plan that includes the mutually agreed upon law enforcement plan for the courts. The bill requires the Judicial Council to outline the required provisions of the plan, and to identify the most efficient means of providing for court security. The Judicial Council is required by the bill to develop a process within the California Rules of Court for reviewing court security plans and to report annually to the Senate and Assembly Judiciary committees on the county court security plans that have been reviewed. The report must include a description of each plan, the projected cost of implementation, and an analysis of whether or not each plan complies with the Judicial Council's most efficient practice rules.

The bill creates new requirements for the superior court and sheriff's or marshal's departments in counties in which the sheriff's department is legally required to provide court security services or in which security services once provided by a marshal are now provided by the sheriff. The section requires the superior court and sheriff or marshal to enter into a memorandum of understanding that details the planned level of court security services, the cost of those services, and the terms of payment. The bill requires such agreements be met by August 1 of each year.

The bill also requires the sheriff or marshal to annually provide information, as identified in the contract law enforcement template, that specifies the nature, scope, and basis for the costs of court security service, including potential salary changes that would be proposed in the coming budget year. SB 1396 requires all court security funding be approved by the Judicial Council and the Legislature. The bill declares Legislative Intent that court security spending proposals approved through the state budget process will follow the definitions outlined in the contract law enforcement template.

SB 1396 provides for the possibility that the superior court and sheriff or marshal may not reach an agreement by August 1, authorizing either party in the negotiations to request a 45-day continuation with mediation services. During such continuation, the bill specifies that the previous law enforcement agreement will remain in effect. The bill requires the Administrative Director of the Courts and the president of the California State Sheriff's Association to determine mutually acceptable mediation services.

This bill declares Legislative Intent to establish a definition of the court security component that will replace Function 8 of Rule 810 of the California Rules of Court. The new definition is intended to standardize billing and accounting procedures, and to identify allowable law enforcement security costs. The bill also states the Legislature's intent that court law enforcement budgets will not be reduced in response to these provisions, nor will the new court security costs allowed by the bill be permitted without funding approval from the Legislature.

The bill requires the Judicial Council to establish a working group on court security comprised of six judicial representatives appointed by the Courts Administrative Director, two county

representatives selected by the California State Association of Counties, and three county sheriff's representatives selected by the California State Sheriffs' Association. The working group is authorized to recommend modifications to the template that is used to determine whether or not security costs are allowable. The bill stipulates that the template will be part of the trial court's financial policies and procedures manual in replacement of Function 8 of Rule 810 of the California Rules of Court.

Upon mutual agreement between the courts, the county and the sheriff or marshal, **the bill allows** the costs of perimeter security for any shared county court facilities to be apportioned on the basis of the amount of floor space not shared by the court and the county.

SB 1396 defines "allowable costs for equipment, services, and supplies," as outlined in the template, as the cost of purchase and maintenance of security screening equipment, and the cost of ammunition, arms, protective gear, uniforms, and equipment to control or subdue violent perpetrators.

The bill defines "allowable costs for professional support staff for court security operations," as outlined in the contract law enforcement template, as all costs associated with hiring support staff to handle payroll, human resources, information systems, accounting, budgeting, and other services related to court-mandated special support services.

SB 1396 defines "allowable costs for security personnel services," as outlined in the contract law enforcement template, as all county costs associated with hiring staff and training expenses for deputies, court attendants, contract law enforcement services, prisoner escorts, weapons screening personnel, training required expressly by the court, and overtime and related benefits for court security personnel.

The bill requires the Administrative Office of the Courts to use actual figures from court security personnel salaries and benefits as approved annually on June 30 when preparing the Department of Finance funding request for the following fiscal year.

The bill stipulates that courts and court security staff are to minimize the use of overtime.

SB 1396 defines "allowable costs for vehicle use for court security needs," according to the contract law enforcement template, as the cost per mile of providing court security services, excluding the costs of transporting prisoners or detainees. The bill requires that the standard mileage reimbursement rate for judicial officers and employees in effect when the contract is developed will be used as the rate of reimbursement.

This bill declares that these provisions are not a mandate for which state reimbursement is required.

LEGISLATIVE HISTORY

AB 3028 – Committee on Judiciary (Amended June 26, 2002) is an omnibus court procedures bill. The measure includes provisions that permit the Judicial Council to authorize the direct payment of costs for trial court programs, and to require the Judicial Council to request quarterly transfers from the Controller's Office to the Trial Court Trust Fund and the Trial Court Improvement Fund. The bill would also require the Judicial Council to file specified reports and establish certain procedures in this regard. The bill is pending in Senate Judiciary Committee.

AB 223 – Dickerson (Chapter 15, 2000) required the Judicial Council, in consultation with the California State Association of Counties and the County Auditors Association of California by February 1, 2001, to study and make recommendations to the Legislature on alternative procedures for improving collections and remittance of Trial Court Trust Fund revenues.

AB 1673 – Committee on Judiciary (Chapter 891, 1999), among other things, authorized the Madera County Sheriff to provide services to the court in place of the Madera County Marshall. The bill also deleted provisions that prohibited the Humboldt County Sheriff from diverting personnel or

other resources allocated to the County Security Services Division through the annual budget process.

SB 1196 – Morrow (Chapter 641, 1999) authorized the County Supervisors of Merced, Orange, and Shasta counties to hold public hearings on court consolidation. Among other things, the bill provided that if the counties elected to abolish the marshal's office, those duties would be assigned to the sheriff's department and specified the method for assignment of bailiffs and employment of marshal's and sheriff's office staff following the consolidation. SB 1196 also required, as of July 1, 1999, that any county in which the sheriff was required by law to provide court security services must enter into an agreement with the sheriff's department that provided those services on July 1, 1998, for the continued provision of security services. The bill required after July 1, 1999, trial courts in counties where court security was provided by a marshal's office to enter into an court security service agreement with the sheriff's department that had replaced the marshal, if the marshal's office had been abolished.

AB 92 – Cardoza (Chapter 764, 1998) required counties to enter into service agreements with sheriff's departments for providing court security services on an ongoing basis.

PROGRAM BACKGROUND

According to the sponsors, California's court system relies on ambiguous guidelines for defining allowable court security expenses. Function 8 of Rule 810 of the Rules of court uses broad, general terms for defining expenses, such as allowing "equipment" costs, but not specifying what types of equipment. The lack of specificity has led to a wide variation in what the various courts see as allowable costs. According to the Judicial Council, one court may consider security officer uniforms to be "equipment," while another may not. The different interpretations cause differences in what county sheriffs are required to supply in providing security services to the various courts. The definition of "training" is also unclear and has been interpreted in a variety of ways.

The sponsors believe the approach taken by SB 1396 will ensure that every court is being charged uniformly, and the new system will provide an opportunity to compare across the court system.

The sponsors had considered amending Rule 810, Function 8, to address this issue, but because the rule was adopted prior to full state funding for the trial court system, believed it would be more effective to develop a remedy that reflects the courts' current operational and funding environment.

OTHER STATES' INFORMATION

NEW HAMPSHIRE Revised Statutes Title LIX, Chapter 594, Section 1-a stipulates that bailiffs and supreme court security officers will have full powers of arrest when performing court security duties. The bill specifies that the sheriff, through the sheriff's deputies and bailiffs, is responsible for court security and is responsible for the conduct and control of detained defendants and prisoners during their time in all state courts, except for the Supreme Court.

TENNESSEE Code Title 16, Chapter 2, Part 5, Section 5 (d) requires counties to establish a court security committee composed of the county executive, sheriff, district attorney general, the presiding judge of the judicial district, and a court clerk from the county, for the purpose of determining the security needs of the county courts in order to provide safe and secure facilities. The committee's findings must be compared to the minimum security standards as adopted by the Tennessee Judicial Conference, and by May 15 of each year, be reported to the county legislative body and the administrative office of the courts. The law requires the county legislative body to review and consider the recommendations of the court security committee in preparing the fiscal year 1995-96 budget and each subsequent budget, and by December 1 of each year, to report to the administrative office of the courts on any action taken to meet the security needs. No later than January 15 of each

year, the administrative office of the courts is required to report to the general assembly on each county's compliance with the security needs established by the court security committee. The law specifies that any recommendation by the court security committee requiring county expenditures shall be subject to approval of the county legislative body.

WEST VIRGINIA Codes Chapter 51, Article 3, Section 16 authorizes the county sheriff, circuit judges, magistrates, and family law masters to develop a security plan to enhance the security of all the court facilities in the county for submission to the court security board. The law details all required components of the plan and requires that each plan prepared under this section receive approval by the court security board. The law specifies that any plan rejected by the court security board must be returned to the county with a statement of the insufficiencies in such plan, which shall be revised for resubmission to the court security board. The law requires the court security board to meet at least twice a year to review the plans and to award money from the court security fund to the circuit clerk, county commission or county sheriff for use in purchasing equipment, hiring personnel or making other identified expenditures in accordance with the plan. The board is required to develop an application form and establish criteria to assist the board in making the decisions on funding decisions and in establishing how much money will be awarded. The board must also convey in writing the amount of the award, the time frame for accomplishing the plan's objectives and the requirement that any unexpended money be returned to the board for deposit in the court security fund. The court security board is authorized to award money from the court security fund to be used by the counties for costs and expenses of training for bailiffs, and to establish minimum standards for training.

FISCAL IMPACT

According to the sponsors, this bill may increase trial court funding costs by allowing coverage of more court security costs. This will be offset, to some degree, by reductions in charges from counties that have previously over-charged for costs. The bill specifies that no additional costs will be approved prior to the Legislature's approval through the state budget process.

ECONOMIC IMPACT

This bill will have no direct economic impact.

LEGAL IMPACT

This bill creates no new cause of action.

SUPPORT/OPPOSITION

Support:
Judicial Council
California State Sheriff's Association
California State Association of Counties

Opposition:
None listed.

ARGUMENTS

Pro:

- SB 1396 replaces the ambiguous instructions on court security costs found in Function 8, Rule 810 of the Rules of Court.

- California's court systems have gone too long without clear direction on providing court security services. This bill will bring uniformity to court security services throughout the state's court system.
- By detailing the court security costs eligible for trial court funding reimbursement, the bill will place all counties on equal footing for reimbursement.
- With the nation's current concerns over terrorist acts, this bill will help to better prepare our courts for any possible threat, thus strengthening security throughout the court system.

Con:

- This bill may increase state costs by widening the range of charges allowable for court security services. Even though the payment for new charges will require prior Legislative approval, there will undoubtedly be additional costs that the Legislature deems necessary and merit approval.
- SB 1396 is not needed. The Judicial Council has the authority under Government Code 68502.5 to develop rules to address the needs of the court system, and to recommended adjustments to trial court budgets.

VOTES

		Ayes	Noes
8/ /02	Senate Concurrence		
8/ /02	Assembly Floor		
6/26/02	Assembly Appropriations	22	0
6/11/02	Assembly Judiciary	12	0
5/29/92	Senate Third Reading	38	0
5/23/02	Senate Appropriations	12	0
5/7/02	Senate Judiciary	7	0

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EXHIBIT 9

1510 Governor Davis

Judicial Council of California
Administrative Office of the Courts

Office of Governmental Affairs
770 "L" Street, Suite 700 • Sacramento, CA 95814-3303
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 800-735-2929

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

RAY LEBOV
Director
Office of Governmental Affairs

September 12, 2002

Honorable Gray Davis
Governor of California
State Capitol, First Floor
Sacramento, CA 95814

Subject: SB 1396 (Dunn) – Request for Signature

Dear Governor Davis:

The Judicial Council is co-sponsoring SB 1396 (Dunn), with the California State Sheriffs Association. California Rules of Court, Rule 810, function 8 defines allowable and unallowable state costs for court security, but the details are ambiguous. For example, the rule says that equipment is an allowable cost, but it does not specify what type of equipment. Because Rule 810 does not provide specificity in the areas of equipment and personnel costs, it has been subject to different interpretations across the state.

A Court Security Working Group, with representatives from the courts, Administrative Office of the Courts, California State Sheriff's Association, and California State Association of Counties, considered amending Rule 810 function 8, but determined that because it was written prior to full state funding of the trial courts it made more sense to instead draft legislation that reflects the current operational and funding environment of the courts.

SB 1396 will, among other things, clarify state costs for court security. Specifically, SB 1396 will:

1) clarify what are allowable and unallowable state costs for court security;
2) require each court to prepare and implement a court security plan;
3) require each Sheriff or Marshall to prepare and implement a law enforcement security plan; and

4) require the Judicial Council to adopt a rule establishing a working group on court security that may recommend modifications to the implementation of these provisions.

For the above reasons, the Judicial Council respectfully requests your signature on SB 1396.

Sincerely,

Eraina Ortega
Legislative Advocate

cc: Honorable Joseph Dunn
Mr. Mike Gotch
Ms. Ann Richardson
Office of Planning and Research

EXHIBIT 10

California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894
Request for Signature

August 30, 2002

Honorable Gray Davis, Governor
State of California
First Floor, Capitol Building
Sacramento, CA 95814

Subject: SB 1396 (Dunn) – Sponsor (with Judicial Council)

Dear Governor Davis:

On behalf of the California State Sheriffs' Association (CSSA), I am pleased to advise you that we are the co-sponsors of SB 1396 with the Judicial Council. We respectfully request your signature of the bill. The bill creates a statewide and uniform standard for reporting costs of court security provided by the sheriffs to the courts.

SB 1396 is necessary to clarify California Rules of Court, Rule 810, function 8, which define allowable and unallowable state costs for court security. The current rules in this area are confusing and ambiguous. For example, the rule says that equipment is an allowable cost, but it does not specify what type of equipment. Because Rule 810 does not provide specificity in the areas of equipment and personnel costs, it has been subject to different interpretations across the state.

A court security working group, with representatives from the courts, Administrative Office of the Courts, California State Sheriffs' Association, and California State Association of Counties, considered amending Rule 810 function 8, but determined that because it was written prior to full state funding of the trial courts it made more sense to instead draft legislation that reflects the current operational and funding environment of the courts.

SB 1396 will, among other things, clarify and unify how court security costs are reported to the state. Specifically, SB 1396 will:

- clarify what are allowable and unallowable state costs for court security;
- retain the requirement that the sheriff or Marshall shall be the provider of court security services;
- require the court and sheriff to prepare and implement a court security plan;
- require the Judicial Council to adopt a rule establishing a working group on court security that may recommend modifications to the implementation of these provisions.

This measure is the outcome of months of productive negotiations between and among counties, courts and sheriffs. We are pleased with the outcome and we request your signature on the bill. Thank you.

Cordially,

Nick Warner
Legislative Director

cc: The Honorable Joe Dunn, Member of the Senate

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EXHIBIT 11

COUNTY OF LOS ANGELES
Sacramento Legislative Office
1100 K STREET, SUITE 400 • SACRAMENTO, CALIFORNIA 95814
(916) 441-7888 • FAX (916) 445-1424

August 31, 2002

Honorable Gray Davis
Governor, State of California
State Capitol
Sacramento, California 95814

RE: SENATE BILL 1396 (DUNN), AS AMENDED JUNE 17, 2002, RELATING TO COURT SECURITY – REQUEST FOR SIGNATURE

Dear Governor Davis:

The Los Angeles County Board of Supervisors supports Senate Bill 1396 (Dunn), as amended June 17, 2002, relating to court security. That measure is awaiting your action.

Current law provides for the organization and operation of California's trial courts. Court security provisions have been interpreted inconsistently throughout the State.

Senate Bill 1396 would replace the current Rule of Court regarding court security with a statutory requirement that courts and sheriffs in each county develop a court security plan. It states the intent not to reduce the current court security budget and not to create any increased court security costs, unless those costs are funded by the Legislature.

I urge that you sign Senate Bill 1396's effort to improve security in California's courts.

Very truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

cc: Senator Joseph Dunn

EXHIBIT 12

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS
NORTHERN/CENTRAL REGIONAL OFFICE
2880 Gateway Oaks Drive, Suite 300 • Sacramento, California 95833-3509
Telephone 916-263-1900 • Fax 916-263-1966

MEMORANDUM

Date
July 10, 2003

To
California State Sheriffs
Executive Officers of the Superior Courts

From
Michael Roddy
Regional Administrative Director,
Northern/Central Region
Administrative Office of the Courts

Doug Storm
Assistant Sheriff
Orange County Sheriff's Department

Subject
Court Security – Contract Law Enforcement Template - Supplemental Information

Action Requested
N/A

Deadline
N/A

Contact
Mike Roddy
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916-263-1966 fax
mike.roddy@jud.ca.gov

Doug Storm
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714-953-3092 fax
dstorm@ocsd.org

We are pleased to announce the Administrative Office of the Courts (AOC) and the California State Sheriffs Association (CSSA) have completed responses to the court security questions submitted at the SB 1396 training sessions that were held on March 18, 19, 26, and 28 in the AOC Sacramento, San Francisco and Burbank offices. The SB 1396 training sessions were attended by sheriff's departments and court staff who have responsibility for the provision and fiscal management of court security services, and provided information in the following areas:

- Allowable and unallowable court security costs under SB 1396
- How trial courts and the sheriff should apply SB 1396, even though no additional funding for court security has been appropriated
- Using the standardized court security financial reporting template to report court security expenditures

As many sheriff and court staff asked the same questions, we have summarized the questions and our response below.

Law Enforcement Security Personnel Services

Question: Please explain the state's policy on funding staffing, salary and benefit increases.

Currently, there are no recognized staffing formulas being used statewide, so each request for additional positions and funding is evaluated individually. The state does not automatically fund all salary increases, so benefit increases based on salary are considered on a case-by-case basis. There are currently no plans to establish a relief factor for sheriff's deputies. However, the working group may consider this issue in the future.

Question: If a court security position is backfilled with an individual receiving a higher salary, should the court pay the salary for the agreed upon position or the salary of the more costly replacement?

The court is responsible for the actual costs for filling a position, but changes from the written agreement must be mutually agreed upon if a position is backfilled with a higher-paid employee.

Question: Should the template include the costs of AB 1058 security? If not, how is growth funding provided for AB 1058 deputies working in courtrooms, since AB1058 has not received increases?

No. The template does not include court security expenditures related to AB 1058 child support hearings, because these positions are separately funded out of a federal grant. Cost increases for court security staff used in these child support hearings should be handled through the AB 1058 reimbursement process and should not be included in the template.

Question: In a multi-use building, should there be an allocation of sheriff time, considering that court security may respond to incidents in those county offices or with their clientele?

While this arrangement may be more equitable than having the court assume all costs, it must be locally negotiated.

Question: How should the sheriff calculate the proportion of time spent on supervision and how should records be kept to support these charges?

The court may fund supervisory positions at actual cost, but only when the supervisory position works at least 25% of time. There are no minimum staffing levels for supervision. The sheriff and the court should mutually agree upon a reasonable standard. Supervision time spent on court security functions should be noted on individual timesheets.

Question: Please explain when sheriffs may charge the court for overtime and what costs should be paid when replacement security staff on overtime is used for court security.

Generally, the court should pay the regular rate for security staff that is actually working at anytime. For auditing purposes, the sheriff should maintain time card records of who is in court.

The court is responsible for paying overtime costs when overtime is requested or when court operations require it (i.e. court runs past regular workday). If the sheriff replaces regularly assigned staff with staff paid at an overtime rate, the court is responsible for paying the replacement staff at the regular rate only. If the regular rate of the replacement staff is higher than the rate for the regularly assigned staff, this must be specified in the local agreement and mutually agreed upon by the court and the sheriff. Currently, there is no relief factor for bailiffs, so if the sheriff can only provide higher paid staff for relief staffing, the court and the sheriff must agree upon service reductions. The court can pay for vacation time or replacement staff, not both.

Question: Please provide examples of premium pay and whether or not they may be charged to the court.

Examples of premium pay include SWAT, canine, compensated time off, and military pay. All agreements for premium pay must be locally negotiated and mutually agreed upon by both the court and the sheriff.

Question: Please explain court and county responsibilities under labor code section 4850 and SDI.

Under SB 1396, the following workers compensation costs are allowable:

- Worker's compensation paid to an employee in lieu of salary as specified in Labor Code Section 4850.
- Worker's compensation premiums.

The court contracts with the sheriff for services. Since sheriff's staff are employees of the county, they would be covered under the county's workers compensation program.

Pursuant to Labor Code Section 4850, peace officers are entitled to 100 percent of their salary when out due to a work-related injury. The court is responsible for the difference between actual workers compensation payments and the individual's salary. For example, if the county workers compensation insurance program funds 80 percent of the injured worker's salary, the court would be responsible for the remaining 20 percent. Under a self-insured county program, the court could be responsible for 100 percent of the salary in addition to the cost of replacement staff.

If court security staff are injured, the sheriff and the court should mutually agree on a solution – the court cannot require the sheriff to provide backfill services at the same cost and the sheriff may not unilaterally impose additional costs on the court. The court should have the option to request a service reduction or reorganize court operations to reduce the need to pay additional costs.

Question: Please explain how the sheriff should calculate the amount of leave balance payouts for court security staff which can be charged to the court.

The court is responsible for leave balance payouts for time accumulated since January 1, 1998 for court security staff that retire after January 1, 2003. The sheriff is responsible for tracking court security staff time spent in the court and must have time cards available for audit if the court is billed for leave balance payout. As with all other costs, courts cannot be billed for leave balance payouts, until funding is provided to implement SB 1396.

Question: Is the payment of premiums for lifetime health benefits in retirement an allowable cost?

Yes. Payment of retirement benefits, such as health insurance should be locally negotiated.

Question: Please explain the types of training that the sheriff may charge to the court?

Under SB 1396, the sheriff may charge the court only for training that is required by the court and not part of the sheriff's staff regular training. The court pays for any special training it requests, but does not pay for POST-mandated training. The court is not responsible for any training required to maintain the status of sheriff staff as peace officers, etc. To the extent possible, the sheriff should schedule training for court security staff during court holidays to minimize use of overtime. Positions dedicated to training are not an allowable cost.

Question: If sheriff's personnel do not observe a court holiday, can they charge the court for this cost?

Yes, if locally negotiated. However, we recommend that sheriffs provide training to court security staff on court holidays in order to reduce the use of overtime hours.

Equipment, Services and Supplies

Question: If the Court purchases allowable safety equipment for a bailiff and the bailiff leaves court security, does the equipment stay behind?

Yes. The court does not provide a new complement of equipment each time new staff is assigned to the court. Charges for safety equipment should be an annual cost based on the expected life of the equipment and length of time staff are assigned to the court.

Question: Does the Court pay a uniform allowance on a backfill position as well as the regular staff position? (i.e. when someone is out long term under labor code section 4850)

No. The court should fund allowable equipment based on the number of court security positions mutually agreed upon with the sheriff. This does not change based on turnover of individual security staff.

Question: Uniform costs are to be listed under supplies. In our county, the uniform allowance is paid to deputies via payroll, subject to FICA, retirement, etc. Shouldn't this be left in salaries and benefits for court billing purposes?

It was determined that including uniforms as part of equipment to be purchased would be a more consistent approach since many sheriffs do not provide uniform allowances as part of compensation.

Question: Who pays for training associated with using equipment?

All allowable equipment costs are for standard peace officer, regardless of whether or not they are assigned to the court, so the sheriff is responsible for training associated with using the equipment.

Question: If sheriff's MOU includes an annual equipment allowance, can they also charge for additional equipment? The equipment allowance appears to be non-specific. Or is this equipment allowance an allowable cost to the court?

The only allowable equipment costs are for items specified in SB 1396. No other equipment costs are allowable.

Question: Is underground parking within the definition of Perimeter Security?

No.

Question: Is the maintenance of radios included in allowable costs? Is the "monthly service charge" for usage of radios allowable? Radio backbone costs?

Yes. Maintenance of radios and monthly service charges may be charged to the court based on the proportion of staff dedicated to court security services. Radio backbone costs are allowable and can be prorated based on the proportion of the system dedicated to the court.

Vehicle Use for Court Security Needs

Question: What are examples of allowable and unallowable vehicle use charges?

Court security activities for which the sheriff may charge the court for vehicle use include:

- Taking juries to crime scenes by order of a judge.
- Transportation of sheriff supervision staff between court facilities to oversee court security staff.

Court security activities for which the sheriff may not charge the court for vehicle use include:

- Prisoner transportation between courthouses and/or jail facilities.
- Change of venue

Professional Support Staff for Court Security Operations

Question: How should the sheriff calculate professional support costs? What if the county provides professional support services to the sheriff – how should the court be charged?

There is currently no statewide methodology for determining sheriff support staff costs, as these costs are not allowable under Rule 810.

The sheriff may bill the court for actual professional support costs based on a mutually agreed upon methodology and any invoices should be supported by timecards indicating the amount of staff time used for court security. Pursuant to Government Code section 69927(a)(4):

" Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services is less than ten million dollars ($10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services exceeds ten million dollars ($10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services."

If the sheriff does not have a dedicated professional support staff and the county provides these services to the sheriff, the court may be charged for a portion of distributed support staff costs (A87 costs) incurred by the sheriff, based on the number of sheriff's staff assigned to court security.

Question: Are data processing costs charged by the county to the sheriff, for which there are no dedicated staff hours (the sheriff is charged on a per user basis), an allowable cost which can be charged to the court?

Yes. This cost can be allocated based on the proportion of users dedicated to court security services, taking into account the extent to which security staff use computers in the courthouse.

Question: Can the court bill the sheriff for time spent verifying and correcting inaccurate billing statements? The court currently spends significant amounts of time backing out unallowable costs, undocumented costs, etc.

If this is a recurring problem, we recommend a provision in the court security agreement, which provides for compensation if errors appear consistently and are not addressed.

Court Security Budget Management

Question: Please explain how trial courts receive allocations for court security and what the courts' responsibilities are with respect to expending those funds for court security purposes.

Each trial court's budget contains many cost categories, including personal services, equipment, consulting services, etc. Court security is one of many cost categories in the trial courts budgets. These funds should be expended on court security, but the court budget transfer process allows courts to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operations or to correct technical errors. Budget transfers are subject to the following limitation:

- For any fiscal year, a cumulative amount not to exceed $400,000 or ten percent, whichever is less, of the affected program, element, component or task, may be transferred between or among other programs, elements, components or tasks. This threshold applies to increasing or decreasing programs, elements or components. The trial court has the authority to transfer unrestricted funds up to this limitation and must report this information to the AOC.

- Any request(s) exceeding the $400,000 or ten percent threshold requires written notification to the AOC Finance Division and must include a complete explanation for the necessity of the transfer. The AOC will review the request and respond (approve/deny) within 30 days of receipt.

Courts that redirect funds from security may not request addition funds until their total costs exceed the base security allocation plus any budget augmentations.

At this time we do not know when funding will be made available to fully implement SB 1396. Until new funding is appropriated, courts should continue to pay the cost categories that were in effect and funded before January 1, 2003. For example, if a court has historically funded POST training, it could negotiate to reduce the amount of training provided to accommodate budget reductions. However, a court could not decide to stop funding POST training, because it is an unallowable cost under SB 1396. When new funding is appropriated, the sheriff may only bill the court for prospective costs from the date funding becomes available.

Question: How should the court and the sheriff handle mid-year budget reductions or cost increases?

SB 1396 provides that any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature. This includes mid-year funding increases. The sheriff may not unilaterally impose cost increases at midyear and the court may not require the sheriff to provide a continued level of service at the sheriff's increased expense. The court and the sheriff should mutually agree upon service reductions that reflect and accommodate the constraints faced by the sheriff and the court. The sheriff and the county must resolve whether or not a sheriff must keep court security positions which can no longer be funded by the court.

Question: Under what circumstances can a court negotiate for cost reductions in new contract?

When a new contract is being negotiated, the court may propose cost reductions in light of necessary budget reductions. While courts must continue to pay for the same types of court security costs, they may negotiate increases or reductions based on court needs. If the court and the sheriff reach an impasse in negotiating a new contract, the sheriff is required to provide a minimum level of service, until disagreements are resolved. Pursuant to Government Code section 69926(a)(1)(d):

If the superior court and the sheriff or marshal are unwilling or unable to enter into an agreement pursuant to this section on or before August 1 of any fiscal year, the court or sheriff or marshal may request the continuation of negotiations between the superior court and the sheriff or marshal for a period of 45 days with mediation assistance, during which time the previous law enforcement services agreement shall remain in effect. Mutually agreed upon mediation assistance shall be determined by the Administrative Director of the Courts and the president of the California State Sheriffs' Association.

Auditing Standards

Question: What will be the AOC's audit criteria in reviewing sheriffs billing records (types of records, retention policy, etc.)? Do sheriffs need to send these records to the court with each billing statement?

As the employer, the sheriff – not the court -- is responsible for tracking hours worked by deputies.

At a minimum, sheriffs should retain auditable records for five years, in order to support invoiced charges to the court. Types of records that should be kept include all monthly time cards for security and professional support staff, purchase receipts, etc. These records do not need to be included with each invoice to the court, but should be made available to the court for review. Documentation that should be included with each bill include regular and overtime hours worked.

Examples of records that will not be accepted in lieu of actual timecards are:

- Sample of monthly timecards
- Job descriptions and monthly schedules

Sheriffs should expect to have court security billing records audited by the AOC at least once every three years.

Court Security Plans

Question: When will the court security plan requirements be available? Will the AOC provide sample court security plans?

The SB 1396 Working Group will be recommending court security plan elements to the Judicial Council. The AOC is in the process of collecting existing court security plans and will be able to provide samples of court security and law enforcement plans.

Question: Does the legislation clearly define what services the sheriff has to provide and what the court has to provide?

SB 1396 does not specify the types of services that the sheriff must provide for the court other than that "the sheriff shall attend all superior court held within his or her county."

Question: If the court security plan and the law enforcement plan are the same can a court submit just one plan?

Yes, the court security plan and the law enforcement plan can be the same document if, by mutual agreement of the court and the sheriff, the sheriff/marshal is responsible for all aspects of court security and the plan addresses all areas outlined by the Judicial Council.

Question: What are court security costs outside of court law enforcement costs?

Possible court security costs outside court law enforcement costs could include court attendants, private contractors used for perimeter security, security equipment owned by the court (i.e. video cameras, panic buttons, etc.)

Question: Will the AOC be providing a list of best practices?

Yes, a list of best practices will be provided after the working group has reviewed all court security plans.

Question: What is the difference between law enforcement services and court security? What are "other court security matters"?

Law enforcement services include all activities provided or administered by the sheriff/marshal. Court security services include law enforcement services and other security functions, such as court attendants, or perimeter security provided by a private vendor.
"All other court security matters" includes all court security functions not provided or administered by the sheriff or marshal.

Question: Security defines requirements - can the presiding judge change requirements?

Court security requirements must be mutually agreed upon by both the sheriff and the presiding judge.

Other Questions

Question: When will the court security policy in the Trial Court Financial Policies and Procedures manual be approved and in effect?

The latest version of the Trial Court Financial Policies and Procedures manual will be effective no later than November 1, 2003.

***Question**: What is the status of the court security budget trailer bill?*

The Governor's proposal to allow trial courts to contract for court security services was recently dropped, because many stakeholders came to agree that such contracting might not achieve the additional savings originally anticipated. The budget conference committee has included the following language as part of the omnibus trailer bill:

"A working group on court security shall promulgate recommended uniform standards and guidelines which may be used by the Judicial Council and Sheriffs for trial court security services. The Judicial Council shall provide for the establishment of a working group with representatives from the judiciary, the California State Sheriffs Association, California State Association of Counties, Peace Officers Research Association and California Coalition of Law Enforcement Associations for the purpose of developing recommended guidelines."

This language is subject to agreement by the Legislature and the Governor.

***Question:** What is the status of Senate Bill 254 related to the use of court attendants? Have there been any decisions on the duties/responsibilities of court attendants? Training & certification, how the attendant will interact with Sheriff's deputies?*

Under current law, the trial court may hire court attendants to perform functions that are not the sole responsibility of the sheriff. The court may also use court attendants in non-criminal, non-delinquency matters at the discretion of the presiding judge. Court attendants are authorized to take charge of juries that are deliberating without the agreement of the sheriff. Mutual agreement is preferable when possible.

SB 254 was not passed out of the Senate Appropriations Committee and is now "dead". The bill has been a catalyst for discussions between the judicial branch, the California State Sheriffs Association and law enforcement labor associations and it is likely that developing standards for how court attendants will be used will be the responsibility of the working group on court security.

Status as of 4/16/04 – see next page

CURRENT BILL STATUS

MEASURE : S.B. No. 254
AUTHOR(S) : Dunn.
TOPIC : Trial courts: court attendants.
HOUSE LOCATION : SEN +
LAST AMENDED DATE : 05/05/2003
TYPE OF BILL : Inactive Non-Urgency Non-Appropriations Majority Vote Required Non-State-Mandated Local Program Non-Fiscal Non-Tax Levy
LAST HIST. ACT. DATE: 02/02/2004
LAST HIST. ACTION : Returned to Secretary of Senate pursuant to Joint Rule 56.
TITLE : An act to amend Section 69922 of the Government Code, relating to trial courts.

EXHIBIT 13

Judicial Council of California
Administrative Office of the Courts

COURT SECURITY

POLICY NUMBER: AOC FIN 14.01

Original Release

August 2003

Originator:	Effective Date:	Revision Date:
Administrative Office of the Courts	July 1, 2006	January 12, 2006

CONTRACT LAW ENFORCEMENT TEMPLATE

Attachment A -Contract Law Enforcement Template, Version 2 – Effective May 1, 2003

County:				**FY ENDED:**	
DIRECT SECURITY:					
SECURITY PERSONNEL					
Supervision Personnel	**FTE's**	**HOURS**	**SALARY**	**BENEFITS***	**TOTAL COSTS**
Captain	0	0	0	0	0
Lieutenant	0	0	0	0	0
Sergeant	0	0	0	0	0
Other Titles	0	0	0	0	0
Total Supervisors Direct Security: (AutoField)	0	0	0	0	0
Line Personnel	**FTE's**	**HOURS**	**SALARY/ CONTRACT**	**BENEFITS***	**TOTAL COSTS**
Deputies / Court Security Officers et al. Inside the courtroom	0	0	0	0	0
Deputies et al. / Perimeter Security / Escort	0	0	0	0	0
Weapons Screening Personnel	0	0	0	0	0
Contracted Security Services / Cost		0	0	0	0
Court Required Training		0	0	0	0
Total Line Personnel Direct Security: (AutoField)	0	0	0	0	0
OVERTIME					
Supervision Personnel		**HOURS**	**OVERTIME**	**BENEFITS***	**TOTAL COSTS**
Captain		0	0	0	0
Lieutenant		0	0	0	0
Sergeant		0	0	0	0
Other Titles		0	0	0	0
Total Supervisors Overtime: (AutoField)		0	0	0	0
Line Personnel		**HOURS**	**OVERTIME**	**BENEFITS***	**TOTAL COSTS**
Deputies / Court Security Officers et al. Inside the courtroom		0	0	0	0
Deputies et al. / Perimeter Security / Escort		0	0	0	0
Weapons Screening Personnel		0	0	0	0
Contracted Security Services		0	0	0	0
Court Required Training		0	0	0	0
Total Line Personnel Overtime: (AutoField)		0	0	0	0
TOTAL HOURS AND COSTS SPENT ON OVERTIME (AutoField)		0	0	0	0
TOTAL DIRECT SECURITY PERSONNEL COSTS			0	0	0

(AutoField)					

* Benefits refer to Section III, No. 2

CONTRACT LAW ENFORCEMENT TEMPLATE

Attachment A – Contract Law Enforcement Template, Version 2 – Effective May 1, 2003

County				FY ENDED:	

PROFESSIONAL SUPPORT STAFF FOR COURT SECURITY OPERATIONS

Hours/Cost of Staff Required Assistance In:

		HOURS	SALARY	BENEFITS*	TOTAL COSTS
Payroll Processing Staff		0	0	0	0
Human Resources Staff		0	0	0	0
Information Systems Staff		0	0	0	0
Accounting Staff		0	0	0	0
Budget Staff		0	0	0	0
Court-mandated special project support		0	0	0	0
Total Professional Staff Costs (AutoField)		0	0	0	0

OVERTIME		HOURS	OVERTIME	BENEFITS*	TOTAL COSTS
Payroll Processing Staff		0	0	0	0
Human Resources Staff		0	0	0	0
Information Systems Staff		0	0	0	0
Accounting Staff		0	0	0	0
Budget Staff		0	0	0	0
Court-mandated special project support		0	0	0	0
Total Professional Staff Overtime Costs (AutoField)		0	0	0	0

SECURITY S&S & EQUIPMENT

Purchased This Year:		COST	
Ammunition		0	
Baton		0	
Bulletproof Vest		0	
Handcuffs		0	
Holster		0	
Leather Gear		0	
Chemical Spray & Holder		0	
Radio		0	
Radio Charger/Holder		0	
Uniforms		0	
One Primary Duty Sidearm		0	
Purchase and Replacement of Safety Equipment: (AutoField)		0	
Purchase & Maintenance for Security Screening Equipment		0	

VEHICLE USE FOR COURT SECURITY NEEDS

# Vehicles used by Staff		0	
Miles Driven by allowable personnel		0	
Authorized cost per mile:		0	
Vehicle Recovery Cost: AutoField		0	
Court security cost: AutoField		0	

** Benefits, refer to Section III, No. 2.*

Sec I: Allowable Cost Narratives:

Note

SECURITY PERSONNEL:

Supervision Personnel

Captain
Lieutenant
Sergeant
Other Titles

Line Personnel

Deputies / Court Security Officers et al. Inside the courtroom
Deputies et al. / Perimeter Security / Escort
Weapons Screening Personnel
Contracted Security Services
Court Required Training

PROFESSIONAL SUPPORT STAFF FOR COURT SECURITY OPERATIONS

Payroll Processing Staff
Human Resources Staff
Information Systems Staff
Accounting Staff
Budget Staff
Court-mandated special project support

SECURITY Services and Supplies & EQUIPMENT

Purchase and Replacement of Safety Equipment:
Ammunition
Baton
Bulletproof Vest
Handcuffs
Holster
Leather Gear
Chemical Spray & Holder
Radio
Radio Charger/Holder
Uniforms
One Primary Duty Sidearm
Purchase & Maintenance for Security Screening Equipment

VEHICLE USE FOR COURT SECURITY NEEDS

Vehicles used by Staff
Miles Driven by allowable personnel
Authorized cost per mile:

Sec I: Allowable Cost Narratives:	
Note	
PERSONNEL - DIRECT SECURITY	
1	Court security personnel approved in the budget or provided at special request of the court.
2	Salary, wages and benefits (including overtime) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel.
3	SUPERVISORY LEVELS: Salary, wages, and benefits, of sheriff, marshal, and constable employees, up to and including the level of Captain, whose supervisorial duties require 25% or more of their time on court security functions. Costs shall be based on the percentage of actual time spent in the supervision of court security staff. The cost of any supervisor working less than 25% in the court is not an allowable expense.
4	Security Personnel who: a) patrol hallways and other areas within court facilities, b) supervise prisoners in holding cells within court facilities, c) escort prisoners to and from courtrooms within the court facility, d) unique court operational and staffing issues (ie. control rooms). Service levels for these functions are to be negotiated between the court and service provider. Court issues above existing resources fall under the review of the State budgeting process.
5	Negotiated Salary Increases (NSI's) shall be included as well as projected NSI's for periods beyond the expiration of a signed personnel labor contract. For projected NSI's, billing at actual rates automatically returns to the State any NSI that ultimately is not enacted.
6	Contractual security services - non Government (e.g. private sector outsourced security).
OVERTIME	
7	Overtime coverage is allowable when regularly assigned court security personnel are absent for vacation, and court-required training.
8	Overtime necessary to maintain scheduled coverage and for extraordinary circumstances.

9	Training, beyond basic training, for needs unique to the court security function and requested by the court (method of payment should be negotiated as part of a local MOU).
	PROFESSIONAL SUPPORT STAFF
10	Sheriff staff preparing security budgets for the courts or other human resources, financial, or administrative/clerical staff services for the security function of the courts (e.g., their service cost should be based upon the actual time dedicated to meeting requested services in the security function).
11	Salary, wages, and benefits of professional staff employees whose time is directly chargeable to court security needs and/or State budgetary requirements in support of trial court funding (this service may include, but is not limited to staff support of/for payroll processing, financial, administrative and clerical services, human resources, court-mandated information systems, court invoicing and billing, budget preparation, trial-court-related ad hoc reports, surveys, studies).
	SECURITY Services & Supplies and EQUIPMENT
12	Purchase of the following personnel safety equipment: Ammunition, Baton, Bulletproof Vest, Handcuffs, Holster, Leather Gear, Chemical Spray & Holder, Radio, Radio Charger/Holder, Uniforms, One Primary Duty Sidearm.
13	Purchase & Maintenance of security screening equipment.
	VEHICLE USE FOR COURT SECURITY
14	The mileage rate utilized by the State (currently $0.34 per mile) may be applied to the costs of allowable security personnel driving in the course of their normal duties (non-prisoner transport).

Sec II: Non-Allowable Cost Narratives:	
Note	
1	Other sheriff or marshal employees (***not working in the court***).
2	County Overhead cost attributable to the operation of the sheriff/marshal offices. For example, indirect overhead (such as county CWCAP for cost recovery of county operations)
3	Departmental overhead of sheriffs and marshals that is not in the list of Sec I allowable costs.
4	Service and supplies, including data processing, not specified as allowable in Sec I.
5	Furniture
6	Basic training for new personnel to be assigned to court
7	Transportation and housing of detainees from the jail to the courthouse.
8	Vehicle costs used by court security personnel ***in the transport of prisoners to court***.
9	The purchase of new vehicles to be utilized by court security personnel.
10	Vehicle maintenance (***exceeding the allowable mileage reimbursement***.)
11	Transportation of prisoners between the jails and courts or between courts.
12	Supervisory time and costs where service for the court is less than 25% of the time on duty.
13	Costs of supervision higher than the level of Captain, regardless of the amount of time they spend on court security supervision activities.
14	Service of process in civil cases.
15	Security outside of the courtroom in multi-use facilities which results in a disproportionate allocation of cost.

Sec II: Non-Allowable Cost Narratives:	
Note	
16	Any external security costs i.e.,. Security outside court facility, such as perimeter patrol and lighting.
17	Extraordinary security costs (e.g.,. General law enforcement activities within court facilities and protection of judges away from the court).
18	Overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage.
19	Construction of holding cells or remodeling to improve existing cells.
20	Maintenance of holding facility equipment (not deemed as allowable elsewhere).
21	Facilities alteration or other than normal installation in support of perimeter security equipment.
22	Video arraignment equipment, including purchase and monthly overhead costs for equipment used for video arraignments (i.e., monthly telephone costs, fax, etc.)
23	Costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

Sec III: Addendum Narratives:	
Note	
1	Security equipment that the State is obligated to fund includes, but is not limited to, Security equipment used within the court facility including metal detection devices, x-ray machines, magnetometers, OCTV, alarms, panic alarms, cameras, card-key systems, special courtroom devices for highly dangerous prisoners. Normal installation only is included. State funds may not be used for facility alterations (such as adding cable raceways, new doorways, and asbestos abatement prior to installation).

2	BENEFITS: This is a list of the allowable employer-paid labor-related employee benefits.
a	County Health & Welfare (Benefit Plans)
b	County Incentive Payments (PIP)
c	Deferred Compensation Plan Costs
d	FICA / Medicare
e	General Liability Premium Cost
f	Leave Balance Payout
g	Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
h	Retirement
I	State Disability Insurance (SDI)
j	Unemployment Insurance Cost
k	Workers Comp Paid to Employee in lieu of salary
l	Workers Comp Premiums

3	Item k represents a cost to the sheriff and a benefit paid to the employee when Workers Comp Premiums (item l) do not cover 100% of all workers comp instances. If the premiums (item l) cover all risk and the sheriff is not charged by the county as a result of that coverage, item k will be zero.

4	"Direct Security" FTE's=Full Time Equivalent personnel. HOURS=Personnel not included as FTE (example Extra Help, Hourly, Contracted).

5	"Direct Security" HOURS (except Overtime) = Personnel that would not otherwise be included as FTE's (example Extra Help and Hourly personnel).

EXHIBIT 14

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Christine M. Hansen, Director, Finance Division and Chair of the Trial Court Budget Working Group, 415-865-7951, tina.hansen@jud.ca.gov
Mary Roberts, General Counsel, 415-865-7803, mary.roberts@jud.ca.gov
Stephen Nash, Assistant Director, Finance Division, 415-865-7584, stephen.nash@jud.ca.gov

DATE: October 18, 2006

SUBJECT: FY 2006–2007 Trial Court Budget Allocations, Fund Balance Policy, and Delegation of Authority (Action Required)

Issue Statement
The Judicial Council has the authority to approve the allocation of funding to the trial courts. This report presents recommendations for remaining allocations of fiscal year (FY) 2006–2007 State Appropriations Limit (SAL) adjustment funding. The report also presents for consideration allocation of the screening station equipment replacement funding included in the Budget Act of 2006 (Stats. 2006, ch. 47), and a proposed Fund Balance Policy. Finally, there are recommendations for the delegation of authority and responsibility to expend funds pursuant to Government Code section 68085 and to direct the Administrative Office of the Courts to develop related policies, procedures, and criteria.

Previous Judicial Council Action
At its August 25, 2006 meeting, the Judicial Council allocated most of the FY 2006–2007 SAL funding to courts. For various reasons, allocation of portions of the funding was deferred to the October meeting. Three allocations based on the SAL adjustment funding are discussed in this report: (1) funding to address mandatory security costs changes, (2) trial court operating and staffing costs for new facilities opening during the period July 1, 2006 through September 30, 2007(security and non-security costs), and (3) the Research Allocation Study (RAS) model component of the workload growth and equity funding. The amount of funding available and the proposed allocations in each of these areas are discussed in the following sections.

Remaining SAL Allocations

Mandatory security cost changes

The final SAL adjustment for FY 2006–2007 was 4.96 percent. When applied to the security budget, this resulted in an increase in ongoing security funding of $19.987 million. There is also $4.323 million in additional ongoing security funding that carries over from FY 2005–2006, and $12.646 million in one-time security funding that carries over from previous fiscal years. In FY 2005–2006, all security allocations were made from security funding, i.e., no undesignated SAL funding or other undesignated funds were used to address security costs.

At its August 2006 meeting, the Judicial Council deferred allocation of the SAL funding for mandatory security costs until the October meeting because AOC staff had concerns regarding the cost information provided in a May 2006 survey completed by the trial courts and sheriffs that was designed to identify changes in mandatory costs for security services. This included changes in negotiated salary, retirement, and other benefit costs. Courts were instructed to include only existing levels of security—no new positions over the previous fiscal year. The survey form allowed for the inclusion of costs for all areas of security for which the court was paying at the time Senate Bill 1396 (Stats. 2002, ch. 1010) was enacted. The initial amount requested by courts for FY 2006–2007, above the amount provided to the courts in the previous year, was over $44 million. This is well in excess of the amount of funding available to address mandatory security cost changes in FY 2006–2007.

Because $44 million would represent an increase of approximately 11 percent over the FY 2006–2007 security base budget before application of SAL, and given the inconsistency of some of the data provided by courts and sheriffs, AOC staff believed that a greater level of analysis of this information was necessary. As part of this analysis, staff compared the service levels indicated in the FY 2005–2006 security cost surveys to those in the FY 2006–2007 surveys for each court. Staff also compared FY 2005–2006 salary, retirement, benefits costs paid with that included in the FY 2006–2007 survey. Based on the review performed on each court, it became clear that some courts were not submitting mid-step salary and benefits for the calculation of the funding standards.

A second set of forms was sent to all of the courts for completion that required more detailed information on salary, retirement, and benefit costs at the entry, mid, and top step. As a result of the review of the second set of forms, the mandatory funding needed from SAL has decreased. The following adjustments have led to this decrease:

- The number of FTEs from requests that were above the FY 2005–2006 service/funding levels were reduced.

- The salaries and benefits costs used to calculate funding need per the standard were reduced. Some courts used top-step salary rather than mid-step. Some

included maximum incentive pay, or included overtime in pay. Some included healthcare based on a family of four, not the actual average. Nonallowable benefits, such as retiree health, were removed. Incorrect rates for Medicare and FICA were changed.

- Implementation of the interim security equipment, and services and supplies standards based upon the lesser of the actual cost or standard, for things such as uniforms, ammunition, sidearms, etc., as approved by the Judicial Council at its August 25, 2006 meeting. Costs that were above the standards for these services and supplies items as well as those above the council approved 1.5 percent for professional services, were reduced. Vehicle costs that were above the standard were also reduced.

- All items that are not SB 1396 allowable were eliminated.

- Only allowable equipment, services, and supplies that had previously been paid for by the courts were included.

- Increases in perimeter screening, of which most, but not all, are being funded by the separate entrance screening funding from the 2006 Budget Act were removed.

- Costs for radios, radio accessories, and radio maintenance were removed, as these may be considered by the Working Group on Court Security for funding through one-time security funding in FY 2006–2007. Recommendations for allocation of the one-time funding will be brought to the council in February 2007.

In addition to the preceding adjustments, the judicial position equivalents (JPEs) for each court were updated to reflect the numbers as of July 1, 2005. In addition, the AB 1058 FTE for each court was subtracted from the JPE figure as these are not state funded positions. Staff used the same assessed judicial need (AJN) figure for each court that was used last year, except that the AB 1058 commissioner FTE was subtracted.

The September survey provided detailed salary, retirement and benefit information for the mid-step sheriff, sergeant, lieutenant and captains, where used in the courts. Staff confirmed by way of document provided by the court and county/sheriff web sites that the information was actually mid-step. Premium pay, health, dental, and vision were required to be an average of actual. Non-allowable costs such as retiree health care benefits were deducted.

Each court's individual analysis was sent to them prior to the Judicial Council meeting to confirm the accuracy of the analysis. To the extent that input was received prior to the meeting, it is reflected in the council report. If input is received after the council meeting, amendments will be made at that time. If a court did not submit a security survey, courts

will be funded at the lesser of actual FY 2005–2006 expenditures or the FY 2005–2006 base budget adjusted by the percentage change in the State Appropriations Limit (4.96 percent in FY 2006–2007). Where a survey includes estimated costs (either due to pending follow-up information from the courts or contract negotiations not yet being complete), the estimated increases will not be allocated until final or accurate data has been provided.

As a result of these adjustments and application of the approved standards, the security funding need above the FY 2006–2007 SAL funding amount is estimated to be within the $24.3 million ongoing that is available. As indicated earlier in this section, there is also approximately $12.646 million in one-time security funding available to be allocated. If, as staff anticipate, there is sufficient ongoing funding to meet the courts mandatory security costs, staff will return to the council, as indicated in recommendation 6, with recommendations to address security costs for new facilities opening or transferring during the period July 1, 2006 through September 30, 2007. If ongoing SAL security funding still remains, the Working Group on Court Security would meet to develop recommendations for review by the Trial Court Budget Working Group and ultimately the Judicial Council at its February 2007 meeting as to how to allocate these funds. Recommendations for the allocation of the remaining one-time funding would also be developed and presented at the February 2007 meeting. This funding could potentially be used to bring courts closer to the security funding standards, or for such things as costs for tasers, and the expenses of radios and associated costs for sheriff communication in the courts. Staff discussed with the Trial Court Budget Working Group, at its October 11, 2006 conference call, the detailed analysis that was being performed on each court's security needs and the recommendations that would be made to the council.

Recommendation

The staff of the Administrative Office of the Courts recommends that the Judicial Council:

1. Approve the allocation of up to $24.3 million in ongoing SAL security funding, plus an additional $7.1 million in ongoing security funding from Los Angeles County's Maintenance of Effort payment, to the courts as indicated in columns A, B, and B1 of Attachment 1.

2. Approve, as in FY 2005–2006, immediate allocation to those courts with confirmed changes in mandatory security costs, and set aside funding for those courts that have estimated changes, until such time as their cost needs have been confirmed.

3. In the event that after allocation of funding to address mandatory security costs and security costs for facilities opening or transferring during the period July 1, 2006 through September 30, 2007, there is remaining ongoing SAL security funds,

direct the Working Group on Court Security to meet to develop recommendations to be presented to the Trial Court Budget Working Group and, ultimately to the Judicial Council at its February 2007 meeting, as to how these funds should be allocated to include such things as bringing the courts closer to security funding standards. Also direct the Working Group on Court Security to develop recommendations for allocation of the available one-time security funding for one-time expenses for such things as radios and related costs, and other equipment.

Rationale for Recommendation

Fiscal year 2006–2007 mandatory security costs have not been finalized in all courts. Staff believes that only those courts with confirmed changes should be funded at this time. Rather than providing funding for speculative increases that may in the end be overestimated, only known increases are recommended to be funded. A substantial amount of one-time funds is available in FY 2006–2007 from previous fiscal years. If these one-time funds are not needed to address the mandatory cost changes, there are other security related costs that could be addressed using these funds.

Alternative Actions Considered

Since it now appears that mandatory security costs can be funded through available ongoing SAL security funding, no additional alternatives were considered.

Trial Court Staffing and Operating Expenses for New and Transferring Facilities

There are two Judicial Council approved budget priorities for FY 2006–2007: (1) trial court staffing and operating expenses for new facilities, and (2) self-help centers. The Legislature adopted the Supplemental Report of the 2006 Budget Act (Supplemental Report Language) which includes language which specifies the specific allocation of SAL funds in FY 2006–2007. The Supplemental Report Language, which states legislative intent but does not impose legal requirements, specified that the total amount that can be provided from the SAL adjustment for both of these Judicial Council priority areas in FY 2006–2007 could not exceed $5.0 million in total. Based on commitments made during the legislative budget process, AOC staff recommended to the council at its August 25, 2006 meeting that a maximum of $1.3 million in ongoing funding be provided for staffing and operating expenses for new and transferring trial court facilities and that a minimum of $3.7 million in one-time and ongoing funding be provided for self-help. At the August 2006 meeting, the council approved these recommendations and an allocation of $3.7 million in ongoing funding for self-help.

Consideration of the trial court staffing and operational expenses for new and transferring facilities was deferred to the October 2006 council meeting due to various reasons. For review purposes, the forms submitted by the court were divided into security funding requests and staffing and operational (non-security) funding requests. The staffing and operational funding requests will be discussed first.

EXHIBIT 15

JOHN A. CLARKE
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California
County of Los Angeles

January 10, 2007

William C. Vickrey
Administrative Director of the Courts
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Dear Mr. Vickrey:

FY 2006-07 SECURITY FUNDING REDUCTIONS

Recent changes in the calculation of security funding have resulted in an $11.3 million shortfall in Los Angeles Superior Court's (LASC) security services. As you might recall, LASC had an earlier $11.2 million ongoing reduction imposed on its FY 2004-05 security budget, which the Court addressed through courthouse closures, personnel reductions, and realignment of Sheriff's services. This is the second substantial reduction in three years.

Upon assessing the causes for the $11.3 million shortfall, we have determined they relate primarily to: (1) the exclusion of Retiree Health from the rate calculation, (2) use of mid-step salary (rather than actual cost), and (3) funding of the uniform allowance based only on actual personnel entitled to it instead of personnel levels established by the security staffing standards.

This shortfall is of grave concern to the Court given that Government Code section 69921.5 limits the authority of the Court to contract for law enforcement services commensurate with available funding, we have ongoing contractual obligations with the Sheriff, the reduction comes mid-year with little opportunity to make program adjustments, and the change very likely violates our County Maintenance of Effort (MOE) agreement. The purpose of this letter is to provide you with our analysis (Attachment I) and apprise you of actions being taken to address this shortfall.

(1) Contractual Adjustment for Retiree Health

According to AOC management, the inclusion of Retiree Health is "Not appropriate as part of the mid-step salary calculation." Our analysis (Attachment I) shows the exclusion of the Retiree Health percentage from the reimbursement rates results in a $3.9 million reduction in our total security request.

Accordingly, the Court intends to adjust the Sheriff's monthly billing to exclude the Retiree Health costs included in its billings. Because the Court has already reimbursed through November 30, 2006, the December billing will include a lump-sum adjustment retroactive to July 1, 2006.

At the last Trial Court Budget Working Group meeting, concerns were expressed by this Court and a number of other trial courts that Retiree Health may have been included in the MOE. AOC staff indicated that if Courts could substantiate this claim, funding of this item might have to continue. Our review of this matter identified the attached document (Attachment II), which clearly shows Retiree Health costs were included in the deputy and sergeant rates in FY 1994-95. It is likely that the County will contest this adjustment based on this fact. It is our contention that the cost of Retiree Health should be restored as part of the security budget.

(2) Use of Mid-Step Salary Rate

After excluding the value of the Retiree Health issue, the Court's analysis shows the remaining security funding shortfall of $7.4 million primarily relates to the use of the "mid-step salary" instead of actual costs to fund deputies and sergeants. Attachments III and IV show that the annual costs per deputy and sergeant exceed the funding rate by approximately $9,380 and $11,551, respectively.

It is our belief that the only solution to eliminate this shortfall is to make modifications to the delivery of security services that include major security staffing changes and/or reductions. As a result, the Court and the Sheriff are developing recommendations to resolve this $7.4 million funding gap. I do not believe that a solution exists that will maintain existing Court operations and avoid Court closures or a wholesale realignment of Sheriff personnel assigned to court security details.

It should be noted that the Sheriff's Department believes it has an $11.3 million funding shortfall, not $7.4 million. In light of the FY 2004-05 $11.2 million security reduction, the Sheriff informed us that further reductions without major changes in Court operations would be extremely difficult, if not impossible, to implement.

Uniform Allowance

The funding level for the Uniform Allowance was based on the actual number of personnel entitled to a uniform allowance, at the lesser of $850 or actual cost. This approach does not credit the Court with, nor does it give recognition to, the fact that LASC achieves over $400,000 in uniform allowance savings by using the following non-sworn personnel in lieu of deputies:

- Instead of sworn deputies, 174.0 Courtroom Assistants are placed in civil courtroom. Courtroom Assistants receive no uniform allowance compared to approximately $1,026 for sworn deputies, resulting in cost savings of more than $167,000 annually.

- Instead of sworn deputies, 299.0 non-sworn security officers are used to monitor entrance screening stations, after-hour security, and unsecured doors. The uniform allowance for non-sworn security officers is $260 compared to approximately $1,026 for sworn personnel, resulting in cost savings of more than $229,000 annually.

- An alternative funding approach would be to use the personnel levels determined by the security standards (or 1,339.24 sworn personnel) times the approved funding rate of $850. Under this approach, LASC would be eligible to receive the lesser of the standard (i.e., $1,138,354) or actual cost (i.e., $1,122,458). Furthermore, this approach would be consistent with how courts are funded for the labor components of the security standards and provides a benefit for using less-costly personnel.

I hope you are in agreement that the above facts are troublesome. Particularly problematic is the timing of the reductions. As you know, the Judicial Council did not act on this matter until October 20, 2006, and the final numbers were not released until December, halfway though this fiscal year and long after we had entered into a Memorandum of Understanding contract for security with the Sheriff. Further reductions in LASC's security operation would seriously impact the Court's security structure. We have discussed this matter with the Sheriff's Department but do not foresee an easy solution. In meetings with Sheriff's staff, we have been advised that these reductions may violate not only our preexisting contractual obligations, but also the provisions of the Superior Court Law Enforcement Act of 2002 that require funding to be sought on the basis of actual costs, and which prohibit changes in standards and guidelines that increase a County's obligations for Court operations costs or reduce a Sheriff's law enforcement budget. We fully expect that the Sheriff may initiate litigation concerning these matters and want to take this opportunity to apprise you of this possibility.

We are available at your convenience to discuss this matter with you. If you or your staff have any questions regarding the information provided to you, please contact William H. Mitchell, Deputy Executive Office, at (213) 974-5101.

Yours truly,

John A. Clarke

John A. Clarke
Executive Officer/Clerk

JAC:ss
Attachments (4)

LOS ANGELES SUPERIOR COURT
COMPARISON OF SECURITY STANDARDS USING AOC RATES TO PROJECTED COSTS PER A/C RATES
(Revised as of January 5, 2006)

(A) Classification	(B) LA Superior Court Cost A/C Rates	(C) Service Units	(D) Projected Cost	(E) Funding Per Standard/AOC Rates AOC Rates	(F) Service Units Per Std.	(G) Available Funds	(H) Variance Col (G) - (D)	(I) Retiree Health	(J) Remaining Deficit	(K) Position Impact (Column J Only)
Supervision										
Sergeants	143,811	44.1	6,332,681 *	128,576	103.02	13,245,680				
Bonus Deputies	117,394	68.4	8,017,837 *							
Total		112.5	$14,350,518		103.02	13,245,680	-$1,104,838	-379,622	-725,216	-5.6
Entrance Screening										
Security Officer	49,678	121.0	6,011,083 *	97,702	129.50	12,652,409				
Security Assistant	31,258	155.0	4,844,973 *							
		276.0	$10,856,056		129.50	12,652,409	$1,796,353	-364,672	2,161,025	Used to Fund Uniform Allowance OT Deputies
Courtroom and Internal Security										
Courtroom Bailiff	109,898	466.9	51,454,916 *	97,702	810.00	79,138,620				
Courtoom Assistants	63,068	169.0	10,658,492 *							
Senior Courtroom Serv. Liaison	84,642	5.0	423,205 *							
Bailiff Security	109,898	168.6	18,501,384 *							
		811.5	$81,037,997		810.00	$79,138,620	-$1,899,377	-2,280,960	381,583	Funds OT Deputies
Internal Transportation/Holding Cells & Control Room										
Internal Transportation Deputy	109,898	129.0	14,155,863 *							
Unsecured Doors Security Officer	49,678	2.3	114,260 *							
Security Assistant	31,258	7.9	246,937 *							
After Hours Security Officer	49,678	12.8	635,883 *							
Holding Cells Deputy	109,898	151.6	16,635,883 *							
Control Rooms Deputy	109,898	31.7	3,478,811 *							
		335.3	35,267,437	97,702	286.72	28,990,089	-$6,277,348	-835,562	-5,441,786	-55.7
Services and Supplies										
Uniform Allowance			1,122,458			980,695	-$141,763		-$141,763	
Maintenance for Security Screening Equipment			225,000			225,000	$0			
Court Related Training			156,000			156,000	$0			
Overtime Deputies			3,655,113			0	-$3,655,113		-$3,655,113	-12.8
MOE Retirement Changes			7,108,968			7,108,968	$0			
Rounding Adjustment			0			673	$673		$673	
		1,535.3	$163,779,547		1,339.2	$142,497,461	-$11,281,413	-$3,860,817	-$7,420,596	-74.2

* Includes Relief.

Exhibit 15
197

ATTACHMENT I

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

HALL OF RECORDS
320 WEST TEMPLE STREET, ROOM 380
LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 974-0311 FAX: (213) 626-1108

ALAN T. SASAKI
AUDITOR-CONTROLLER

March 10, 1995

File No. 4CW

To: Fred Ramirez, Director
Fiscal Administration
Sheriff's Department

From: Mort Carson
Chief Accountant-Auditor

Subject: Fiscal Year 1994-95 Employee Benefit Rates

We developed the Fiscal Year 1994-95 employee benefit rates for use in the LECC study. In addition, we developed rates for use in the Custody study and other studies using the productive work-hour billing basis. The rates are as follows:

	LECC Study		Custody Study and PWH Billing Basis	
	Sworn	Non-Sworn	Sworn	Non-Sworn
Retirement	16.471%	10.906%	16.471%	10.906%
Retirement Debt Service	.819	.542	.819	.542
Unemployment Insurance	.035	.035	.035	.035
Retiree Health Insurance	2.780	2.780	2.780	2.780
Long-Term Disability	.053	.053	.053	.053
FICA/HIT	NA	2.358	NA	2.358
Life Insurance	.013	.013	.013	.013
Workers' Compensation	5.617	5.617	5.617	5.617
ESP Expense	.309	.309	.309	.309
Flex Plan	9.112	9.112	9.112	9.112
Nurses Bonus	NA	.104	NA	.104
Bilingual Bonus	.141	.141	.141	.141
Shooting Bonus	.296	NA	.296	NA
Separation Pay	.824	.824	NA	NA
Sick Day Buyback	.908	.908	NA	NA
Uniform Allowance	1.867	NA	1.867	NA
Totals	39.245%	33.702%	37.513%	31.970%

If you have any questions, please contact Rick Vandenberg at (213) 893-0972.

MC:RV

LECCEB.pw2

ANALYSIS OF SALARIES AND BENEFIT CALCULATION - DEPUTY

	Auditor-Controller (A/C)	AOC	Variance	Notes
Base Salary Rate	68,244.00	61,596.00	-6,648.00	(1)
Incentives (POST Cert. $ Longevity)	7,236.00	7,221.00	-15.00	(2)
Retirement (less LACERA Credit)	11,987.00	10,656.00	-1,331.00	(3)
Benefits w/o Retiree Health	19,615.00	18,229.00	-1,386.00	(4)
Retiree Health	0.00	0	0.00	(5)
Total	$107,082.00	$97,702.00	-$9,380.00	

Notes				Estimated Annual Cost Impact Per Position
(1)	Base Salary Rate		The AOC developed an average mid-step salary rate using the mid-step of three salary ranges in place during the fiscal year. Where as, the A/C estimates actual salary cost using a salary savings adjustment to the top step of the last salary range in place during the fiscal year.	-$6,648.00
(2)	Incentives	A.	Eventhough the methods used to calculate these costs were different, the results generated only a minor cost difference.	-15.00
(3)	Retirement (less LACERA Credit)	A.	The majority of this cost variance relates directly to the AOC's base salary rate being lower than the A/C's base salary rate.	-1,058.00
		B.	The remaining cost variance relates to the AOC's adjustment to reflect one month cost savings for the LACERA credit. The Court is reluctant to make this adjustment because in the past two years the County has made mid-year decisions regarding the LACERA credit, forcing the Court to absorb additional retirement cost.	-273.00
(4)	Benefits w/o Retiree Health	A.	The majority of this cost variance relates directly to the AOC's base salary rate being lower than the A/C's base salary rate.	-1,387.00
		B.	The remaining cost variance relates to the AOC's use of a higher Medicare benefit percentage.	1.00
(5)	Retiree Health		According to the AOC, these costs are not appropriate as part of the mid-step salary calculation.	0.00
			Total	-$9,380.00

ANALYSIS OF SALARIES AND BENEFIT CALCULATION - SERGEANTS

	Auditor-Controller (A/C)	AOC	Variance	Notes
Base Salary Rate	86,028.00	79,812.00	-6,216.00	(1)
Incentives (POST Cert. & Longevity)	12,744.00	10,752.00	-1,992.00	(2)
Retirement (less LACERA Credit)	15,686.00	14,022.00	-1,664.00	(3)
Benefits w/o Retiree Health	25,668.00	23,989.00	-1,679.00	(4)
Retiree Health	0.00	0	0.00	(5)
Total	$140,126.00	$128,575.00	-$11,551.00	

Notes				Estimated Annual Cost Impact Per Position
(1)	Base Salary Rate		The AOC developed an average mid-step salary rate using the mid-step of three salary ranges in place during the fiscal year. Where as, the A/C estimates actual salary cost using a salary savings adjustment to the top step of the last salary range in place during the fiscal year.	-$6,216.00
(2)	Incentives	A.	Part of this cost variance relates directly to the AOC's base salary rate being lower than the A/C's base salary rate.	-936
		B.	The remaining cost variance relates to different methods used by the AOC and A/C to estimate the average costs for Post Certification and Longevity Pay.	-1,056
(3)	Retirement (less LACERA Credit)	A.	The majority of this cost variance relates directly to the AOC's base salary rate being lower than the A/C's base salary rate.	-1,304
		B.	The remaining cost variance relates to the AOC's adjustment to reflect one month cost savings for the LACERA credit. The Court is reluctant to make this adjustment because in the past two years the County has made mid-year decisions regarding the LACERA credit, forcing the Court to absorb additional retirement cost.	-360
(4)	Benefits w/o Retiree Health	A.	The majority of this cost variance relates directly to the AOC's base salary rate being lower than the A/C's base salary rate.	-2,056
		B.	The remaining cost variance relates to the AOC's use of a higher Medicare benefit percentage.	377
(5)	Retiree Health		According to the AOC, these costs are not appropriate as part of the mid-step salary calculation.	0
			Total	-$11,551.00

EXHIBIT 16

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue ♦ San Francisco, CA 94102-3688
Telephone 415-865-4235 ♦ Fax 415-865-4244 ♦ TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

January 30, 2007

Mr. John A. Clarke
Executive Officer
Superior Court of California,
County of Los Angeles
111 North Hill Street Room 105E
Los Angeles, California 90012

Re: Los Angeles Superior Court FY 2006-07 Security Funding

Dear Jack:

In response to your written communications and in confirmation of my telephone call with you yesterday, I am writing to confirm the following:

- Payment of Security Salaries above the Mid-step: In response to the concern you expressed that you may not have authority to pay security costs above the mid-step, I have reviewed materials from the Working Group on Court Security, consulted with the chair of the committee, a committee member, and a staff member to the committee; there is no record in the materials that hints of any such limitation. Individuals consulted state that the mid-step was chosen as a means of determining the amount of money available for each court. How that money is expended falls within the discretion of the court subject to the agreement the court has reached with the sheriff after considering needs, all funds in the court budget which the court feels it can dedicate to security, and the projections of actual costs to be incurred by the court and sheriff.

- Payment of Past Retirement Health Insurance Cost for Court Security Personnel: You report that you and others were advised that these costs are not reimbursable costs; your position is that each court should be allocated funding if the costs were

paid by the court in the past. I agree with your position subject to the following observation and conditions:

- First, I believe that the sheriff's post-retirement health costs should be considered for approval as a specific cost pursuant to the procedures established in the Government Code (i.e., Working Group on Court Security should review and recommend that the Judicial Council amend the template, the Council approve the amendment and the legislative and executive branches approve the funding). If these are new costs which have been incurred after 2002, these costs would not be allowable until the executive and legislative branches have adjusted the base budgets of the courts to reflect the new costs. If the legislative and executive branches agree to assume responsibility for these costs, the manner by which they are calculated may be determined by how the legislative and executive branches address the implications of new accounting standards.

- Notwithstanding the above process, the payment of retirement health insurance cost for the sheriffs' security personnel are authorized if expenditures were included in the Counties Maintenance of Effort Payment (MOE) (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability. As would be true with any financial obligation, the means of calculating the retirement health insurance cost should be periodically reviewed to ensure that the methodology and calculation is representative of actual costs incurred. Again, the method of calculating such retirement health care costs may be affected by how the legislative and executive branches address the implications of new accounting standards. You have provided documentation dated May 10, 1995 (the base year for calculating the county MOE for state funding) explaining how the county determined the costs of security personnel. Please provide the documentation on the amount in the county MOE dedicated to this cost, documentation that these costs have been paid for all past years, and a schedule of the base funding in your budget for this cost for the years from FY 1999-2000 to FY 2005-06.

- Funding for FY-2006-07 Court Security Costs: To confirm our conversations, I calculate your security budget as follows:

FY 2005-06 Actual Expenditures	$134,879,202
New Funding for FY-2006-07	$5,462,746

* *Subtotal FY 2006-06*	$140,341,948
Pro Rata Distribution From Reduced Workload Grants on Equity Funding (Per Presiding Judge's Statement of Intended Use)	$1,536,000
FY 2006-07 One-time Funding for Costs	$5,569,826
TOTAL FY 2006-07 Funding	**$147,447,774**

I recognize the operating necessities may have required that the actual allocation of funding in your budget may be different than my outline above (especially the pro rata distribution). I also understand that you may have augmented court security funding in FY-2005-06 by reallocating savings or ongoing funding from other areas of your budget which you are entitled to do.

You continue to have the discretion to reallocate money within your budget consistent with the budget procedures, and the needs of your court to support your security program. And, because the trial courts have the ability to carry over funds from one year to the next, you may use reserves to meet necessary financial obligations, which would include as a first priority, any expense necessary to keep all courts open (year-end financial reports for FY 2005-06 show that Los Angeles Superior Court's total reserve had increased by 105 percent over the previous 12 months and that the portion of those reserves classified as undesignated increased by 45 percent over the previous 12 months.

- Long-Term Solutions: The current process for funding security places all trial courts at risk if security costs consistently increase at a rate that exceeds SAL. In addition, because the allocation of SAL is almost entirely absorbed by mandatory costs, the current process will not allow costs below the funding structured to be brought up to standard or permit costs to fund the sheriff's overhead costs. For these reasons, we have raised with the Department of Finance and the Governor our concerns that the current process has structural problems which, if not addressed, will ultimately jeopardize the safe, accessible operation of the court. [Even if we could fully fund the security standard and maintain funding at standard, while your court is one of the very few that is funded at standard, I understand that your court believes that the standard does not meet the operational needs of your court. I am committed to working with your court on a solution.]

The chair and members of the Court Security Working Group have worked diligently to develop standards and procedures to provide the sheriffs and judicial branch the ability to advocate for an adequate statewide budget for security and the ability to fairly allocate funding regardless of whether there is or is not funding to bring courts up to standard. They have made tremendous progress with a funding standard that supports the courts

and that facilitates reasonable discussions in areas where courts or sheriffs feel their needs are not being addressed. Because of their work, we are in a better position to craft and advocate for an improved funding process.

This year your court received an increase in funding. Of the $24 million of new funding dedicated to security across the state, Los Angeles did not receive the approximate $16 million it requested. Because budget funding is not guaranteed on a line item basis and recognizing that court operations are complex and are subject to fluctuations in costs the Judicial Council, pursuant to legislative authorization, has provided courts with the unique authority to carry over funding from year to year and great discretion to move funding within the budget. Trial courts have exercised this discretion in managing their budgets to meet a variety of unanticipated problems and to address areas where the SAL adjustment is not sufficient to meet the actual growth in a particular line item or program area. At the same time, we must work together to improve process to address specific funding issues that arrive, such as security, on a statewide basis in a matter that meets the needs of all courts, including Los Angeles.

Judicial Council representatives will be meeting with the Security Committee, sheriffs, and the sheriffs' lobbyist and executive director, with the intent of identifying possible solutions to present to the Governor and Legislature (Sheriff Baca will be participating).

I also want to recognize your concern that the Judicial Council decision was made nearly half way through the year. While Stephen Nash has a proposal that would allocate funding at the beginning of the year, I request your help in working with Stephen to ensure a timely submission of the necessary information from your court.

During our call yesterday you indicated that you do not agree with the proposed result for the resolution of Los Angeles' security funding needs for this year. I am willing to meet with you further if you feel that would be helpful.

In the meantime, if you are satisfied that the sheriff's billings are accurate and consistent with your security plan (and subject to documenting the 1998-2002 payments for retirement health cost), payment to the sheriffs should be made consistent with your local agreement. In no circumstances should courts be closed so long as you have financial options to maintain court operations.

Sincerely,

William C. Vickrey
Administrative Director of the Courts

cc: Hon. Ronald M. George, Chief Justice of California
Hon. Richard D. Aldrich, Chair, Working Group on Court Security
Leroy D. Baca, Sheriff, Los Angeles County Sheriff's Department
Ms. Sheila Calabro, Regional Administrative Director, AOC
Hon. J. Stephen Czuleger, Presiding Judge of the Superior Court of California, County of Los Angeles
Hon. Richard D. Huffman, Chair, Judicial Council Executive and Planning Committee
Richard Martinez, Chief, Los Angeles County Sheriff's Department
Hon. Charles W. McCoy, Jr., Assistant Presiding Judge of the Superior Court of California, County of Los Angeles

EXHIBIT 17

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Ronald G. Overholt, AOC Chief Deputy Director, 415-865-4241, ron.overholt@jud.ca.gov
Stephen Nash, Director, Finance Division, 415-865-7584, stephen.nash@jud.ca.gov
Marcia Caballin, Assistant Director, Finance Division, 916-263-1385, marcia.caballin@jud.ca.gov

DATE: October 8, 2008

SUBJECT: Allocation of Trial Court Funding, Including Allocation of New Funding, a One-Time Reduction, and Other Adjustments (Action Required)

Issue Statement
The Judicial Council has statutory authority to approve the allocation of funding to the trial courts. This report presents recommendations related to allocations of new funding and a budget reduction, as well as prior year allocations for the Judicial Branch Workers' Compensation Program and the Court-Appointed Counsel program.

This report deals solely with allocation adjustments related to Trial Court Funding, and does not address current year budget issues for the Supreme Court, Courts of Appeal, or the Administrative Office of the Courts (AOC). Budget issues in these areas will be brought back to the council later this fall for discussion, including determination of how state budget reductions for the appellate system and AOC will be implemented.

Summary of Recommendations
The following recommendations are made by AOC staff with concurrence of the Trial Court Budget Working Group (TCBWG). The TCBWG did not consider recommendation 14, which is the standard technical budget delegation. It is recommended that the Judicial Council:

Rationale for Recommendation
AOC staff surveyed the courts in the spring of 2008 to determine the cost of court staff retirement rate and plan changes for FY 2008–2009. Based on this information, overall projected court cost adjustments resulting from both rate and plan changes will be -$3.560 million in FY 2008–2009. This amount is the net savings produced from total projected cost savings of $4.737 million in FY 2008–2009 and funding cost increases in the amount of $1.177 million that are the result of annualizing FY 2007–2008 costs of retirement rate and plan changes for several courts. This amount includes ratified changes (one court remains nonratified but we do not anticipate, at this time, that it will experience rate changes). This recommendation is consistent with policies established by the council for allocation of employee retirement rate and plan changes, and with the retirement allocation methodology used in FY 2007–2008.

Alternative Actions Considered for Recommendation
Based on the policies approved by the Judicial Council and utilized for the past three years with regard to court staff retirement funding, no alternatives were considered.

VI. Security

Recommendation
AOC staff and the TCBWG recommend that the Judicial Council:

7. Allocate $45.209 million in new and carryover funding ($12.644 million in CPI funding, $20.0 million in one-time security funding from TCTF authorized by legislature, $2.291 million in funding from TCTF, and $10.274 million in one-time security carryover money), to address projected cost increases for court security, based on FY 2007–2008 existing service levels only. This funding addresses $31.202 million of new and previously unfunded court security costs (see Attachment 1, columns H, I, and J), as well as $13.902 million of ongoing costs funded with one-time savings in FY 2007–2008.

8. Distribute funding to courts once a court has notified AOC staff that security compensation and retirement cost increases are confirmed and ratified. Some of the projected court security cost increases are based on estimated cost changes for security employee compensation and retirement that have not yet been ratified.

9. Direct that the remaining $105,483 in one-time security funding be used to address security costs for new or transferring facilities in FY 2008–2009.

Rationale for Recommendation

For FY 2008–2009, trial courts are scheduled to automatically receive baseline security funding totaling $476.649 million. This base, though, includes $13.902 million in funding that was provided in FY 2007–2008 through one-time security funding. This is an ongoing shortfall that needs to be addressed. Beyond this, an additional $20.181 million is needed to address projected FY 2008–2009 cost increases, $4.976 million in retiree health costs, and $6.045 million for costs in excess of the computed funding standards. There are three funding sources proposed to be utilized to address funding security cost increases.

- New ongoing funding at the Consumer Price Index (CPI) rate of 2.7 percent, totaling $12.644 million to address projected cost increases for existing service levels.

- One-time funding from the TCTF totaling $20.0 million authorized by the legislature and an additional one-time $2.292 million in available funding in the TCTF.

- One-time security carryover funding totaling $10.274 million from previous years. This includes one-time savings from on-going funding of 101 new entrance screening stations, entrance screening equipment replacement funding not used, and one time carryover, all from FY 2007–2008.

In order to determine the statewide allocation of new security funding, a *Court Security Survey* was sent to the trial courts in April of 2008. The courts and sheriffs were requested to provide cost information in the following areas:

- salaries;
- pay differentials;
- overtime;
- benefits;
- retirement; and
- services and supplies and other costs.

This information was used to estimate the change in costs that will be incurred by courts for the *existing security service level.*

Analysis of Requests

The court surveys were reviewed by staff. Consistent with the funding approach that was recommended by the Working Group on Court Security, and approved by the Judicial Council last fiscal year, the following principals were applied to developing the statewide security funding recommendation:

- Costs to support security staffing in excess of prior year levels cannot be accommodated within the limited funding. This does not apply to courts that received separate security allocations for entrance screening stations.

- Council-approved security equipment and supplies and services standards were used as well as the standards for professional services and vehicle costs. Any costs above standards were not recommended for funding.

- All items that are not allowable under existing statutory rules (SB 1396) are not recommended. Non-allowable costs would include costs not previously paid for by a court and those listed in Section 14.01 of the Trial Court Financial Policies and Procedures, page 25, Section II: Non-Allowable Costs. Examples would include costs for flashlights, parking, tasers, and basic training for new personnel assigned to the court.

- Only allowable equipment, services, supplies, and benefits that have been previously paid by the courts were included in the staff funding recommendations.

- Costs for radios, radio accessories, and radio maintenance were deferred. In FY 2006–2007 this item was removed from the regular security costs process until a statewide standard is developed. This standard is currently under review.

Based on this methodology, statewide cost increases for security for existing service levels is projected to be $20.181 million in FY 2008–2009.

Courts Above the Security Funding Standard
There are 10 courts that are above the security funding standards that have existing unfunded security costs estimated at $6.045 million. These are legitimate costs that these courts must absorb, and are continuing security funding needs for FY 2008–2009.

Court Security Retiree Health Costs in MOEs
Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since before the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them. The courts have not been funded for these costs the past two years, but the proposal is to use one-time funding from the TCTF and one-time security carryover funding to address these costs in FY 2008–2009, while full state funding to address this issue continues to be pursued.

Resources Available to Address this Need
New security funding based on the CPI rate for FY 2008–2009 will total approximately $12.644 million. An additional $20.0 million in one-time funding from the TCTF authorized by the legislature, $2.291 million in one-time funding from the TCTF, and $10.274 million in one-time security carryover money will also be available.

The total security funding available for FY 2008–2009 is $507.957 million, while the security costs total $507.852 million. The table below details these amounts.

Security Funding - FY 2008–2009

Security Base Allocations FY 2007–2008	$476,649,238
Less: One-Time FY 2007–2008 Security Funding for Ongoing Costs	(13,902,483)
Add: New CPI Funding at 2.7%	12,644,350
One-time Funding from TCTF Authorized by the Legislature	20,000,000
Additional One-time Funding from TCTF	2,291,716
One-time Security Carryover Funding	10,274,383
FY 2008–2009 Security Funding	$507,957,204

Security Costs - FY 2008–2009

Security Base Allocations FY 2007–2008	$476,649,238
Add: Projected FY 2008–2009 Cost Increases	20,181,433
One-time Retiree Health Costs in MOEs	4,976,000
Costs in Excess of Standards	6,045,050
Projected Security Costs FY 2008–2009	$507,851,721
One-Time Security Funding Available for New Facilities Allocation	$ 105,483

Alternative Actions Considered for Recommendations
An alternative to the proposed recommendation would be to not allocate any one-time security funds, but to allocate only the $12.644 million in FY 2008–2009 CPI security funding and the $20.0 million authorized in the 2008 Budget Act to address security cost increases. This lower amount of funding could result in courts having to implement significant reductions in the level of security services currently being provided. Because one-time security funding is available to meet the funding need for FY 2008–2009, this alternative is not recommended.

EXHIBIT 18

Study J-1400 January 16, 2001

Memorandum 2001-9

Statutes Made Obsolete by Trial Court Restructuring: Sheriff/Marshal

BACKGROUND

Historically, sheriffs, marshals, and constables each served a different trial court. Sheriffs were associated with the superior court, marshals with the municipal court, and constables with the justice court.

Each of these officers has non-court, as well as court-related functions. Court-related functions include service of process and notices, execution and return of enforcement of writs, acting as crier and calling witnesses, and attending court and executing lawful court orders and directions. Trial court funding legislation includes in its definition of court operations, "Those marshals, constables, and sheriffs as the court deems necessary for court operations." Gov't Code § 77003(a)(3).

The non-court functions of these officers are substantial, however. Those functions relate significantly to their peace officer status, including law enforcement and incarceration operations.

There has been some overlap and commingling among the various types of court-services officers. In some counties, for example, the board of supervisors has been authorized to transfer certain court service functions from the sheriff to the marshal. See, e.g., Gov't Code §§ 26608.3-26608.5 (Shasta, Santa Barbara, and Glenn counties).

IMPACT OF TRIAL COURT FUNDING REFORM

In the aftermath of trial court funding reform, the courts contract directly for the provision of court security services:

> **Gov't Code § 77212.5. Contracts for court security services**
>
> 77212.5. Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall

enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

It should be noted that this provision is limited to courts for which sheriff-provision of services is required by law. Trial courts that employ marshals are not required to hire sheriffs under this section, nor are they required to enter into agreements with sheriffs.

CONSOLIDATION OF SHERIFF AND MARSHAL OPERATIONS

Consolidation of sheriff and marshal operations has been an ongoing process. Before trial court unification, the sheriff and marshal operations in a number of counties were consolidated. For example:

§ 72110. Consolidation of court-related services in Riverside County

72110. (a) Notwithstanding any other provision of law, the Board of Supervisors of Riverside County may find, after holding a public hearing on the issue, that cost savings can be realized by consolidation of court-related services provided by the sheriff and both offices of the marshal within that county. If that finding is made, there shall be conducted among all of the judges of the superior and municipal courts of that county an election to determine the agency, either the sheriff or both offices of the marshal, under which court-related services shall be consolidated. The outcome shall be determined by a simple majority of votes cast. The registrar of voters shall administer that election and tabulate the results thereof. The results of that election shall be reported within 15 days following the election period by the registrar of voters to the board of supervisors and to the judges of the superior and municipal courts of that county. The board of supervisors shall immediately commence and, within a reasonable time not to exceed 90 days, implement the determination made by a majority of the votes cast by the judges of the superior and municipal courts of the county in that election. If an election is not conducted within 90 days of notification of the board of supervisors' finding, or if the results of the election are evenly divided, the board of supervisors of that county shall determine under which agency, either the sheriff or both offices of the marshal, court-related services shall be consolidated, and shall proceed to implement that consolidation as if on the basis of a majority of the votes cast by the judges of the superior and municipal courts of that county.

(b) Notwithstanding any other provision of law, the marshals and all personnel of the marshals' offices or personnel of the sheriff's office affected by a consolidation of court-related services under this section or Section 26668 shall become employees of that consolidated office at their existing or equivalent classifications, salaries, and benefits, and except as may be necessary for the operation of the agency under which court-related services are consolidated, shall not be involuntarily transferred during a period of six years following the consolidation out of that consolidated court-related services office. The elective offices of marshal for the County of Riverside shall be abolished upon a determination pursuant to the procedures required by this section or Section 26668 that consolidated court-related services shall be provided by the sheriff.

(c) Permanent employees of the marshals' offices or sheriff's office on the effective date of a consolidation under this section or Section 26668 shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period. Transferring personnel may be required to take a promotional examination to promote to a higher classification but shall not be required to retest for his or her existing classification as a prerequisite to testing for a higher classification. A transferring deputy marshal requesting a transfer to another division in the sheriff's office shall not be required to take a written test as a prerequisite to making a lateral transfer.

(d) All county service or service by employees of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall be counted toward seniority in that court-related services office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(e) No employee of the sheriff's office or the marshals' offices on the effective date of a consolidation under this section or Section 26668 shall lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court services.

See also Sections 26625-26625.15 (Contra Costa County), 26630-26637 (Ventura County), 26638.1-26638.11 (Sacramento County), 26639-26639.3 (Los Angeles County), 26639.5-26639.6 (Solano County), 72114.2 (San Diego County), 72115 (San Bernardino County), 72116 (Shasta County).

The consolidation process has been accelerated by trial court unification. When unification occurs, the status quo of sheriff and marshal rights and terms of employment are maintained, pending further legislative action:

Gov't Code § 70217. Effect of unification on court personnel

70217. On unification of the municipal and superior courts in a county, until adoption of a statewide structure for trial court employees, officers, and other personnel by the Legislature:

(a) Notwithstanding any other provision of law contained in this title, upon unification, previously selected officers, employees, and other personnel who serve the courts shall become the officers, employees, and other personnel of the unified superior court at their existing or equivalent classifications, and with their existing salaries, economic and noneconomic benefits and other existing terms and conditions of employment that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, health and pension plans, civil service or merit system coverage, and other systems that provide similar employment protections. The status, position, and rights of such persons shall not be affected by the unification and shall be retained by them as officers, employees, and other personnel of the unified superior court. This provision shall be retroactive to the date of unification and shall supersede any other provision of law governing at-will employment or exemption from civil service coverage applicable to these employees. It is the intent of the Legislature to ensure that officers, employees, and other personnel of the superior court do not lose employment protections to which they were entitled when unification took effect as a result of unification.

(b) Permanent employees of the municipal and superior courts on the effective date of unification shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees on the effective date of unification shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(c) Employment seniority of an employee of the municipal or superior courts on the effective date of unification shall be counted toward seniority in the unified superior court, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(d) No officer or employee with peace officer status shall lose that status as a result of unification, and any officer or employee authorized to perform notice and process services or court security services in the municipal court is authorized to perform those services in the unified superior court.

However, the Trial Court Employment Protection and Governance Act does not provide a framework for resolving sheriff/marshal issues. That act does not cover sheriffs. See Section 71601(m) ("trial court employee" does not include sheriffs). That treatment is appropriate, given the noncourt responsibilities of those officers. But it leaves unresolved the question of the ultimate treatment to be given the officers in a unified court.

DISPOSITION OF INDIVIDUAL STATUTES

As a result of the development of trial court funding, unification, and court employment reforms, no generalizations can be made about the various statutes governing sheriff and marshal operations in the courts. Each statute must be individually analyzed in light of the circumstances of every county, and a decision made as to disposition of that statute.

For example, Government Code Section 69915 relates to consolidation of sheriff and marshal services in Merced, Orange, and Shasta counties.

> **Gov't Code § 69915. Consolidation of sheriff and marshal services**
>
> 69915. (a) Notwithstanding any other provision of law, and except as provided in subdivision (j), the Board of Supervisors of each of the Counties of Merced, Orange, and Shasta may commence public hearings regarding the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. Within 30 days of the commencement of public hearings as authorized by this section, the board shall make a final determination as to the most cost-effective and most efficient manner of providing court-related services.
>
> (b) Concurrently, an election may be conducted among all of the judges of the consolidated courts of the county to provide an advisory recommendation to the board of supervisors on the abolition of the marshal's office and the transferring of court-related services provided by the marshal within the county to the sheriff's department. The outcome shall be determined by a simple majority of votes cast. The vote of the judges shall then be forwarded to the board of supervisors prior to the close of the public hearing, and the board of supervisors shall take into advisement the recommendation of the judges provided by the election report.
>
> (c) The determination of the abolishment of the marshal's office or the transferring of the duties of the marshal shall occur pursuant to the board's determination, and shall be concluded no later than July 1, 2000.

(d) The courtroom assignment of bailiffs after abolition of the marshal's office and the consolidation pursuant to this section shall be determined by a two-member committee comprised of the presiding judge of the consolidated court and the sheriff, or their designees. Any new bailiff assignments shall be made only after consultation with the affected judge or commissioner in whose courtroom a new assignment is planned.

It is the intent of the Legislature, in enacting this subdivision, to ensure that courtroom assignments are made in a manner that best ensures that the interests of the affected judge or commissioner and bailiff are protected.

(e) Notwithstanding any other provision of law, the marshal and all personnel of the marshal's office affected by the abolition of the marshal's office in the county shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits, and, except as may be necessary for the operation of the agency under which court-related services and the service of civil and criminal process are consolidated, they shall not be involuntarily transferred out of the consolidated office for a period of five years following the consolidation.

(f) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed the same as any other request from within the department. Persons who accept a voluntary transfer from the court services/civil division shall waive their rights pursuant to subdivision (e).

(g) Permanent employees of the marshal's office on the effective date of the abolition of the marshal's office pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation pursuant to this section shall retain their probationary status and rights and shall not be deemed to have transferred so as to require serving a new probationary period.

(h) All county service or service by employees of the marshal's office on the effective date of a consolidation pursuant to this section shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(i) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(j) Subdivisions (d) to (i), inclusive, shall not apply to the County of Orange. Prior to a determination by the Orange County Board of Supervisors to abolish the marshal's office and to transfer

duties of the marshal to the sheriff, the board of supervisors shall do both of the following:

(1) Meet and confer with affected employee bargaining representatives with respect to matters within the scope of representation that would be affected by a determination to abolish the marshal's office and to transfer duties of the marshal to the sheriff. These matters shall include, but not be limited to, seniority within the merged departments, job qualifications, classification of positions, and intradepartmental transfers. For purposes of carrying out this paragraph, employees of the superior court whose job classification confers safety status shall have the right to representation in accordance with the local employer-employee resolution and to bargain in accordance with Sections 3504, 3505, and 3505.1. The board of supervisors is not authorized to abolish the office of the marshal and to transfer duties of the marshal to the sheriff unless a mutual agreement, or mutually agreed to amendment to an existing memorandum of understanding as authorized by this section, is reached with each affected recognized employee organization pursuant to Section 3505.1 and adopted by the board of supervisors.

(2) Confer with the presiding judge of the superior court or his or her designated representative and the sheriff to discuss courthouse security and to establish a mechanism for the assignment of courtroom security personnel. Any agreement made in accordance with this paragraph that commits the superior court to fund services shall be approved by the presiding judge of the superior court or his or her designee. Any agreement entered into pursuant to this paragraph shall become effective only upon a majority vote of the board of supervisors to abolish the office of the marshal or to transfer duties of the marshal to the sheriff.

(k) Upon a determination by the Orange County Board of Supervisors to abolish the office of marshal and to transfer duties of the marshal to the sheriff, Article 17.1 (commencing with Section 74010) of Chapter 10 shall become inoperative.

To our knowledge, due to ongoing personnel issues in the affected counties, this statute may have continuing relevance and there is a need to maintain in the law its guarantee of rights. For that reason, this statute should be preserved and not repealed as obsolete.

We plan to make a similar inquiry of each affected office before suggesting disposition of the statutes relating to that office.

SAVING CLAUSE

As we proceed through the statutes cleaning out obsolete references to consolidated offices, we need to bear in mind that, although court services are performed by the sheriff in most counties, these services are performed by the marshal's office in other counties. To our knowledge, counties that may have marshals today include Del Norte, Glenn, Inyo, Merced, Orange, San Benito, Santa Barbara, Shasta, and Trinity. However, this is the result of the historical development of those offices in those counties. And in fact, the court services in a unified court are the same, whether performed by a sheriff or a marshal.

The staff thinks it would be worthwhile to add a saving clause along the following lines:

> **Gov't Code § 26618 (added). "Sheriff" includes marshal**
>
> 26618. A reference in a statute to the sheriff of a county means the marshal of a county in which the right, duty, authority, liability, or other matter to which the statute relates is by law performed by the marshal.
>
> **Comment.** Section 26618 is added in recognition of the fact that in some counties functions of the sheriff may be performed by the marshal. Cf. Sections 26608.3-26608.5 (Shasta, Santa Barbara, and Glenn counties).

CORRECTION OF STATUTORY REFERENCES TO SHERIFF OR MARSHAL

Many statutes refer generally to actions in superior court by the "sheriff." These references are incorrect with respect to a county in which as a result of consolidation the court services are performed by the marshal. Likewise, there are other statutory references to the "sheriff or marshal." These references are obsolete generally where consolidation has occurred, and should be cleaned up.

One approach to correction of the statutory references to the sheriff or marshal would be to rely on the saving clause proposed above. All references would be to the sheriff, with a Comment noting that this means marshal in a county in which the court service functions are performed by the marshal. For example:

> **Gov't Code § 26665 (amended). Writs and notices**
>
> 26665. All writs, notices, or other process issued by superior ~~or municipal~~ courts in civil actions or proceedings may be served by any duly qualified and acting ~~marshal or~~ sheriff of any county in the state, subject to the Code of Civil Procedure.

Comment. Section 26665 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to California Constitution Article VI, Section 5(e). It should be noted that functions under this section may be performed by the marshal of a county in which such functions have been assigned by law to the marshal. Section 26618 ("sheriff" includes marshal).

The staff is not completely happy with an approach such as this. Granted, in most counties these functions are performed by the sheriff. But as long as the marshal will perform the functions on an ongoing basis in a significant number of counties, this is bound to promote confusion.

An alternative would be to amend sheriff and marshal references throughout the codes to refer to the "court services officer" or some such term, and define that term to include the sheriff or marshal. (Much in the same way that the term "levying officer" is used in enforcement of judgments statutes, and is defined to include the sheriff or marshal. See, e.g., Code Civ. Proc. § 680.260.)

Thus:

Gov't Code § 26603 (amended). Superior court attendance

26603. Except as otherwise provided by law, whenever required, the ~~sheriff~~ court services officer shall attend all superior courts held within ~~his~~ the officer's county provided, however, that a ~~sheriff~~ court services officer shall attend a civil action only if the presiding judge or ~~his~~ the presiding judge's designee makes a determination that the attendance of the ~~sheriff~~ court services officer at ~~such~~ the action is necessary for reasons of public safety. The ~~sheriff~~ court services officer shall obey all lawful orders and directions of all courts held within ~~his~~ the officer's county.

Comment. Section 26603 is amended to reflect that the court services referred to may be provided by the marshal and not by the sheriff in a county in which those services are authorized by law to be provided by the marshal. See Section 69914 ("court services officer" defined).

Gov't Code § 26611 (amended). Court crier

26611. The ~~sheriff~~ court services officer in attendance upon court shall act as the crier ~~thereof. He~~ of the court. The officer shall call the parties and witnesses and all other persons bound to appear at the court and make proclamation of the opening and adjournment of the court and of any other matter under its direction.

Comment. Section 26611 is amended to reflect that the court services referred to may be provided by the marshal and not by the sheriff in a county in which those services are authorized by law to

be provided by the marshal. See Section 69914 ("court services officer" defined).

Gov't Code § 69914 (added). Court services officer

69914. "Court services officer" means, when used with reference to the superior court of a county, the sheriff or marshal of the county, to the extent the sheriff or marshal is authorized by law to provide the following court services:

(a) Court security services, including prisoner transportation services, prisoner escort services, bailiff services, courthouse and other security services, and the execution of court orders and bench warrants requiring the immediate presence in court of a defendant or witness.

(b) Notice and process services, including service of summons, subpoenas, warrants, and other civil and criminal process.

Comment. Section 69914 is added for convenience of reference to the sheriff or marshal, as may be appropriate. It is drawn from Section 26671.4 (Santa Barbara County sheriff–marshal consolidation). Counties in which the marshal, and not the sheriff, may be authorized to perform court services include Shasta, Santa Barbara, and Glenn. Cf. Sections 26608.3-26608.5.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

EXHIBIT 19

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

Enrolled Bill Report

Bill Number	Author	As Amended
AB 1587	KATZ	8/23/93

Subject

LOS ANGELES COUNTY: MARSHALS

SUMMARY

This bill would establish a procedure for the consolidation of court-related services provided by the sheriff and marshal of Los Angeles County.

ANALYSIS

Existing law requires the sheriff in Los Angeles County to provide court-related services such as bailiff duties, security, prisoner transportation, service of process, and investigations to the superior courts, and the marshal to provide these services to the municipal courts in Los Angeles County.

Existing law also provides for the consolidation of sheriff's and marshal's offices to handle court-related services in several counties throughout the State. For example, in San Diego County, the Board of Supervisors is authorized to implement consolidation upon majority approval by the municipal and superior court judges in the County. Existing law similarly authorizes the Riverside County Board of Supervisors to consolidate court-related services provided by the sheriffs and marshals after holding public hearings to find that costs could be reduced by consolidation and after conducting an election of the county superior and municipal court judges to determine the agency under which court-related services would be consolidated. Existing law contains similar consolidation provisions for eight other counties in California.

AB 1587 would provide that the Board of Supervisors of Los Angeles County may, no later than October 1, 1993, commence public hearings regarding the consolidation of court related services provided by the sheriff's and marshal's offices. This bill would require that within 30 days of the commencement of the hearings, the Board must make a final determination as to the most cost effective and most efficient manner of consolidation.

AB 1587 would provide that concurrent with the public hearings, the judges of the County superior and municipal courts may provide

Recommendation SIGN

By [signature] Date 9/13/93

Title Richard Sybert
Director

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Exhibit 19

an advisory recommendation to the Board as to the preferred agency for consolidation. The advisory recommendation shall be determined by a simple majority vote of the judges. AB 1587 would provide that the judges' recommendation shall then be forwarded to the Board of supervisors before the close of the public hearing, and the Board would be required to consider the recommendation. This bill would require that the consolidation must be implemented according to the Board's determination, and must conclude by July 1, 1994.

AB 1587 would further provide that the courtroom assignment of bailiffs after the consolidation shall be determined by a three member committee comprised of the presiding judge of the superior court, the Chairperson of the Municipal Court Judges' Association, and the bailiff's management representative, or their designees. This measure would provide that any new bailiff assignments shall be made only after consultation with the affected judge for the new courtroom assignment, the bailiff's management representative, and the bargaining unit of the bailiff employee, if the employee is represented. AB 1587 would declare legislative intent that this section would ensure that courtroom assignments are made in the interests of the affected judge and bailiff.

AB 1587 would further provide that all existing employee classifications, salaries, benefits, status, and rights would be protected under consolidation. AB 1587 would also provide that except as would be necessary for the operation of the agency, all employees would also be protected from involuntary transfer out of a consolidated court-related service office for a period of five years following consolidation.

Finally, AB 1587 provides that no sheriff's or marshal's personnel would lose peace officer status, or be demoted or otherwise adversely affected by a consolidation of court services.

COST

No appropriation. This bill would not create a State-mandated local program.

ECONOMIC IMPACT

This bill would not appear to impact California's business climate.

LEGAL IMPACT

There are two bills currently pending on the Governor's action, both of which propose a means of authorizing the consolidation of the sheriff's and marshal's offices court related services. AB 479 and AB 1587 (Katz) are not double-joined and both propose to create new statutes, therefore they would not chapter each

other out if both were signed. However, because they propose different approaches to consolidation, if the Governor chooses to grant this authority, only one bill should be enacted in order to prevent confusion.

LEGISLATIVE HISTORY

AB 1587 is sponsored by the Association for Los Angeles Deputy Sheriffs (ALADS).

Historically, county sheriffs, marshals, and constables have provided bailiff, security, service of civil and criminal process and other court related services to the superior, municipal, and justice courts, respectively. Over the past several years, the Legislature has authorized several counties to consolidate these court related services into either the office of the sheriff or marshal. Counties must obtain legislative approval in order to consolidate these offices, and as the court services provided by these offices are duplicative, many counties have sought this consolidation authority as an efficient cost savings measure.

However, the method of consolidating theses offices has been somewhat controversial, particularly in the case of Los Angeles County. Currently, there are two measures pending the Governor's action which authorize the consolidation the court related services of the sheriff's and marshal's offices in Los Angeles County. The primary issue is not whether or not to consolidate, as there is wide agreement that consolidation under either office would save the County approximately $10 million annually; the issue is who should determine which office to consolidate under: the judges or the County Board of Supervisors. AB 479, a measure sponsored by the Los Angeles County Marshals Association, would, for the most part, give the authority to the judges. AB 1587 would give the consolidation authority to the County Board of Supervisors.

The details of the consolidation process provided for in AB 1587 are as follows:

- AB 1587 would allow the Los Angeles County Board of Supervisors to hold a public hearing regarding the consolidation of court related services provided by the sheriff's and marshal's offices, beginning no later than October 1, 1993. This bill would require the Board to make a final determination as to the most cost effective and most efficient manner of consolidation within 30 days after the commencement of the hearing.

- AB 1587 would provide that concurrent with the public hearings, the judges of the County superior and municipal courts may provide an advisory recommendation to the Board as to the preferred agency for consolidation. AB 1587 would provide that the judges' recommendation shall then be forwarded to the Board of supervisors before the close of the public hearing, and the Board would be required to take the recommendation into advisement.

- This bill would require that the consolidation must be implemented according to the Board's determination, and must conclude by July 1, 1994.

- AB 1587 would further provide that the administration of courtroom assignment of bailiffs after the consolidation shall be determined by a three member committee comprised of the presiding judge of the superior court, the Chairperson of the Municipal Court Judges' Association, and the bailiff's management representative, or their designees.

Therefore, although this bill would allow the judges to provide a recommendation for consolidation, the decision would actually lie with the Board of Supervisors.

AB 479 similarly contains some provisions for the participation of the County Board of Supervisors in the consolidation determination; however, in that measure, the decision ultimately rests with the judges. In AB 479 the Board would have the authority to reject or ratify the determination by the judges. However, if the Board rejects the judges' plan, no consolidation would take place. Therefore, both measures contain some token compromise, but in the end, one group or the other would have the decision making authority. The author's staff stressed that this consolidation process has been put off for 30 years, and only AB 1587 would require the consolidation of the court services once a public hearing has commenced on the issue. AB 479 would allow a situation where no consolidation would take place due to differences between the judges and the Board.

Since the 1970s, ten counties have consolidated the court related services of the sheriff and marshal's offices: Ventura, San Diego, Orange, Merced, Sacramento, Contra Costa, Riverside, San Bernardino, Shasta, and Stanislaus. Seven of these consolidations were undertaken by a procedure similar to the one proposed by AB 479. That is, the decision was determined by a majority vote of the municipal and superior court judges. Of these seven, in three cases the judges voted to consolidate under the marshal, and in four cases the judges voted to consolidate under the sheriff. In two other counties, Ventura and Merced, all interested parties agreed to legislation prior to the consolidation, and the measure designated the prevailing agency. In 1982, Orange County was given the authority to consolidate its sheriff and marshal court services. Under the Orange County plan, a consolidation advisory committee was created, composed of two Board members, two judges, and a fifth person unanimously agreed upon by the other committee members. The plan created by the committee was then forwarded to the judges of the County municipal and superior courts for ratification or rejection.

Proponents of AB 1587 note that the non-binding precedent for consolidation procedures established by these counties is misleading. Staff indicated that in most of these other counties,

either a decision was reached prior to legislation regarding what office to consolidate under, or the boards of supervisors did not want to take on the decision of choosing the presiding office, and so the authority was given to the judges. Staff explained that this is not the case in Los Angeles County. The Board of Supervisors wants to be given the authority because they believe consolidation is a budgetary issue. Furthermore, staff stated that the judges do not have credibility with the Board of Supervisors. He commented that the Board is elected to make these fiscal decisions, and the judges are elected to make judicial decisions.

According to the author's staff, currently the Los Angeles County sheriff's and marshal's offices provide duplicative bailiff services for the municipal and superior courts. This measure would allow the two offices to be consolidated if a hearing is held to determine if such an action would result in cost savings or increased efficiency of services. This merger of court services would be consistent with the county's trial court realignment plan to achieve greater efficiency which is required under the Trial Court Realignment and Efficiency Act of 1991 (Ch. 90 and Ch. 189).

Furthermore, the sponsor indicated that the Board of Supervisors is prepared to hold a public hearing in October, as provided for in AB 1587, should this bill be enacted.

Support

AB 1587 is supported by: the California State Association of Counties, Los Angeles County, the Association of Highway Patrolman, the California Peace Officers Association, the California Police Chief's Association, and the California State Sheriffs' Association.

Proponents noted that consolidation under AB 479 would be determined by a secret ballot vote by the judges, whereas AB 1587 would allow the decision to be made by an open ballot vote of the Board of Supervisors. Proponents note that this decision should not be left to the judges because this would be a biased and unfair process. Specifically, the judges appoint the marshal, and the marshal thus serves at the pleasure of the judges. The sheriff is an elected official in Los Angeles County, and serves at the pleasure of the voters.

Opposition

AB 1587 is opposed by: the California Association of Collectors, the Los Angeles County Court Presiding Judges Association, the Municipal Court Judges' Association of Los Angeles County, the Marshals Association of California, and the San Diego County Marshals Association.

Opponents to AB 1587 argue that determining the prevailing agency for consolidation is an administrative issue which should be left to the courts. Staff noted that judges are more concerned about the levels of security which adequately protect the public, the courts, and personnel. Any determination by the judges would be based primarily on who would best provide court security, which would not necessarily be the most cost efficient office.

However, supporters of AB 1587 counter that (1) that deputy marshals and deputy sheriffs are county employees and this is county money; (2) this is a cost savings issue, for which the Board of Supervisors has purview, and consolidation should be based on the most cost efficient method; (3) this bill allows the judges to provide an advisory recommendation; and (4) this bill would give the judges authority over the administrative issue of bailiff assignment.

Opponents further believe that this is a separation of powers issue. Bailiff duties are the responsibility of the courts, and consolidation should be a decision by the courts. However, staff with Los Angeles County (which is neutral on AB 479) explained that deputy sheriffs and deputy marshals are a unique hybrid of court/county employees: they are responsible to the courts, but their salaries and benefits are paid for by the county (pursuant to the Trial Court Funding Realignment of 1991, counties pay approximately 55% and the State pays approximately 45% of court funding).

Opponents of this bill note that in May 1992, the Los Angeles County Commission on Local Government Services issued a report on bailiff services in the Los Angeles County court system. The report made the following conclusions and recommendations:

1. All bailiff services should be supervised by one operating agency.

2. The Board of Supervisors should seek State legislation authorizing such consolidation of services.

3. The legislation should enable the Board to conduct an election of county judges to decide whether the sheriff or marshal should assume the services. If the election does not take place within six months, the decision should revert to the Board.

4. The County's chief administrative officer should study the potential cost savings which may be realized through the use of civilian personnel in the court system.

5. The Board should call for proposals from the sheriff and marshal relative to operation, transition plans, and costs if they were to become the prevailing agency for operation.

Opponents of AB 1587 contend that this bill is not consistent with the recommendations of the Commission. Both the marshal and sheriff submitted consolidation plans recommended by the Commission which included estimated cost savings for consolidation under the respective office. These estimates were greatly inflated: the marshal estimated a $20.1 million savings, and the sheriff estimated a $17.4 million savings. The County Auditor reviewed and revised the estimates, and concluded that there would be an $8.4 million annual savings under the marshal's plan, and an $11.4 million annual savings under the sheriff's plan.

It has been argued that measures which establish laws for a single agency result in legislation being enacted on a piecemeal basis, when a general statute for all similar agencies is more appropriate. However, in this circumstance, it is appropriate that consolidation of county departments be enacted on a case-by-case basis. Not all counties may need to consolidate the duties of their marshals and sheriffs.

VOTES:

Assembly - 30 June 1993	Senate - 27 August 1993
Ayes - 47	Ayes - 23
Noes - 12	Noes - 9

Concurrence - 31 August 1993
Ayes - 41
Noes - 22

The votes cast against this measure were bipartisan.

RECOMMENDED POSITION

The Governor's Office of Planning and Research recommends the Governor SIGN AB 1587.

This bill would allow Los Angeles County to establish a procedure for the consolidation of court-related duties of the sheriff's and marshal's office.

This office believes that of the two proposed bills on this issue, AB 1587 and AB 479, this bill contains the most equitable and appropriate provisions to allow Los Angeles County to consolidate the court related services of the sheriff's and marshal's office. It is clear that Los Angeles County should be granted this authority, as it would provide for a more efficient administration of court services and allow the County to realize a significant cost savings from the elimination of duplicative services.

OPR believes that AB 1587 is a better measure because: (1) the consolidation would be based upon the most effective and cost-efficient manner of consolidation; (2) this is a local issue over a fiscal determination for employees on the County payroll, which should be determined by the County; (3) AB 1587 would give the judges an advisory vote for consolidation; (4) AB 1587 would give

the judges the administrative role of determining bailiff courtroom assignment; and (5) this bill would require consolidation after the Board commences a public hearing, therefore an issue which has been put off for 30 years would no longer fail to be implemented due to indecision and disagreement between the judges and the Board.

Finally, OPR recommends that the Governor sign one of the consolidation bills. If both bills are vetoed, Los Angles County has no authority to consolidate the court services provided by the sheriff's and marshal's offices. Consolidation will save the County at least $10 million annually, and would streamline court services and eliminate local government wasteful spending. If both measures are vetoed, after the severe budget cuts counties have experienced in recent years, the Governor may appear insensitive to the fiscal needs of the County.

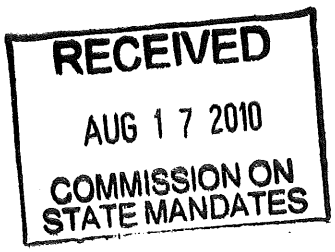
Christina Strader, Analyst
Nancy Patton, Assistant Deputy Director, Legislation

Exhibit C

DEPARTMENT OF FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV



August 13, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance (Finance) has reviewed the test claim, Claim No. CSM-09-TC-02, "Sheriff Court-Security Services" submitted by Los Angeles County (claimant). The claimant asserts that a reimbursable state mandate was created by shifting the financial responsibility of retiree health benefits from the state to the counties. Specifically, the claimant alleges that the test claim statutes removed the state's obligation to pay counties for the costs of retiree health benefits of sheriff personnel who were assigned court security duties.

Finance, however, believes the state did not transfer the costs of the retiree health benefits to the counties, and the test claim is not a reimbursable mandate. Unlike the state's obligation in *Lucia Mar School District v. Bill Honig, et al.* (1988) 44 Cal.3d 830 cited in the test claim, the state did not previously have the requirement to provide complete or partial financial responsibility for the costs of the retiree health benefits. The costs of the retiree health benefits were not explicitly included in the definition of "costs of service" in any of the statutory requirements plead by the claimant. The state's obligation to fund any costs associated with retiree health benefits, therefore, is permissive and not required by law.

Finance recommends that this test claim be denied because it is not a reimbursable state mandate within the meaning of Article XIII B, section 6 of the California Constitution.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your July 14, 2010 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

ZLATKO THEODOROVIC
Assistant Program Budget Manager

Enclosure

PROOF OF SERVICE

Test Claim Name: Sheriff Court-Security Services
Test Claim Number: CSM-09-TC-02

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12th Floor, Sacramento, CA 95814.

On 8-13-2010, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

And all parties on the attached mailing list

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 8-13-2010 at Sacramento, California.

Kelly Montelongo

Kelly Montelongo

Commission on State Mandates

Original List Date: 7/1/2010
Last Updated:
List Print Date: 07/07/2010
Claim Number: 09-TC-02
Issue: Sheriff Court-Security Services

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: Fax:	(916) 485-8102 (916) 485-0111
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: Fax:	(916) 445-3274 (916) 449-5252
Mr. Martin J. Mayer California State Sheriffs' Association P.O. Box 980790 West Sacramento, CA 95798	Tel: Fax:	(916) 375-8000
Mr. Jeff Carosone Department of Finance (A-15) 915 L Street, 8th Floor Sacramento, CA 95814	Tel: Fax:	(916) 445-8913
Mr. William Vickrey Administrative Office of the Courts 455 Golden Gate Avenue San Francisco, CA 94102	Tel: Fax:	(415) 865-4200
Mr. Andy Nichols Nichols Consulting 1857 44th Street Sacramento, CA 95819	Tel: Fax:	(916) 455-3939 (916) 739-8712
Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: Fax:	(213) 893-0792 (213) 617-8106

Ms. Marianne O'Malley
Legislative Analyst's Office (B-29)
925 L Street, Suite 1000
Sacramento, CA 95814

Tel: (916) 319-8315

Fax: (916) 324-4281

Enclosure A

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-09-TC-02 "Sheriff Court-Security Services"

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

August 13, 2010
at Sacramento, CA

Carla Shelton
Carla Shelton

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

September 14, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

LOS ANGELES COUNTY'S REVIEW OF STATE AGENCY COMMENTS
SHERIFF COURT-SECURITY SERVICES TEST CLAIM (CSM 09-TC-02)

The County of Los Angeles respectfully submits its review of State agency comments on the test claim we filed on June 29, 2010 to recover the cost of security services provided to the Los Angeles County Superior Court. The Los Angeles County Sheriff's Department is the service provider and the related costs have been incurred since July 28, 2009 under the Superior Court Law Enforcement Act of 2002.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:lk
H:\Sb90\Sheriff Court Security Services\State Review cover letter-sheriff security services.doc

Enclosure

Los Angeles County's Review of State Agency Comments
Sheriff Court-Security Services Test Claim (CSM 09-TC-02)

Executive Summary

The State Department of Finance (Finance) and the Administrative Office of the Courts (AOC) commented on Los Angeles County's (County) test claim seeking recovery of its Sheriff's retiree health benefit costs. Payment for these costs was prohibited on July 28, 2009 in SB 13. This resulted in an unfunded State mandate to provide court security services required by the Superior Court Law Enforcement Act of 2002 (SCLEA).

Mr. Zlatko Theodorovic, Finance's commentator, indicates that the County's test claim should be denied because "... the costs of retiree health benefits were not explicitly included in the definition of "costs of service" in any of the statutory requirements plead by claimant".

The County respectfully disagrees. Article XIII (B), section 6 of the California Constitution does not require that costs be explicitly defined as "costs of service" in order to be reimbursable. Rather, requirements for reimbursement are that claimed costs are incurred in performing a "new program" or "higher level of service" and are not subject to funding disclaimers. And, both requirements were discussed and satisfied in the County's test claim.

Mr. Michael I. Giden, an attorney with AOC, finds that the County's test claim does not constitute an unfunded state mandate "... because there is no state law that requires the County to pay for sheriff retiree health benefits and because the County of Los Angeles actively supported recent legislation requiring sheriffs to provide security to the superior courts".

The County respectfully disagrees. There need be no state law that requires the County to pay for retiree health benefits in order to find an unfunded state mandate. All that is required, according to the State Controller's "Local Agencies Mandated Cost Manual", is that the "... compensation paid and benefits received are appropriately authorized by the governing board". And, this has been done.

Mr. Giden's assertion that active support for SCLEA and SB 13 legislation will defeat the County's claim has no legal basis. The pertinent funding disclaimer requires that the County request such legislation. And, this the County did not do.

"Costs Mandated by the State"

The County finds that retiree health benefit costs are reimbursable because these costs are "costs mandated by the State" which are not subject to funding disclaimers. On the other hand, Mr. Zlatko Theodorovic, Finance's commentator, finds that retiree health benefit costs are not reimbursable because these costs are not explicitly included in the definition of "costs of service".

Which is the proper analysis?

Determining if the test claim legislation[1] imposes reimbursable "costs mandated by the State" under article XIII (B), section 6 of the California Constitution and Government Code section 17500 et seq. is the proper analysis here. In this regard, Ms. Paula Higashi, Commission's Executive Director, notified Finance, AOC, and other State agency commentators on July 7, 2010 that the County's test claim was complete and that the "... key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 of the Government Code?

[1] The test claim legislation here is: Government Code Section 69926 as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(a)(6) as amended and renumbered by Statutes 2009, Chapter 22 (SB 13) and as added as 69927(a)(5) by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(b) as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and Government Code Sections 69920, 69921, 69921.5, 69922, and 69925 added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Section 77212.5 as added by Statutes 1998, Chapter 764 (AB 92) and repealed but replaced and modified by Statutes 2002, Chapter 1010 (SB 1396) under Government Code Section 69926; and, Rule 10.810 of the California Rules of Court Sections (a), (b), (c), (d) and Function 8 (Court Security). Rule 10.810 was amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Subdivision (d) was amended effective January 1, 2007 and previously was amended and re-lettered effective July 1, 1995. Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule.

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source? " (Emphasis added.)

And, the County met all three of these requirements.

The first step in Commission's recommended analysis is to determine if 'costs mandated by the State', as defined in Government Code section 17514, are imposed on the County by the State. In order to satisfy this requirement, a 'new program or higher level of service' must be created by the test claim legislation.

The County found that a new program was created when the State shifted the costs of retiree health benefits, earned by Sheriff staff assigned to court security duties, to the County. This finding is similar to the one made by the California Supreme Court in finding in *Lucia Mar School District v. Bill Honig*, et al. (44 Cal.3d 830).

The *Lucia Mar* Court held that when local governments are compelled to pay the costs of State mandated programs such as SCLEA, a "new program", within the meaning of article XIII B, section 6 of the California Constitution, is created. Specifically, the Court stated that:

> "The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIIIB because the programs are not "new." Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIIIB, seems equally violative of the fundamental purpose underlying section 6 of that article.[FN7] We conclude, therefore, that because section 59300 shifts partial financial responsibility for the support of students in the state operated schools from the state to school districts-an obligation the school districts did not

have at the time article XIIIB was adopted-it calls for plaintiffs to support a "new program" within the meaning of section 6." (44 Cal.3d 830, 834)

Here, of course, the partial financial responsibility shifted was for retiree health benefit costs. Like the shift in *Lucia Mar*, the result was that a new 'program' was created. Specifically, this 'program' was created on July 28, 2009 --- when Government Code Section 69926(b) was amended by SB13 (Chapter 22, Statutes of 2009) and shifted the costs of retiree health benefits from the State to the County.

Further, the AOC analysis indicates (on page 11) that the portion of *Lucia Mar* holding that a "new program" is created when costs are transferred to local governments, as is the case here under SB 13, was codified by initiative in 2004[2] as subdivision (c) of Article XIIIB, section 6:

> "A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

This, of course, supports the County's position that a reimbursable "new program" was created when SB 13 was enacted on July 28, 2009 and retiree health benefit costs were transferred to the County.

However, the AOC analysis continues and suggests a further requirement for finding that the transferred costs are reimbursable. AOC asserts that:

> "Under either *Lucia Mar* or subdivision (c), to be reimbursable the cost transferred must nonetheless be *mandated* by the state. Here, the cost the County alleges was transferred was discretionary, not mandatory."

Here, the County respectfully disagrees. Subdivision (c) refers to a "required program", not required or mandated costs. Also, in the definition of 'costs mandated by the State', previously discussed, there is no reference to required costs. In addition, the cases cited by AOC only consider whether an activity is

[2] Proposition 1A, approved by the voters on November 2, 2004.

mandatory or discretionary, not whether the costs of performing that activity are mandatory or discretionary.

For example, consider the Department of Finance v. Commission on State Mandates (Kern High School Dist.)(2003) 30 Cal 4th 727, holding reported on page 12 of AOC's analysis. Here, the Supreme Court found that new laws imposing notice requirements on certain meetings did not constitute a reimbursable mandate because "... the districts were not legally compelled to hold the meetings in the first place ...".

So a finding of reimbursable costs depends on whether the activity is compelled by State law, not on whether the costs of performing that activity are compelled by State law.

Here, there is no dispute that the County is compelled to provide court security duties under the test claim legislation. And, there is no provision, under Article XIIIB, section 6 of the California Constitution and Government Code section 17500 et seq. that requires the retiree health benefit portion of court security costs be compelled by State law. So our analysis continues and addresses whether any funding disclaimers in Government Code Section 17556 apply to the County's test claim.

Section 17556

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

(a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given

program shall constitute a request within the meaning of this paragraph.

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district. AOC maintains that active support for SCLEA and SB 13 legislation will defeat the County's claim. But this has no legal basis. Section 17556(a) plainly states that it applies when a local agency requests authorization for that local agency to implement a given program. And, this the County did not do.

(b) The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments which are sufficient to reimbursement the county for all costs necessarily incurred in complying with the test claim legislation.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional

revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature. Any reimbursements for duplicative activities claimed herein will be deducted from those claimed under the test claim legislation detailed herein.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction."

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the test claim legislation as these disclaimers are all not applicable to the subject claim.

The next question is whether retiree health benefit costs are allowable costs under reimbursement provisions of article XIII B, Section 6 of the California Constitution.

Allowable Costs

Retiree health benefit costs up until SB 13 was enacted on July 28, 2009 were allowable Sheriff court security costs. In fact, the AOC analysis indicates on page 11 that such costs were paid to five courts in 2008-09 based on documentation that these costs had been paid by AOC in the past. As AOC could not pay for costs that were unallowable, the conclusion here is that AOC found these costs to be allowable.

Further, in AOC's Exhibit 17, an AOC report dated October 8, 2008 on the "Allocation of Trial Court Funding", includes a schedule on page 8 showing "One-time Retiree Health Costs in MOEs" of $4,976,000.

Therefore, AOC had recognized and paid retiree health benefit costs as allowable costs under SCLEA up until SB 13 was enacted on July 28, 2009.

However, SB 13 did not eliminate the County's right to reimbursement under article XIII B, Section 6 of the California Constitution as long as retiree health benefits are allowable costs under these funding provisions. In this regard, the State Controller's Office (SCO) has provided criteria for determining if retiree health benefit costs are allowable on page 8 of their "Local Agencies Cost Manual", Revised 10/09, found in Exhibit 2, as follows:

> "Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, worker's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:
>
> The amount of compensation is reasonable for the service rendered.
>
> The compensation paid and benefits received are appropriately authorized by the governing board.

> Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
>
> The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs."

The County has met all four criteria set forth by SCO for finding allowable retiree health benefit costs. A description and itemization of the County's retiree health benefit costs is found in Exhibit 3.

In addition, the County includes, in Exhibit 4, an excerpt from OMB A-87 (2 CFR Part 225) regarding cost principles for State, Local and Indian Tribal Government, also used by SCO in determining if claimed indirect and direct retirement health benefits costs are allowable. The section of OMB A-87 addressing "post-retirement health benefits" (PRHB) is found on page 3. According to OMB A-87, PRHB direct and indirect costs are allowable and "... may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit".

Therefore, the costs of retirement health benefits are allowable under the reimbursement provisions of article XIII B, Section 6 of the California Constitution.

The final question here is one asked by the Commission.

> "Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available?"

The County's answer is that there is no appropriation for this program and no other sources of funds are available. The State commentators do not answer this question.

Conclusion

For the reasons stated, reimbursement of the costs of retiree health benefit compensation earned by County Sheriff staff providing State mandated court security services is required as claimed herein.

Exhibit I

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

Los Angeles County's Review of State Agency Comments
Sheriff Court-Security Services Test Claim (CSM 09-TC-02)

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, am Los Angeles County's representative in this matter, and have prepared the subject review of State agency comments.

I declare that it is my information and belief that retiree health benefit costs incurred in performing State-mandated Sheriff court-security services are reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

9/13/10; Los Angeles, CA
Date and Place

Signature

Table 1: Productive Hourly Rate, Annual Salary + Benefits Method

Formula:	Description:
[(EAS + Benefits) ÷ APH] = PHR	EAS = Employee's Annual Salary
	APH = Annual Productive Hours
[($26,000 + $8,099)] ÷ 1,800 hrs = 18.94	PHR = Productive Hourly Rate

- As illustrated in Table 1, if you assume an employee's compensation was $26,000 and $8,099 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the productive hourly rate would be $18.94. To convert a biweekly salary to Annual Salary, multiply the biweekly salary by 26. To convert a monthly salary to Annual Salary, multiply the monthly salary by 12. Use the same methodology to convert other salary periods.

2. A claimant may also compute the productive hourly rate by using the "Percent of Salary Method."

Table 2: Productive Hourly Rate, Percent of Salary Method

Example:

Step 1: *Fringe Benefits as a Percent of Salary*		**Step 2:** *Productive Hourly Rate*
Retirement	15.00 %	**Formula:**
Social Security & Medicare	7.65	[(EAS x (1 + FBR)) ÷ APH] = PHR
Health & Dental Insurance	5.25	
Workers Compensation	3.25	[($26,000 x (1.3115)) ÷ 1,800] = $18.94
Total	**31.15 %**	

Description:

EAS = Employee's Annual Salary	APH = Annual Productive Hours
FBR = Fringe Benefit Rate	PHR = Productive Hourly Rate

- As illustrated in Table 2, both methods produce the same productive hourly rate.

Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, worker's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:

- The amount of compensation is reasonable for the service rendered.
- The compensation paid and benefits received are appropriately authorized by the governing board.
- Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
- The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs.

PART 10: RETIREE HEALTH CARE PROGRAM

Overview

The LACERA-administered Health Care Benefits Program offers an extensive choice of medical plans and dental/vision plans for retirees and their eligible dependents.

Program History

Prior to July 1, 1982, LACERA funded the retiree health care program using surplus earnings. Retirees' premiums were subsidized by LACERA based on the number of years of service. Retirees with 10 years of service had 40% of their premiums paid by LACERA. For each additional year of service, an additional 4% was paid by LACERA, with the result that retirees with 25 or more years of service had their entire premium subsidized.

In April 1982, an agreement was negotiated with the County that required the County to take over the funding of the health care program. The agreement provides for health care benefits at least equal to those being provided to retirees in April of 1982, and further provided:

> "[LACERA] agrees not to lower retired members' current contributions toward insurance premiums or increase medical-dental-optical benefit levels without the consent of County."

Fully Vested Program

The obvious intent of this provision is to assure the County that it will not become financially responsible for additional health care benefits implemented without the County's consent.

If a retiree has less than 25 years of retirement service credit, or the plan chosen costs more than the maximum County contribution for the Provident Plans, the portion of the premium not subsidized will be deducted each month from the member's retirement allowance.

The agreement negotiated with the County in 1982 obligated the County to fund the health care program only so long as the County provided a health care program for active employees. That limitation has since been deleted, resulting in a fully-vested health care program for LACERA retirees.

County of Los Angeles
Pension Footnote
Summary of Retiree Health Care
FY 2009/2010

		FY2010
A01 - General Fund	1145 - Retiree Health Insurance	$286,297,288.65
B04 - Public Works-Internal Service Fund	1145 - Retiree Health Insurance	$13,831,959.00
B06 - Public Library Fund	1145 - Retiree Health Insurance	$2,810,219.00
DA1 - Fire Department	1145 - Retiree Health Insurance	$16,932,533.00
DN4 - Reporters Salary Fund	1145 - Retiree Health Insurance	$212,619.30
MN1 - LAC Harbor-UCLA Medical Center Enterprise Fund	1145 - Retiree Health Insurance	$14,029,340.00
MN3 - LAC Olive View-UCLA Medical Center Enterprise Fund	1145 - Retiree Health Insurance	$12,140,568.00
MN4 - LAC+USC Healthcare Network	1145 - Retiree Health Insurance	$28,383,973.00
MN5 - Martin Luther King Jr. General Hospital Enterprise Fund	1145 - Retiree Health Insurance	$3,967,584.00
MN7 - Rancho Los Amigos National Rehabilitation Center	1145 - Retiree Health Insurance	$5,642,961.00
V97 - Trial Court Funding	1145 - Retiree Health Insurance	$15,506,843.45
ZJ2 - LACERA Retiree Health Care Program	1145 - Retiree Health Insurance	$674,803.00
ZJ3 - County Employee Retirement Fund	1145 - Retiree Health Insurance	$692,752.00
All Fund		$401,123,443.40

Governmental	$319,871,999.65
Proprietary	$64,164,426.00
Total County	$384,036,425.65
Non-County	$17,087,017.75
Total	$401,123,443.40
	$0.00

Fund	FY2009	FY2010
A01 - General Fund	271,649,707.08	286,297,288.65
B04 - Public Works-Internal Service Fund	13,395,472.00	13,831,959.00
B06 - Public Library Fund	2,727,633.80	2,810,219.00
DA1 - Fire Department	16,028,844.00	16,932,533.00
DN4 - Reporters Salary Fund	207,979.10	212,619.30
MN1 - LAC Harbor-UCLA Medical Center Enterprise Fund	13,226,294.00	14,029,340.00
MN3 - LAC Olive View-UCLA Medical Center Enterprise Fund	11,649,110.00	12,140,568.00
MN4 - LAC+USC Healthcare Network	27,667,043.00	28,383,973.00
MN5 - Martin Luther King Jr. General Hospital Enterprise Fund	3,999,564.00	3,967,584.00
MN7 - Rancho Los Amigos National Rehabilitation Center	5,345,732.00	5,642,961.00
V97 - Trial Court Funding	15,207,769.30	15,506,843.45
Z02 - LACERA Retiree Health Care Program	-	674,803.00
Z03 - County Employee Retirement Fund	1,307,158.00	692,752.00
	382,412,306.28	401,123,443.40

2010	15681	Sheriff	1145	Retiree Health Insurance	70,583,486.00

2009	15681	Sheriff	1145	Retiree Health Insurance	66,572,718.99
2008	15681	Sheriff	1145	Retiree Health Insurance	61,003,263.00

REQUIRED SUPPLEMENTARY INFORMATION
(Unaudited)
Schedule of Funding Progress-Other Post Employment Benefits
(Dollar amounts in thousands)

Retiree Health Care(1)

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded AAL (b-a)	Funded Ratio (a/b)	Covered Payroll (c)	Unfunded AAL as a Percentage of Covered Payroll ((b-a)/c)
July 1, 2006	$ 0	$ 20,301,800	$ 20,301,800	0%	$ 5,205,804	389.98%
July 1, 2008	0	20,901,600	20,901,600	0%	6,123,888	341.31%

Long-Term Disability(1)

July 1, 2007	$ 0	$ 929,265	$ 929,265	0%	$ 5,615,736	16.55%
July 1, 2009	0	951,797	951,797	0%	6,123,888	15.54%

(1) There was no data available prior to the first valuation.

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 225

Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87)

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A–87, "Cost Principles for State, Local, and Indian Tribal Governments," to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A–87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106–107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A–87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A–87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB Circular A–87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,

Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A–87)

Sec.

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

§225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

§225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106–107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied "Selected Items of Cost" in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§225.40 Effective date of changes.

This part is effective August 31, 2005.

§225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular

assets and substantial relocation of Federal programs
19. General government expenses
20. Goods or services for personal use
21. Idle facilities and idle capacity
22. Insurance and indemnification
23. Interest
24. Lobbying
25. Maintenance, operations, and repairs
26. Materials and supplies costs
27. Meetings and conferences
28. Memberships, subscriptions, and professional activity costs
29. Patent costs
30. Plant and homeland security costs
31. Pre-award costs
32. Professional service costs
33. Proposal costs
34. Publication and printing costs
35. Rearrangement and alteration costs
36. Reconversion costs
37. Rental costs of building and equipment
38. Royalties and other costs for the use of patents
39. Selling and marketing
40. Taxes
41. Termination costs applicable to sponsored agreements
42. Training costs
43. Travel costs

Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. ("Direct Costs") and F. ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, d, and e of this appendix;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by , and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A–133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their

employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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500 WEST TEMPLE STREET, ROOM 525
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WENDY L. WATANABE
AUDITOR-CONTROLLER

MARIA M. OMS
CHIEF DEPUTY

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
JUDI E. THOMAS

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 15h day of September 2010, I served the attached:

Documents: Los Angeles County's Review of State Agency Comments on Sheriff Court-Security Services Test Claim (CSM 09-TC-02) including *a 1 page cover letter of Wendy L. Watanabe, a 9 page narrative and 4 exhibits, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by e-mailing a PDF copy of the document(s) listed above to the Commission on State Mandates and mailing the original-signed set to the Commission.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of September 2010 at Los Angeles, California.

Lorraine Hadden

Original List Date: 7/1/2010
Last Updated: 8/9/2010
List Print Date: 09/14/2010
Claim Number: 09-TC-02
Issue: Sheriff Court-Security Services

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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March 13, 2014

Ms. Wendy Watanabe
County of Los Angeles, Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012

Mr. Ed Jewik
County of Los Angeles, Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Mr. Jewik:

The draft staff analysis and proposed statement of decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **April 3, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 30, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 16, 2014. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Eric Feller at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

j:\mandates\2009\tc\09-tc-02 (sheriff ct security)\correspondence\tcdsatrans.docx

ITEM ___
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5

Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)

California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007

Sheriff Court-Security Services

09-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission's) regulations.

Overview

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts.
The claimant alleges that, before 2009, these costs were funded by the state through the Trial Court Funding program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution, reimbursement is required for these costs. Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows: "A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." The claimant estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011.[1]

[1] Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011.

A. History of trial court funding and sheriff court security.

Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[2] Before the Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts.

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program, and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations. The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, trial courts gave up their fees, fines and penalty revenue. If a county did not opt into the program, "court operations" remained a county cost. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change. The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function." Function 8 of the rule further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant included the "salary, wages, and benefits" of sheriff employees and their supervisors.

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county contributions at fiscal year 1994-1995 levels. To implement the Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996." In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011.

[2] See Government Code section 69922, derived from former Political Code, sections 4176 and 4157 (Stats. 1883, ch. 75).

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

Beginning in fiscal year 1999-2000, the state provided counties additional relief by reducing their MOE payments for court operations pursuant to Government Code section 77201.1.

In 2002, the Legislature enacted the Superior Court Law Enforcement Act of 2002 (Stats. 2002, ch. 1010, SB 1396; adding Gov. Code §§ 69920, et seq.), which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the court operations and security costs paid by the state through the concept of a "contract law enforcement template." The 2002 Act further provides that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court for sheriff court security costs. Government Code section 69927(a)(5) then defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to,* county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

In addition, the 2002 Act required the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the Administrative Office of the Courts (AOC) pursuant to the 2002 Act.

The 2002 Act also enacted Government Code sections 69926 and 69927 to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum

of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal is required to provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. The AOC is required to use the actual salary and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance. Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[3]

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003. Allowable benefits payable by the state under the 2002 Act are listed in section III of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs. Retiree health benefits are not specifically identified in Section II as a non-allowable cost.

---

[3] Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

B. The 2009 test claim statute excludes retiree health benefits from the sheriff court security costs payable by the state.

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22), in amending Government Code sections 69926(b), specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel.

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

Procedural History

Claimant filed the test claim on June 30, 2010.[4] The Judicial Council filed comments on August 16, 2010, arguing that the claim should be denied on several grounds.[5] The Department of Finance filed comments on August 17, 2010, contending that the test claim should be denied because the state was not responsible for the retiree health benefits before the enactment of the 2009 test claim statute.[6] The claimant filed rebuttal comments on September 15, 2010.[7]

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim. The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[8]

Claims

The following chart provides a brief summary of the issues raised and staff's recommendation.

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[4] Exhibit A.

[5] Exhibit B.

[6] Exhibit C.

[7] Exhibit D.

[8] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Subject	Description	Staff Recommendation
Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).	These statutes and Rule of Court contained old rules governing the allowable costs paid by the state for sheriff court security services under the 1997 Lockyer-Isenberg Trial Court Funding Act and the 2002 Superior Court Law Enforcement Act.	*Deny*. The test claim was filed beyond the statute of limitations for these code sections and Rule and, thus, the Commission does not have jurisdiction. In addition, a Rule of Court is not subject to article XIII B, section 6.
Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22.	As amended, section 69927 states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."	*Deny*. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program. This section requires the AOC to act, but does not impose any required duties or costs on counties.
Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22.	This statute excludes retiree health benefits from the cost of sheriff court security services provided to the trial courts. The Legislature added the following language to the statute: "In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. *For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any*	*Partial Approve*. Section 69926(b), as amended in 2009, imposes a new program or higher level of service within the meaning of article XIII B, section 6(c), and costs mandated by the state, and therefore constitutes a reimbursable state-mandated program for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009*, to provide sheriff

	costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel. (Emphasis added.)"	court security services in criminal and delinquency matters, who have a vested right to such benefits: • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922. In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

Analysis

A. The Commission does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

This test claim was timely filed with respect to the enactment of Statutes 2009-2010, 4th Ex. Session, chapter 22 (SB 13). However, the test claim was filed well beyond 12 months following the effective dates of the Statutes 1998, chapter 764 (AB 92), which amended Government Code section 77212.5 (eff. Jan. 1, 1999); Statutes 2002, chapter 1010 (SB 1396), which added and amended Government Code sections 69920, 69921, 69921.5, 69922, 69925, and 69927 (eff. Jan. 1, 2003); and, the effective date of Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of the 1998 and 2002 statutes, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective. Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[9] Article XIII B, section 6, however, applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.

Accordingly, the Commission does not have jurisdiction over Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program.

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to the Department of Finance. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

[9] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

C. Government Code section 69926(b), as amended in 2009, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The remaining issue in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services mandates a new program or higher level of service within the meaning of article XIII B, section 6(c).

1. The 2004 amendment to article XIII B, section 6.

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[10]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979 and retained administrative control over the program before and after the test claim statute. Reimbursement was denied where the state was only partially responsible for the cost of a jointly funded program under prior law and the state later shifted additional costs to local government.

The plain language of section 6(c), however, expands the definition of a "new program or higher level of service" to include shifts in funding for *existing programs* that are funded jointly by the state and local agencies. A mandated new program or higher level of service includes transfers by the Legislature from the state to the local agencies "complete *or* partial financial responsibility for a required program for which the State *previously* had complete *or* partial financial responsibility."

In addition, to determine if the transfer of costs is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously" had any financial responsibility for the program. Recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing

[10] Exhibit --, LAO summary of Proposition 1A, August 2004.

program.[11] Thus, a test claim statute shifting the financial responsibility of a program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift or transfer of costs constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c).

2. The 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)

Section 69926 as amended by the test claim statute, however, remained in the law only until June 27, 2012, when Government Code section 69926 was repealed to implement the statutory realignment of superior court security funding (Stats. 2011, ch. 40), in which the Trial Court Security Account was established to fund court security. Thus, the issue whether the 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service is relevant only to a potential period of reimbursement from July 28, 2009 to June 27, 2012.

State law, since 1883, has required the county sheriff to provide court security services to the courts in criminal and delinquency matters.[12] There is no dispute that providing court security services for criminal and delinquency actions of the court is a "required program" within the meaning of article XIII B, section 6(c), that is imposed uniquely on counties by the state and

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[11] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

[12] Government Code section 69922. That statute also requires the county sheriff to attend *noncriminal* actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state and, thus, not subject to the reimbursement requirements of article XIII B, section 6. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

provides a service to protect the safety of the public. Furthermore, the program, both before and after the enactment of the 2009 test claim statute, is partially funded by the state. Government Code sections 77300, 77201, and 77201.1 require the state to assume sole responsibility for the funding of court operations, defined to include sheriff court security services, beginning in fiscal year 1997-1998, and further require specified counties to remit maintenance of effort payments to the state each year for the amounts identified and expended by the court for court operations during the 1994-1995 fiscal year.

The parties dispute, however, whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c), or simply clarifies existing law.

The Judicial Council contends that under prior law (the 2002 Law Enforcement Act and the contract law enforcement template), retiree health benefits were not included in the list of allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute.

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost for county employees, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

Staff finds that under the law immediately preceding the 2009 test claim statute, the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003. This conclusion is based on the following findings:

- The allowable benefit in the contract law enforcement template for "County Health and Welfare (Benefit Plans)" is broad and has meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d) defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees. Sections 53202.1 and 53205.2 also provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate*

upon retirement of the employees affected . . . ." It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined allowable "salary and benefit" costs for security personnel services to include "county health and welfare" benefits.

- The record filed by the Judicial Council with its comments supports the finding that the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state under prior law.[13] Exhibit 12 to the Judicial Council's comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."

  Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with documents attached to the letter showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's maintenance of effort payment for trial court funding) in its maintenance of effort payments to the state. The letter took the position that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past.

  Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a).

  And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows: "Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court

[13] Exhibit B.

funding. These five courts have been billed for these costs by the sheriff and have paid for them."

Staff further finds that Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, excludes retiree health benefit costs from the costs payable by the state for the required sheriff court security program, transferring those costs to counties as specified in the analysis. Thus, section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Furthermore, as analyzed in the proposed statement of decision, current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do *not* constitute a new program or higher level of service for counties.

D. The 2009 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

The Judicial Council argues that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, it argues that any transfer of costs is triggered by a discretionary decision of the county and is not mandated by the state. It is correct that the state does not require counties to provide retiree health care benefits to employees. Counties are authorized by Government Code sections 53200 et seq., to provide those benefits and a county, like other local agencies, is required by the Meyers-Milias-Brown Act (MMBA) to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510.)

Staff finds that the state, with the enactment of the 2009 test claim statute, has not mandated counties to incur costs for retiree health benefits for *new employees* performing sheriff court security services in criminal and delinquency matters that are *hired after* the effective and operative date of the test claim statute (July 28, 2009). After that date, counties are on notice that retiree health benefits will no longer be covered by the trial court funding program and can negotiate contracts for new employees providing those services to exclude the provision of retiree health benefits.

Counties continue to have the authority to provide retiree health benefits to new employees pursuant to Government Code section 53200 et seq., but are not required by state law to do so. Moreover, there is no evidence in the record that a county is practically compelled to provide retiree health benefits to new employees hired after July 28, 2009, to perform the required program. Such a showing requires concrete evidence in the record showing that a county has no alternative, but is forced to hire new employees to provide sheriff court security services in criminal and delinquency matters in order to comply with their contracts with the court, and forced to offer retiree health benefits as part of the compensation package to obtain qualified employees. Without concrete evidence in the record, the Commission cannot make such a finding based on instinct alone.[14]

However, the test claim statute imposes costs mandated by the state for the payment of retiree health benefits to employees hired *before* July 28, 2009, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits. Vested rights, once acquired by an express or implied contract, extend beyond the expiration of an MOU and a county has no discretion to later unilaterally change or impair vested rights of existing employees. Such an action is barred by the contracts clause of the United States and California Constitutions.[15] Thus, when the test claim statute was enacted in 2009 to exclude and shift the costs of retiree health benefits from the state to the counties for existing sheriff employees providing security services for criminal and delinquency matters, a county that provided vested retiree health benefits to sheriff employees could not legally stop honoring those vested rights. Under these circumstances, a county has no choice or discretion but to continue incurring retiree health benefit costs for these existing employees.

For fiscal year 2011-2012, however, offsetting revenue in the form of realignment funds (2011 Public Safety Realignment Act, Gov. Code, §§ 30025, 30027) have been appropriated by the state to counties for sheriff court security services, which, if applied to pre-fund retiree health benefits of existing employees providing these services, reduces any costs incurred under this mandated program. Thus, to the extent this funding has been used by the county to pre-fund the costs of retiree health benefits of existing employees providing sheriff court security services, the funding shall be identified and deducted from any costs claimed for this mandated program.

Conclusion

Staff finds that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009,* to provide sheriff

[14] *Department of Finance, supra,* 170 Cal.App.4th 1355, 1369, concurring opinion by Presiding Justice Scotland.

[15]California Constitution, article 1, section 9; U.S. Constitution, article I, section 10; *International Brotherhood v. City of Redding* (2013) 210 Cal.App.4th 1114, 1119, citing *Litton Fin. Printing Div. v. NLRB* (1991) 501 U.S. 190, 207.

court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to partially approve the test claim. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the statement of decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5 Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13) California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007. Filed on June 30, 2010, by County of Los Angeles, Claimant	Case No.: 09-TC-02 *Sheriff Court-Security Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted: May 30, 2014*)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 30, 2014. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts. Before 2009, the claimant alleges that these costs were funded by the state through the Trial Court Funding program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution, reimbursement is required for these costs. Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows: "A mandated new program or higher level of

service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." The claimant has pled statutes enacted in 1998, 2002, and 2009, and California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8, as added in 1988 and last amended in 2007. Both the Department of Finance (Finance) and Judicial Council of California (Judicial Council) dispute this claim.

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009*, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

COMMISSION FINDINGS

I. Chronology

06/30/10 Claimant County of Los Angeles filed the *Sheriff Court-Security Services* test claim, 09-TC-02 with the Commission. [16]

08/16/10 Judicial Council filed comments on the test claim.[17]

08/17/10 Finance filed comments on the test claim.[18]

09/15/10 Claimant County of Los Angeles filed rebuttal comments.[19]

[16] Exhibit A.

[17] Exhibit B.

[18] Exhibit C.

[19] Exhibit D.

II. Background

This test claim is filed on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts. The claimant contends that the state shifted the cost of retiree health benefits for these employees to the counties in 2009 and that, pursuant to article XIII B, section 6(c) of the California Constitution and the *Lucia Mar Unified School District* case, reimbursement is required.[20]

Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[21] In 1947, Government Code section 26603 was added by the Legislature to require the sheriff to "attend all superior courts held within his county and obey all lawful orders and directions of all courts held within his county."[22] As last amended in 1982, section 26603 stated the following:

> Except as otherwise provided by law, whenever required, the sheriff shall attend all superior courts held within his county provided, however, that a sheriff shall attend a civil action only if the presiding judge or his designee makes a determination that the attendance of the sheriff at such action is necessary for reasons of public safety. The sheriff shall obey all lawful orders and directions of all courts held within his county.[23]

Before the Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts. The state paid the salaries of superior court judges and retirement benefits of superior and municipal court judges, and funded the appellate courts, the Judicial Council, and the Administrative Office of the Courts (AOC). The arrangement was later found to result in disparate funding among California's 58 counties, leading to potential disparities in the quality of justice across the state.[24]

In 1985, the first Trial Court Funding Act (Stats. 1985, ch. 1607) was enacted as a grant program that provided block grants to counties based on a formula of reimbursement for statutorily authorized judicial positions.[25] If a county opted into the program, it waived claims for

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[20] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

[21] See former Political Code, sections 4176 and 4157 (Stats. 1941, ch. 1110, Stats. 1923, ch. 108, Stats. 1897, ch. 277, Stats. 1893, ch. 234, Stats. 1891, ch. 216 and Stats. 1883, ch. 75).

[22] Former Government Code section 26603 (Stats. 1947, ch. 424).

[23] Statutes 2002, chapter 1010 (the Superior Court Law Enforcement Act of 2002, SB 1396) repealed section 26603 and recast the same requirements in Government Code section 69922.

[24] Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7. (Exhibit --.) See also the legislative findings in Government Code section 77100(c), Statutes 1985, chapter 1607, reenacted in Statutes 1988, chapter 945.

[25] Exhibit --, Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

reimbursement under article XIII B, section 6 for any state-mandated local program.[26] However, no funds were appropriated to implement the 1985 Act.[27]

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program,[28] and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations.[29] The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, trial courts gave up their fees, fines and penalty revenue. If a county did not opt into the program, "court operations" remained a county cost. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.[30]

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change.[31] The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function."[32] Function 8 of the rule further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant are described in Function 8 of the rule as follows:

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[26] Former Government Code sections 77203.5 and 77005 (Stats. 1985, ch. 1607) stated: "The initial decision by a county to opt into the system pursuant to section 77300 shall constitute a waiver of all claims of reimbursement for state-mandated local programs not theretofore approved by. . . .the Commission on State Mandates."

[27] Exhibit --, Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

[28] Former Government Code section 77004 defined "option county" as, "a county which has adopted the provisions of this chapter for the current fiscal year."

[29] Former Government Code sections 77203.5 and 77005 (Stats. 1988, ch. 945).

[30] Exhibit --, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 9.

[31] The 2007 amendment changed one internal citation in function 11, pertaining to county general services ("indirect costs.")

[32] California Rules of Court, Rule 10.810(a)(3).

- Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e., bailiffs, weapons-screening personnel;
- Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function;
- Sheriff, marshal, and constable employee training.

Costs *not* included in the state funding include the following: other sheriff, marshal, or constable employees; court attendant training (Function 10)[33]; overhead costs attributable to the operation of the sheriff and marshal offices; costs associated with the transportation and housing of detainees from the jail to the courthouse; service of process in civil cases; services and supplies, including data processing, not specified above as allowable; and supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties *less than* .25 FTE time.

In 1991, the Trial Court Realignment and Efficiency Act (Stats. 1991, ch. 90) increased state funding for trial courts and streamlined court administration through trial court coordination and financial information reporting.[34] The state block grants, however, were not enough to cover all trial court costs.[35] By 1997, counties bore about 60 percent of trial court costs for court operations, as specified, and the state grants bore the remaining 40 percent.[36]

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county contributions at fiscal year 1994-1995 levels.[37] The Legislature declared its intent in section 3 of the 1997 Act to do the following:

- Provide state responsibility for funding trial court operations beginning in fiscal year 1997-1998.

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[33] A "court attendant" is a non-armed, non-law enforcement employee of the court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or public safety officer. (Gov. Code, § 69921.) The court may use a court attendant in courtrooms hearing noncriminal and non-delinquency actions. (Gov. Code, § 69922.)

[34] Exhibit --, udicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

[35] Exhibit --, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7.

[36] Exhibit --, Assembly Committee on the Judiciary, Analysis of Assembly Bill 233 (1997-1998 Reg. Sess.), as amended March 10, 1997, page 1.

[37] Statutes 1997, chapter 850, section 3.

- Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994-1995 fiscal year, with adjustments to the cap, as specified.
- Provide that the state shall assume full responsibility for any growth in costs of trial court operations thereafter.
- Provide that the obligation of counties to contribute to trial court costs shall not be increased in any fashion by state budget action relating to the trial courts.
- Return to counties the revenue generated from fines and forfeitures pursuant to the Government, Vehicle, and Penal Codes to allow counties the opportunity to obtain sufficient revenue to meet their obligation to the state.

The Legislature further declared its intent to continue to define "court operations" as the phrase was then defined on July 1, 1996, by Government Code section 77003 and Rule 810 (defined to include the salaries, wages, and benefits for sheriff personnel providing courtroom bailiff and perimeter security services, and their dedicated supervisors, and employee training) recognizing, however, that issues remained regarding which items of expenditure are properly included in the definition of court operations. The Legislature stated its intent "to reexamine this issue during the 1997-98 fiscal year, in the hopes of reflecting any agreed upon changes in subsequent legislation."[38]

To implement the 1997 Trial Court Funding Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996."[39] In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

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[38] Statutes 1997, chapter 850, section 3(d).

[39] In 2002, section 68073 was renumbered to section 70311. Section 70311(a) currently states the following: "Commencing July 1, 1997, and each year thereafter, no county or city and county is responsible to provide funding for "court operations," as defined in Section 77003 and Rule 10.810 of the California Rules of Court, as it read on January 1, 2007."

Beginning in fiscal year 1999-2000, the state provided counties additional relief by reducing their MOE payments for court operations pursuant to Government Code section 77201.1.[40] As a result, only 20 of the largest counties were required to make MOE payments for court operations at a reduced rate. The MOE payment for the claimant, County of Los Angeles, was reduced from $291,872,379 to $175,330,647.

In addition, the 1997 Trial Court Funding Act gave the Judicial Council and its administrative body, the AOC, responsibility for financial oversight of the trial courts.[41]

One year after the Lockyer-Isenberg Trial Court Funding Act, Government Code section 77212.5 (Stats. 1998, ch. 764) was enacted to require trial courts in which court security services were provided by the sheriff's department as of July 1, 1998, to enter into agreements with the sheriff's departments, beginning July 1, 1999, to address the scope and type of security services the sheriff's department would provide as follows:

> Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

The statute was enacted to clarify that county sheriffs would continue to provide deputies for the trial court security program under contract. The Assembly Floor Analysis for the 1998 statute states the following:

> This bill clarifies that the status quo shall be maintained where the sheriff's department currently provides security services (e.g., bailiffs) to the trial courts as of July 1, 1998. The supporters of this bill are concerned that under current trial court funding law it is unclear how security services shall be provided. This bill requires county sheriffs to continue to provide deputies for trial court security under contract.
>
> Currently county sheriffs provide security services for trial courts in 53 counties. Marshals provide security as court employees in the remaining five counties. The trial courts that employ Marshals are not required to hire sheriffs under this bill.
>
> Currently state appellate courts are funded by the state and security is provided by the California Highway Patrol.
>
> Supporters assert that the bill would ensure a continuity of public safety services in California trial courts.[42]

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[40] Statutes 1998, chapter 406.

[41] Government Code sections 77202-77208.

[42] Exhibit --, Assembly Floor Analysis (May 5, 1997), Concurrence in Senate Amendments, Analysis of AB 92 (1997-1998 Reg. Sess.) page 1. See also, Senate Rules Committee, Office of Senate Floor Analyses, Analysis of AB 92 (1997-1998 Reg. Sess.) page 1, which states that the bill reflected an agreement that security services would not transfer from the counties to the

In 1999, Government Code section 77212.5 was amended to address those five counties (San Bernardino, Orange, San Diego, Shasta, and Merced) in which court security services were provided by the marshal's office rather than sheriff deputies. Historically, court security for superior courts was provided by the sheriff's department and security for municipal courts was provided by the marshal's office. With trial court unification combining superior and municipal court functions, most trial courts consolidated court security services with the sheriff's department. The 1999 statute allows those counties to abolish the marshal's office and transfer the court security duties from the marshal's office to the sheriff's department. Subdivision (b) was added to section 77212.5 to state the following: "Commencing on July 1, 1999, and thereafter, the trial courts of a county in which court security was provided by the marshal's office as of July 1, 1998, shall, if the marshal's office is abolished, enter into agreement regarding the provision of court security services with the successor sheriff's department."[43]

Statutes 2002, chapter 1010, enacted the Superior Court Law Enforcement Act of 2002 (SB 1396; adding Gov. Code §§ 69920, et seq.), which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the court operations and security costs paid by the state. A letter from the Judicial Council urging the Governor to sign the bill stated the following:

> California Rules of Court, Rule 810, function 8 defines allowable and unallowable state costs for court security, but the details are ambiguous. For example, the rule says that equipment is an allowable cost, but it does not specify what type of equipment. Because Rule 810 does not provide specificity in the areas of equipment and personnel costs, it has been subject to different interpretations across the state.[44]

The 2002 Act addressed the lack of clarity in Function 8 of former Rule 810 through the concept of a "contract law enforcement template," defining the template in Government Code section 69921(a) as "a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927." Government Code section 69927(a) states the Legislature's intent for the Act as follows:

> It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law

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California Highway Patrol (which would provide security if the state supplied the personnel). The bill was deemed a codification of existing practice.

[43] Statutes 1999, chapter 641 (SB 1196). Today, the sheriff departments in all counties, except Shasta and Trinity Counties, provide security services to the courts. (Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.)

[44] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 9. A similar letter to the Governor from the California State Sheriffs Association is provided as Exhibit 10 to the Judicial Council comments.

> enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

Section 69927(a)(1) requires the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the AOC pursuant to the 2002 Act. Section 69927(a)(1) further states that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court as follows: "[t]he template shall be a part of the trial court's financial policies and procedures manual and used *in place of* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court." (Emphasis added.) Section 69927(a)(5) defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to,* county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

The 2002 Act also repealed Government Code section 77212.5, which required the court and the sheriff or marshal to enter into an agreement for the provision of court security services. In its place, Government Code section 69926 was enacted to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal shall provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature.[45] AOC shall use the actual salary

[45] Government Code section 69926(c).

and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.[46] Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[47]

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003.[48] Section I of template identifies the following allowable court security costs: court security personnel approved in the budget or provided at special request of the court; salary, wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security supervisors who spend more than 25percent of their time on court security functions; and negotiated and projected salary increases. Allowable benefits are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary

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[46] Government Code section 69927(a)(1)(5)(A).

[47] Government Code section 69927(a). Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

[48] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 13.

Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting); extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security equipment; video arraignment equipment; costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

On July 10, 2003, the AOC and the California State Sheriff's Association prepared a memorandum of responses to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[49]

In 2006, requests for security funding from the trial courts for fiscal year 2006-2007 increased by $44 million, eleven percent over the previous fiscal year. According to a report from the AOC to the Judicial Council, dated October 18, 2006, the amount requested was "well in excess of the amount of funding available to address mandatory security cost changes in FY 2006-2007." Thus, the AOC sent surveys to the trial courts that required more detailed information on salary, retirement, and benefit costs of court security personnel, and it became apparent that some counties included retiree health benefit costs in the amounts reported. The AOC took the position that "all items that are not SB 1396 [Superior Court Law Enforcement Act of 2002] allowable were eliminated," and that retiree health care benefits were non-allowable costs and,

[49] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 12.

thus, the AOC deducted those costs from the requests for funding.[50] The Judicial Council adopted the staff recommendation on October 20, 2006.[51]

A number of trial courts took issue with the disallowance of sheriff retiree health benefits. In January 2007, the Superior Court of Los Angeles County sent a letter to the Administrative Director of the Courts, addressing the shortfall in funding as follows:

> According to AOC management, the inclusion of Retiree Health is "Not appropriate as part of the mid-step salary calculation." Our analysis (Attachment 1) shows the exclusion of the Retiree Health percentage from the reimbursement rates results in a $3.9 million reduction in our total security request.
>
> Accordingly, the Court intends to adjust the Sheriff's monthly billing to exclude the Retiree Health costs included in its billings. Because the Court has already reimbursed through November 30, 2006, the December billing will include a lump-sum adjustment retroactive to July 1, 2006.
>
> At the last Trial Court Budget Working Group meeting, concerns were expressed by this Court and a number of other trial courts that Retiree Health may have been included in the MOE [maintenance of effort payment of the county]. AOC staff indicated that if Courts could substantiate this claim, funding of this item might have to continue. Our review of this matter identified the attached document (Attachment II), which clearly shows Retiree Health costs were included in the deputy and sergeant rates in FY 1994-95. It is likely that the County will contest this adjustment based on this fact. It is our contention that the cost of Retiree Health should be restored as part of the security budget.
>
> [¶¶]
>
> Further reductions in LASC's security operation would seriously impact the Court's security structure. We have discussed this matter with the Sheriff's Department but do not foresee an easy solution. In meetings with the Sheriff's staff, we have been advised that these reductions may violate not only our preexisting contractual obligations, but also the provisions of the Superior Court Law Enforcement Act of 2002 that require funding to be sought on the basis of actual costs, and which prohibit changes in standards and guidelines that increase a County's obligations for Court operations costs or reduce a Sheriff's law enforcement budget. We fully expect that the Sheriff may initiate litigation

[50] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 14.

[51] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 15 (Letter from the Los Angeles Superior Court to the Administrative Director of the Courts, dated January 10, 2007).

> concerning these matters and want to take this opportunity to apprise you of this possibility.[52]

The Administrative Director of the Courts responded on January 30, 2007, stating the following:

> First, I believe that the sheriff's post-retirement health costs should be considered for approval as a specific cost pursuant to the procedures established in the Government Code (i.e., Working Group on Court Security should review and recommend that the Judicial Council amend the template, the Council approve the amendment and the legislative and executive branches approve the funding). If these are new costs which have been incurred after 2002, these costs would not be allowable until the executive and legislative branches have adjusted the base budgets of the courts to reflect the new costs. If the legislative and executive branches agree to assume responsibility for these costs, the manner by which they are calculated may be determined by how the legislative and executive branches address the implication of new accounting standards.
>
> Notwithstanding the above process, the payment of retirement health insurance cost for the sheriff's security personnel are authorized if expenditures were included in the Counties Maintenance of Effort Payment (MOE) (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability. As would be true with any financial obligation, the means of calculating the retirement health insurance cost should be periodically reviewed to ensure that the methodology and calculation is representative of actual costs incurred. Again, the method of calculating such retirement health care costs may be affected by how the legislative and executive branches address the implications of new accounting standards. You have provided documentation dated May 10, 1995 (the base year for calculating the county MOE for state funding) explaining how the county determined the costs of security personnel. Please provide the documentation on the amount in the county MOE dedicated to this cost, documentation that these costs have been paid for all past years, and a schedule of the base funding in your budget for this cost for the years from FY 1999-2000 to FY 2005-06.[53]

Five superior courts (Los Angeles, Contra Costa, Kern, Sacramento, and Santa Clara counties) submitted documentation that they paid the sheriff for the costs of retiree health benefits in the base year 1994-1995. Based on the documentation, the Judicial Council reimbursed these five courts for the costs of sheriff retiree health benefits in fiscal year 2008-2009. The report prepared for the Judicial Council by the AOC on October 8, 2008, notes the one-time funding to

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[52] *Ibid*.

[53] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 16.

these counties and also states that the funding issue for retiree health benefits continues to be pursued as follows:

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since before the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them. The courts have not been funded for these costs the past two years, but the proposal is to use one-time funding from the TCTF and one-time security carryover funding to address these costs in FY 2008-2009, while full state funding to address this issue continues to be pursued.[54]

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22) was a court omnibus budget trailer bill enacted as an urgency statute effective July 28, 2009, in light of the Governor's declaration of a fiscal emergency.[55] In amending Government Code sections 69926(b), it specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel. The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

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[54] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 17.

[55] Exhibit --, Senate Floor Analysis, Senate Bill 13, 2009-2010 Fourth Extraordinary Session, July 8, 2009.

III. Positions of the Parties and Interested Parties

A. Claimant's Position

The claimant alleges that the test claim statutes and Rule of Court 10.810 impose a reimbursable state-mandated program under article XIII B, section 6 for the costs of retiree health benefits for sheriff personnel who provide security services to superior courts. According to claimant, on July 28, 2009, the state stopped paying for retiree health benefits for these personnel thereby shifting the costs from the state to the counties in violation of the *Lucia Mar Unified School Dist.* case and article XIII B, section 6(c).[56] Claimant includes a declaration with the test claim that estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011. Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011. Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011. This accounts for four of the five counties affected by the 2009 test claim statute that were reimbursed for retiree health benefits for personnel who provided court security services in fiscal year 2008-2009, as described in section II. Background above.

In comments received in September 2010, claimant rebuts the Judicial Council's observation that no state law requires the county to pay for retiree health benefits. "All that is required, according to the State Controller's Office "Local Agencies Mandated Cost Manual," is that the '. . . compensation paid and the benefits received are appropriately authorized by the governing board.' And this has been done." Claimant also disagrees with the Finance's position that the test claim statutes do not result in a reimbursable state-mandated program.

B. Department of Finance Position

Finance argues that this test claim should be denied. According to comments received in August 2010, Finance "believes the state did not transfer the costs of the retiree health benefits to the counties, and the test claim is not a reimbursable mandate." Finance points out that unlike the case of *Lucia Mar Unified School Dist. v. State of California*, the state was not previously responsible for the retiree health benefits. Finance also states that "costs of the retiree health benefits were not explicitly included in the definition of 'costs of service' in any of the statutory requirements plead by the claimant." Accordingly, Finance argues that the obligation to pay for retiree health benefits is "permissive and not required by law."

C. Judicial Council Position

The Judicial Council argues that this test claim should be denied for the following reasons:

- The 2009 amendment to Government Code section 69926(b) excluding retiree health benefits from allowable costs merely clarifies existing law for what costs are allowable when a sheriff provides court security services.
- There is no state law requiring the sheriff to pay retiree health benefits to its deputies. Thus, any transfer of costs is triggered by a discretionary decision of the county.

[56] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

- Even if the costs were not voluntary, increases in costs, as opposed to increases in the level of service, do not result in a reimbursable state-mandated program.
- The claimant has requested legislative mandates that the sheriff be required to provide security to the superior courts and, thus, no reimbursement is required.
- The claimant cannot claim reimbursement for expenses associated with retiree health benefits for sheriff deputies who are already retired and not currently providing services to the courts. The Superior Court Law Enforcement Act of 2002, in Government Code section 69927(a)(6) only authorizes trial courts to pay for benefits of current employees ("Allowable costs for security personnel services, … means the salary and benefits of an employee …..").

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[57] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[58]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[59]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[60]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[61]

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[57] *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81.

[58] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[59] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[60] *San Diego Unified School Dist., supra,* 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[62]

In 2004, article XIII B, section 6 was amended by the voter's approval of Proposition 1A, which added subdivision (c) to define a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[63]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[64] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[65] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[66]

A. The Commission has jurisdiction to determine if Government Code sections 69926 and 69927, as amended by Statutes 2009, 4th Ex. Sess., chapter 22, imposes a reimbursable state-mandated program, but does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

There is no issue regarding the Commission's jurisdiction over Government Code section 69926 and 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22. The test claim was filed June 30, 2010, within one year of July 28, 2009, the effective date of this test claim statute.

The test claim, however, was filed beyond the statute of limitations for the remaining statutes and Rules of Court pled.

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order,

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[61] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835.

[62] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[63] Proposition 1A, November 2004.

[64] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[65] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[66] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

whichever is later."[67] Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

The test claim in this case was filed on June 30, 2010, well beyond 12 months following the effective dates of the earlier test claim statutes enacted in 2002 (Gov. Code, §§ 69920, 69921, 69921.5, 69922, 69925, and 69927, eff. Jan. 1, 2003) and 1998 (Gov. Code § 77212.5, eff. Jan. 1, 1999), and the effective date of Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of the 1998 and 2002 statutes, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective. The test claim focuses mainly on Government Code section 69926, as amended in 2009, which excluded retiree health benefits from the costs paid by the state for sheriff court security services. According to page 17 of the test claim: "This test claim was timely filed within a year of enactment of SB 13 (Chapter 22, Statutes of 2009) which shifted the costs of retiree health benefits from the State to the County on July 28, 2009."

Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[68] Article XIII B, section 6, however, applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.[69]

Accordingly, the Commission does not have jurisdiction over Government Code sections 69920, 69921, 69921.5, 69922, 69925, and 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program.

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to the Department of Finance. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

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[67] Government Code, section 17551(c) (Stats. 2004, ch. 890) effective Jan. 1, 2005.

[68] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

[69] A "local agency" eligible to claim reimbursement is defined to include a "city, county, special district, authority, or political subdivision of the state," and does not include the courts.

C. Government Code section 69926(b), as amended in 2009, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The remaining issue in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services mandates a new program or higher level of service within the meaning of article XIII B, section 6(c). The Commission finds that section 69926(b), as amended by the 2009 test claim statute, results in a reimbursable state-mandated program pursuant to article XIII B, section 6(c), under the circumstances specified below.

1. The 2004 amendment to article XIII B, section 6(c)

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[70]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979 and retained administrative control over the program before and after the test claim statute.

The line of cases starts with the California Supreme Court's 1988 decision in *Lucia Mar Unified School Dist. v. Honig,* where the court first determined that reimbursement under article XIII B, section 6 is required, not only when the state mandates local government to perform new activities, but also when the state compels local government to accept financial responsibility in whole or in part for a governmental program which was funded *entirely* by the state before the advent of article XIII B, section 6.[71] The statute involved in *Lucia Mar* required the state to operate schools for severely handicapped students. Before 1979, school districts were required by statute to contribute local funding for the education of pupils residing in the district and attending the state schools. These provisions, however, were repealed effective July 12, 1979, when the state assumed full responsibility to fund the state-operated schools. Thus, the state's

[70] Exhibit --, LAO summary of Proposition 1A, August 2004.

[71] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836.

responsibility to fully fund these schools existed when article XIII B, section 6 became effective on July 1, 1980, and continued until Education Code section 59300 became effective on June 28, 1991, to require the school district of residence to pay the state operated school an amount equal to ten percent of the excess annual cost of education for each pupil attending a state-operated school.[72] The court held that "unquestionably, the contributions called for in section 59300 are used to fund a 'program' within [article XIII B, section 6], for the education of handicapped children is clearly a governmental function of providing a service to the public, and the section imposes requirements on school districts not imposed on all the state's residents."[73] In addition, the program was "new" to local school districts since at the time section 59300 became effective, school districts were not required to contribute to the education of students from their districts at state schools.[74] The court stated the following:

> The fact that the impact of the section is to required plaintiffs to contribute funds to operate the state schools for the handicapped rather than to themselves administer the program does not detract from our conclusion that it calls for the establishment of a new program within the meaning of the constitutional provision. To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B. That article imposes spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing power of local governments. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.[75]

Although the court found a new program, it remanded the claim back to the Commission to determine if school districts are mandated by the state to make the contributions to fund the state-operated schools, or whether school districts had other options for educating these pupils.[76]

In 1997, the California Supreme Court in *County of San Diego v. State* also approved reimbursement based on a statute that shifted financial responsibility from the state to the counties for the care of medically indigent adults.[77] Medically indigent adults were not linked to a federal category of disability for purposes of federal disability benefits, but lacked the income and resources to afford health care.[78] In 1971, the state extended Medi-Cal coverage to these

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[72] *Id.* at pages 832-833.

[73] *Id.* at page 835.

[74] *Ibid.*

[75] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

[76] *Id.* at pages 836-837. The matter was later resolved with the special education test claims.

[77] *County of San Diego v. State* (1997) 15 Cal.4th 68, 91.

[78] *Id*. at page. 77.

individuals and, at the time the voters adopted article XIII B, section 6 in 1979, the state administered and bore full financial responsibility for the medical care of medically indigent adults under the Medi-Cal program. In 1982, the state then excluded medically indigent adults from the Medi-Cal program, "knowing and intending that the 1982 legislation would trigger the counties' responsibility to provide medical care as providers of last resort under [Welfare and Institutions Code] section 17000."[79] The court held that the 1982 statute mandated a "new program" on counties by compelling them to accept financial responsibility in whole or in part for a program for the medical care of medically indigent adults, "which was funded entirely by the state before the advent of article XIII B."[80] Addressing an issue raised in the dissenting opinion, the majority court stressed that:

> We do not hold that "whenever there is a change in a state program that has the effect of increasing a county's financial burden under section 17000 there must be reimbursement by the state." [Dis. opn., post, at p. 116.) Rather, we hold that section 6 prohibits the state from shifting to counties the costs of state programs for which the state assumed complete financial responsibility before the adoption of section 6. *Whether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us.*[81]

The *Lucia Mar* and *County of San Diego* holdings, however, were not applied in cases (1) where the state did not administer the program, but instead provided reimbursement assistance to local government that later ended; (2) where the state was only partially responsible for the cost of a jointly funded program under prior law and the state later shifted additional costs to local government; and (3) where the state shifted costs between two local agencies. In such cases, reimbursement was denied. For example, the claim in *County of Los Angeles II* addressed a Penal Code statute that allowed an indigent defendant charged with capital murder to request funds for the payment of investigators, experts, and others expenses necessary for the preparation of his or her defense at trial.[82] For several years after the enactment of the statute, the Legislature appropriated funds to reimburse counties for their costs under the Penal Code statute. In fiscal year 1990-1991, however, no appropriation was made, forcing the counties to pay for the expenses out of their general funds. The counties then filed a test claim for the reimbursement of costs to provide investigators and experts for the defense of indigent criminal defendants in capital murder cases. The court determined that reimbursement was not required under article XIII B, section 6 on the ground that providing experts, investigators, and other ancillary services to indigent defendants was always required by federal law under the constitutional guarantees of due process under the Fourteenth Amendment and the Sixth Amendment right to counsel.[83] The court also found that there was no shift in costs from the state to the counties because the program had never been operated or administered by the state.

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[79] *Id.* at page 98.

[80] *Ibid*.

[81] *County of San Diego, supra,* 15 Cal.4th at page 99, fn. 20 (Emphasis added).

[82] *County of Los Angeles v. State of California* (1995) 32 Cal.App.4th 805.

[83] *Id.* at page 815.

Thus the program was not a "new program" to counties. The state merely reimbursed counties in their operation of a local program.

> In contrast, the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility. There has been no shift of costs from the state to the counties and Lucia Mar is, thus, inapposite.[84]

City of El Monte v. Commission on State Mandates involved statutes that required redevelopment agencies to contribute 15 percent of their revenues to the local Educational Revenue Augmentation Fund (ERAF) to help pay for each school and community college district located within the redevelopment area.[85] The ERAF statutes were enacted in response to a shortfall in state revenues and a period of severe fiscal difficulty brought about by the economic recession in the early 1990's.[86] The court held that reimbursement under article XIII B, section 6 was not required because before the enactment of the ERAF statutes, the state was not responsible for the entire cost of school funding. Rather, a substantial portion of local property tax revenues were used for the support of schools and, thus, the responsibility to pay for education before the enactment of the test claim statutes shifting additional costs to schools, had already been a state and locally shared responsibility. The court determined that the utilization of additional local property taxes in support of schools and community colleges was not a "new program" within the meaning of article XIII B, section 6, distinguishing *Lucia Mar*.[87]

In *City of San Jose v. State of California*, the court found that *Lucia Mar* was not applicable because the test claim statute did not shift costs from the state to cities, but from counties to cities and, thus, reimbursement was not required.[88] *City of San Jose* involved a statute authorizing counties to charge cities and other local entities for the costs of booking into county jails persons who had been arrested by employees of the cities and other local entities. The court recognized that the Legislature was entitled to make policy decisions in order to assist counties in bearing the financial responsibilities of running jails. However, the costs of operating county jails, including the expense of capture, detention, and prosecution of persons charged with crime, were traditionally borne by counties under state statute, and not by the state.[89] Thus, the

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[84] Id. at page 817.

[85] *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266.

[86] *Id.* at page 272.

[87] *Id*. at page 279.

[88] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

[89] *Id.* at page 1815, citing to *County of Lassen v. State of California* (1992) 4 Cal.App.4th 1151, 1156.

program was not new to local government. The court held that "nothing in article XIII B prohibits the shifting of costs between local governmental entities.[90]

Proposition 1A was adopted in 2004, after the court decided the above cases and, thus, the interpretation of article XIII B, section 6(c) is an issue of first impression requiring the Commission to determine what the provision requires. The principles of constitutional interpretation are similar to those governing statutory construction. The aim of constitutional interpretation is to determine and effectuate the intent of the voters who enacted the constitutional provision. To determine that intent, the Commission, like a court, must begin by examining the constitutional text, giving the words their ordinary meaning.[91] In addition, the words must be interpreted in harmony with other relevant portions of the Constitution.[92] In this respect, it is appropriate to apply the same meaning to terms used in a constitutional amendment that are also stated in existing provisions of the Constitution when those terms have been judicially interpreted and put into practice, unless it is apparent from the language used that a more general or restricted sense was intended.[93]

The plain language of article XIII B, section 6(c) states that "a mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." The plain language of section 6(c) still requires a finding that the statute mandates a program within the meaning of article XIII B, section 6, and imposes costs mandated by the state. As previously interpreted by the courts, the statute must compel local agencies to incur increased costs mandated by the state for a program that carries out the governmental function of providing a service to the public or, to implement a state policy, imposes unique requirements on local agencies that do not apply to all residents and entities in the state.[94]

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: "Additionally, this measure (1) Will not allow the state government to force programs on local

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[90] *Ibid*. See also, *City of El Monte, supra,* 83 Cal.App.4 th 266, 279, finding a shift of costs between two local agencies in the school funding ERAF shift from redevelopment agencies to schools.

[91] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418.

[92] *State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 822.

[93] *Sacramento County v. Hickman* (1967) 66 Cal.2d 841, 849.

[94] *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

> governments without the state paying for them." (Ballot Pamp., Amend. To Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18 …). In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.[95]

The plain language of section 6(c), however, expands the definition of a "new program or higher level of service" to include shifts in funding for existing programs that are funded jointly by the state and local agencies. A mandated new program or higher level of service includes transfers by the Legislature from the state to the local agencies "complete *or* partial financial responsibility for a required program for which the State *previously* had complete *or* partial financial responsibility." Thus, the court's specific holding in *City of El Monte* that denied reimbursement for the ERAF shift because the state never had complete financial responsibility to fund schools, no longer applies.[96]

In addition, to determine if the transfer of costs is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously," had any financial responsibility for the program. The word "previously" is not specifically defined in the provision. Before the adoption of Proposition 1A, a shift of financial responsibility for a governmental program from the state to local government was considered "new" and, thus, a "new program," when it followed the fact that the state initially had complete financial responsibility for the program *at the time* article XIII B, section 6 was adopted in 1979. As indicated by the Supreme Court in the *County of San Diego* case, "[w]hether the state may discontinue assistance that it initiated *after* section 6's adoption is a question that is not before us.[97] For purposes of interpreting section 6(c), however, it does not make sense to determine the financial responsibilities of a program in 1979 when section 6(c) was added by the voters 25 years later in 2004, which now expands the definition of a mandated new program or higher level of service to include shifts of costs in *existing* programs with shared financial responsibilities.[98] Such an interpretation may ignore many years of legislation enacted after

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[95] *San Diego Unified School Dist., supra*, 33 Cal.4th at page 875.

[96] This interpretation is consistent with the analysis of Proposition 1A by LAO, which recognized that section 6(c) "may increase future state costs or alter future state actions regarding local jointly funded state-local programs. While it is not possible to determine the cost to reimburse local agencies for potential future state actions, our review of state measures enacted in the past suggests that, over time, increased state reimbursement costs may exceed a hundred million dollars annually." (Exhibit --.)

[97] *County of San Diego, supra*, 15 Cal.4th at page 99, fn. 20 (Emphasis added).

[98] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, providing that the rules of interpretation of a constitutional provision require a court to look at what the voters intended when they enacted the provision.

1979 that impacts an existing program, and adds a limitation to section 6(c), which is not included in the plain language adopted by the voters.[99]

Rather, the dictionary defines the word "previously" as "existing or happening prior to something else in time or order."[100] In addition, recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing program.[101] Thus, the Commission finds that a test claim statute shifting the financial responsibility of a program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift or transfer of costs constitutes a new program or higher level of service within the meaning of article XIII B,
section 6(c).

2. <u>The 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).</u>

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. <u>The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs*</u>

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[99] *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301, where the court stated that "To determine this intent [of a constitutional provision], we look first to the plain language of the law, read in context, and will not add to the law or rewrite it to conform to an assumed intent not apparent from the language."

[100] Webster's II New College Dictionary (1986), page 876.

[101] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, where the court held that "the statutory requirements here at issue – immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral) – reasonably are viewed as providing a "higher level of service" to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of the [test claim statute]."

of future retiree health benefits for either currently employed or already retired personnel. (Emphasis added.)

This 2009 provision, however, remained in the law only until June 27, 2012, when Government Code section 69926 was repealed to implement the statutory realignment of superior court security funding enacted in Assembly Bill 118 (Chapter 40 of the Statutes of 2011), in which the Trial Court Security Account was established to fund court security.[102] Thus, the issue whether the 2009 amendment to Government Code section 69926(b) imposes a new program or higher level of service is relevant only to a potential period of reimbursement from July 28, 2009 to June 27, 2012.

As described in Section II. Background, state law, since 1883, has required the county sheriff to provide court security services to the courts. As last amended in 2002, Government Code section 69922 requires the sheriff to attend all criminal and delinquency actions in the superior court held within his or her county, and to attend noncriminal actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state and, thus, not subject to the reimbursement requirements of article XIII B, section 6.[103] However, providing court security services for criminal and delinquency actions of the court is a "required program" within the meaning of article XIII B, section 6(c), that is imposed uniquely on counties by the state and provides a service to protect the safety of the public. Furthermore, the program, both before and after the enactment of the 2009 test claim statute, is partially funded by the state. Government Code sections 77300, 77201, and 77201.1 require the state to assume sole responsibility for the funding of court operations, defined to include sheriff court security services, beginning in fiscal year 1997-1998, and further require specified counties to remit maintenance of effort payments to the state each year for the amounts identified and expended by the court for court operations during the 1994-1995 fiscal year.

The parties dispute, however, whether the 2009 amendment to Government Code section 69926(b), which excluded retiree health benefits from the state funding for sheriff court security services, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c), or simply clarifies existing law. This issue is addressed below.

a) Prior Law

Immediately before the 2009 amendment to Government Code section 69926(b), the allowable costs paid by the state to counties for providing sheriff security services to the courts for criminal

[102] Government Code sections 69926 was repealed by Statutes 2012, chapter 41 (SB 1021), effective June 27, 2012. In its place, the Legislature added section 69923 to deal with the costs of sheriff court security services and a new section 69926, which does not include the underlined language at issue in this case. There has been no test claim filed on Statutes 2012, chapter 41, and, thus, this decision does not reach the issue whether 2012 statute creates a reimbursable state-mandated program.

[103] Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

and delinquency matters was governed by 2002 Superior Court Law Enforcement Act (Gov. Code, §§ 69920 et seq.) and the contract law enforcement template established to identify allowable costs. Government Code section 69921.5, as added by 2002 Act, required the presiding judge of each superior court to contract with the sheriff or marshal, subject to available funding, for the necessary level of law enforcement services in the courts. Section 69926(b) required that the annual or multiyear memorandum of understanding shall specify the agreed upon level of court security services, cost of services, and terms of payment. Section 69926(c) required the sheriff or marshal to provide information each year to the court specifying the proposed projected costs for the court security budget, including negotiated salary increases for the deputies that provide security services. The court security budget was then subject to the Judicial Council's approval and appropriation of funding by the Legislature.

To standardize billing and accounting practices, the Legislature enacted Government Code section 66227 to identify allowable law enforcement costs after January 1, 2003, the operative date of the 2002 Superior Court Law Enforcement Act. Section 66227(a) states the intent of the Act is to not increase or decrease the responsibility of a county for the cost of court operations for the court security services provided before January 1, 2003. Section 66227(a) further states that any new court security costs permitted by law are not operative unless the funding is approved and provided by the Legislature. The Judicial Council interprets this provision as requiring the court to pay for only those allowable costs that were properly billed under the trial court funding program before the Act as follows:

> The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose.[104]

Section 69927 then required the Judicial Council to establish a working group on court security to develop a contract law enforcement template that identifies allowable law enforcement security costs. Section 69927(a)(5), as added in 2002,[105] defined "allowable costs for security personnel services" for the template to mean "the salary and benefits of an employee, including, but not limited to," a long list of benefits including "county health and welfare" … and related benefits of law enforcement supervisory and line personnel." The contract law enforcement template became effective May 1, 2003, and identifies the following allowable court security costs for county employees in Section 1: court security personnel approved in the budget or provided at special request of the court; salary, wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security

[104] Exhibit --, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010.

[105] Government Code section 69927(a)(5) was renumbered to section 69927(a)(6) by the 2009 test claim statute.

supervisors who spend more than 25 percent of their time on court security functions; and negotiated and projected salary increases.

Allowable benefits for employees are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25 percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting); extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security equipment; video arraignment equipment; costs of workers compensation/disability payments to

disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

Government Code section 69927(b) concludes by stating that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …." As indicated in Section II. Background, Function 8 of Rule 810 previously defined allowable costs for sheriff court security services to include the "salary, wages, and benefits" of sheriff supervisory and line personnel.

The Judicial Council contends that retiree health benefits were not included in the list of allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute. The Judicial Council states the following:

> Although sheriff retiree health benefits are not specifically identified in the list of allowable costs identified in Government Code section 69927(a)(6), the working group could have determined they were allowable because the use of the words [in the statute] "including, but not limited to" preceding the list of allowable items indicates that the Legislature intended the list to be illustrative and not exclusive. [Footnote omitted.] The first version of the Template, [footnote omitted] however, did not allow payment of sheriff retiree health benefits. Section I of the Template, titled "Allowable Cost Narratives," allows for the payment of "Salary, wages, and benefits" for sheriff employees. Section III of the Security Template, entitled "Addendum Narratives," includes a table that states "this is a list of *the* allowable employer-paid labor-related employee benefits." (Italics added.) This wording, in contrast to the use of the phrase "including, but not limited to" in Government Code section 69927(a)(6), makes the list exclusive. [Footnote omitted.] *Retiree health benefits are not included in the list.* Given that the Legislature made the Template the final word on what was an allowable cost, with its adoption, retiree health benefits were not allowable costs.[106]

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost for county employees, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

"County Health and Welfare (Benefit Plans)" is broad and does have meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d)

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[106] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.

defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees.[107] The courts have determined that section 53201 gives local agencies the power to provide their employees "*any* health and welfare benefits" for its officers, employees, and retired employees, with no limitation on the amount or kinds of benefits a local agency may provide.[108] Section 53202 states that the local agency may contract with one or more insurers, health service organizations, or legal service organizations when providing health and welfare benefits. Sections 53202.1 and 53205.2 then provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate upon retirement of the employees affected*, and which provide the same benefits for retired personnel as for active personnel at no increase in costs to the retired person, provided that the local agency or governing board makes a contribution of at least five dollars ($5) per month toward the cost of providing a health benefits plan for the employee or the employee and the dependent members of his family."[109]

It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined allowable "salary and benefit" costs for security personnel services to include

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[107] The legislative history of Government Code section 53201 was described in an opinion issued by the Attorney General's Office. It states the following:

> Section 53201 was enacted in 1949 (Stats. 1949, ch. 81, §1), initially allowing current officers and employees that opportunity to purchase their own group insurance. In 1957 (Stats. 1957, ch. 944, §2), the Legislature authorized local agencies to pay for the insurance if they so chose, and expanded the coverage to health and welfare benefits generally. In 1963, 'retired employees' (Stats. 1963, ch. 1773, §1) were added to the coverage ….

(85 Ops. Cal.Atty.Gen. 63 (2002).

[108] *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 654.

[109] Emphasis added. In *Ventura County Retired Employees' Assn. v. County of Ventura* (1991) 228 Cal.App.3d 1594, 1598-1599, the court held that a county's initial decision to furnish health care benefits to retirees is discretionary and that section 53205.2 does not require a county to provide health care benefits to retirees which are equal to those provided to active employees. Rather, section 53205.2 requires only that the county give preference to health benefit plans that furnish retirees and active employees the same benefits at no cost increase to retirees. "Such a 'preference' should only be made if health plans are commercially available and actuarially sound."

"county health and welfare" benefits.[110] In fact, the plain language of Government Code section 69927(b), as added by the 2002 Act, shows that the Legislature was aware of the prior definition of allowable costs for sheriff court security services in Function 8 of Rule 810 and that it included all costs for salary, wages, and benefits provided by the county for sheriff supervisory and line personnel performing court security services. Section 69927(b) states that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost . . . [in] Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …."

In addition, there is nothing in the phrase "County Health and Welfare (Benefit Plans)," or other language adopted in the template, to suggest that the phrase means something different than the health and welfare benefits authorized by sections 53200 and 53201 for county employees, or that the phrase itself excludes retiree health benefits as suggested in the comments filed by the Judicial Council.

This interpretation is also supported by documents in the record filed by the Judicial Council. Exhibit 12 to the Judicial Council's comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[111] Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with documents attached to the letter showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's maintenance of effort payment for trial court funding) in its maintenance of effort payments to the state. The letter took the position that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past. Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a). And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows:

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[110] *Estate of McDill* (1975) 14 Cal.3d 831, 837.

[111] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 12.

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them.

Thus, the Commission finds that under the law immediately preceding the 2009 test claim statute, the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003.

b) Section 69926(b), as amended in 2009, transfers partial financial responsibility for the sheriff court security program from the state to the counties within the meaning of article XIII B, section 6(c)

The 2009 test claim statute amended Government Code section 69926(b), effective July 28, 2009, to *exclude* retiree health benefits from sheriff court security services payable by the state under the trial court funding program. Section 69926(b) defines the excluded "retiree health benefits" to include, "but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel."

The Judicial Council asserts that reimbursement is not required for retiree health benefit costs associated with former sheriff deputies who are already retired since under prior law, the state did not pay for the health benefits of retired employees under the trial court funding program. Thus, those costs have not been shifted to the counties.

The Judicial Council is correct that under prior law, section 69926(a)(5), as added by the 2002 Superior Court Law Enforcement Act, defined the allowable costs for security personnel services to mean only the salary and benefits of "an employee." No funding was provided by the state under prior law for premium costs provided to already retired employees and their beneficiaries. Thus, the Commission agrees that any current health benefit payments to retirees or their beneficiaries during the period of reimbursement have not been transferred by the state and do not constitute a new program or higher level of service for counties.

However, as indicated above, the cost of retiree health care benefits for existing *employees* providing court security services in criminal and delinquency matters was an allowable cost paid by the state under prior law, as long as the cost was included in the county's cost for court operations and properly billed to the state under the trial court funding program before January 1, 2003. For those counties, retiree health care costs for employees providing the required security services are now excluded and have been transferred to the county. To hold, under the circumstances of this case, that a shift in funding of an existing required court security program from the state to the county is not a new program or higher level of service would violate the intent of article XIII B, section 6. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of the constitutional restrictions on the taxing and spending power of the local entities.[112]

[112] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

However, more analysis is required to determine what the new program or higher level of service "cost" is for a county. Under mandates law, a county must demonstrate actual costs incurred in a fiscal year to be reimbursed. Increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit are the costs that are eligible for reimbursement.[113] "We can only conclude that when the Constitution uses 'costs' in the context of subvention of funds to reimburse for 'the costs of such program,' that some actual cost must be demonstrated . . . ."[114] In this case, whether retiree health benefit "costs" have actually been incurred and can be demonstrated, will depend on how a county funds retiree health benefits.

As described in more detail in the next section, retiree health benefits, like salaries and pensions, are earned during an employee's working years. Several sources indicate, however, that most counties have historically funded these benefits on a "pay-as-you-go" basis *after* the employee retires. If a county has adopted the pay-as-you-go method, the county does not pre-fund retiree health benefit costs in the year services are provided like it does for pensions by making annual contributions to either the normal (or current) cost of the benefit or to unfunded liabilities associated with the benefit, but instead pays premium costs for retiree health benefits as the costs are incurred *after* employees have retired.[115] Thus, the pay-as-you-go method shifts current

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[113] Government Code section 17514; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284; see also, *County of Fresno v. State of California* (1990) 53 Cal.3d 482, 487, where the court noted that article XIII B, section 6 was "designed to protect the tax revenues of local government from state mandates that would require expenditure of such revenues."

[114] *County of Sonoma, supra*, 84 Cal.App.4th at page 1285.

[115] In *Retired Employees Association of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1188, the League of Cities and California State Association of Counties filed amicus briefs stating that "retiree health insurance benefits, unlike pensions, are not funded during the retiree's working years; that most of these benefits have been funded on a pay-as-you-go basis [*after* employees retire]…." This information is consistent with findings of the Public Post-Employment Benefits Commission, established under former Governor Schwarzenegger's Executive Order (S-25-06) dated December 28, 2006. The January 1, 2008 report issued by the Public Post-Employment Benefits Commission states, on pages 24 and 219, that the pay-as-you-go method for funding retiree health costs continues to be the predominate funding strategy used by those agencies and that 78 percent of the agencies do not prefund these benefits. And, finally, the LAO, in its December 19, 2013 review of an initiative for the 2014 ballot that proposes to amend the Constitution related to pensions for state and local governmental employees states the following:

> Unlike pension plans, few government employers prefund retiree health benefits. That is, most government employers and employees do not make annual contributions to either the normal cost or unfunded liabilities associated with the benefit. Instead, employers pay premium costs for retiree health benefits as they incur after employees have retired – a method or payment referred to as "pay-as-you-go." Some government employers recently started prefunding these benefits. In 2010-2011, the state paid about $1.4 billion towards these benefits

retiree health benefit costs earned by the employee in the current year to future taxpayers.[116] In past years, these costs were reported by the county only after retirement, and were not reflected as a cost or obligation incurred as counties receive employee services each year.

In 2004, however, the Government Accounting Standards Board issued statement 45 (GASB 45), which was intended to address the financial reporting of governmental entities using the pay-as-you-go approach for these types of post-employment benefits. GASB 45 requires all government entities, including counties, to start documenting in their accounting and financial reporting statements the unfunded liabilities for post-employment benefits, including retiree health benefits, by December 15, 2008. The liabilities for retiree health benefits, like those for pension systems, will be determined by actuaries and accountants based on assumptions of future health care cost inflation, retiree mortality, and investment returns. "This unfunded liability can be characterized as an amount, which, *if invested today*, would be sufficient (with future investment returns) to cover the future costs of all retiree health benefits *already earned* by current and past employees."[117]

Under GASB 45, government financial statements will list an actuarially determined amount known as an annual required contribution (ARC) for post-employment benefits like retiree health benefits. This contribution includes the following two costs:

- The normal cost – which represents that amount that needs to be set aside to fund future retiree health benefits *earned in the current year*.
- Unfunded liability costs – the amount needed to pay off *existing unfunded retiree health liabilities* over a period of no longer than 30 years.[118]

> for retired state and CSU employees. We estimate that local employers paid an equal or greater sum for these benefits for their employees and retirees.

[116] Exhibit --, "Retiree Health Care: A Growing Cost for Government," LAO, February 17, 2006. The LAO report states the following:

> The state (and nearly every other public entity nationwide) does not pay its current (or normal) costs for retiree health benefits each year. Consequently, the state fails to reflect in its budget the true costs of its current workforce. Since 1961, the state has been shifting costs to future taxpayers. The tens of billions of dollars in unfunded liabilities now owed by the state is the result of this approach. For this reason, the pay-as-you-go approach to retiree health care conflicts with a basic principle of public finance – expenses should be paid for in the year they are incurred. This principle requires decision makers to be accountable – through current budgetary spending – for the cost of whatever future benefits may be promised.

[117] *Ibid*; see also, "GASB Statement 45 on OPEB Accounting by Governments, A Few Basic Questions and Answers." (Exhibit --.)

[118] *Ibid*.

GASB 45, however, does not address how a governmental entity actually finances retiree health benefits, since that is a local policy decision. Thus, even though a county is required to report the amount needed to be set aside to fund future retiree health benefits earned in the current year and the existing unfunded retiree health liabilities, a county may continue to actually fund all retiree health benefit costs *after* employee retirements on a pay-as-you-go basis. When that occurs, 100 percent of the retiree health benefit costs will be an unfunded liability payable in future years.[119]

If a county defers payment for retiree health benefit costs until after their employees retire, the amounts reported in the annual financial statements as the county's annual required contribution pursuant to GASB 45 are not considered costs actually incurred by the entity in the fiscal year of reporting. Rather, as described in the case of *County of Orange v. Association of Orange County Deputy Sheriffs*, the unfunded liability simply represents an estimate projecting future contributions necessary to fund the benefit.[120] In *County of Orange*, the court addressed the issue whether the county's estimated unfunded actuarial accrued liability (UAAL) for pension benefits represented a debt subject to the municipal debt limitation imposed by the California Constitution, which prohibits a county from encumbering its general funds beyond the year's income without first obtaining the consent of two-thirds of the electorate.[121] Under the facts of the case, the county approved a pension increase for sheriff deputies to 3 percent at 50 in 2001, and renewed that agreement in subsequent contracts with the employee union for several years. Before adopting the resolution, the county secured an actuarial report that analyzed the financial impact of adopting the 3 percent at 50 formula for all years of service, both past and future, estimating the increase in the county's actuarial accrued liability between $99 and $100 million. A 2007 actuarial analysis concluded that the past service portion of the increased retirement benefit totaled $187 million. In 2008, the county adopted a resolution finding that, despite its prior resolutions increasing benefits, the enhanced benefits were unconstitutional.[122] The court held, however, that the unfunded actuarial accrued liability for the pension benefits did not constitute a debt or liability of the county, but an estimate projecting future contributions necessary to fund the benefit.[123] The court found persuasive a 1982 Attorney General's Opinion, finding that the state's unfunded liability for retirement did not violate the state debt limitation provision because the liability was based on estimates with no legally enforceable obligation yet existing, and applied that reasoning to the county's unfunded pension liability.

> In 1982, the Attorney General concluded that the state retirement system's "unfunded liability" did not violate the state debt limitation provision. The Attorney General explained that "[d]etermining how much income to the [state] Fund is necessary to pay all benefits as they become due is the business of

[119] *Ibid.*

[120] *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 28, 36-37.

[121] *Id.* at page 33, referring to article XVI, section 18 of the California Constitution.

[122] *Id*. at pages 29-30.

[123] *Id*. at pages 36-37.

> actuaries. Actuaries predict future financial operations of an insurance or retirement system by making certain assumptions regarding the variables in the system." (65 Ops.Cal.Atty.Gen. 571, 572 (1982).)
>
> The state Public Employees' Retirement System (PERS) actuarial balance sheet showed an "unfunded actuarial liability" above the state debt limitation amount. The Attorney General concluded: "The actuarial term 'unfunded liability' fails to quantify as a legally enforceable obligation of any kind. As previously noted the very existence of such an 'unfunded liability' depends upon the making of an actuarial evaluation and the use of an evaluation method which utilizes the concept of an 'unfunded liability.' Further the amount of such an 'unfunded liability' in the actuarial evaluation of a pension system will depend upon how that term is defined for the particular valuation method employed. Finally the amount of such an 'unfunded liability,' however defined for the method used, depends upon many assumptions made regarding future events such as size of work force, benefits, inflation, earnings on investments, etc. In other words *an 'unfunded liability' is simply a projection made by actuaries based upon assumptions regarding future events. No basis for any legally enforceable obligation arises until the events occur and when they do the amount of liability will be based on actual experience rather than projections."* (65 Ops.Cal.Atty.Gen., *supra*, at p. 574, italics added.) Such calculations did not result in a legally binding debt or liability, but instead provided "useful guidance in determining the contributions necessary to fund a pension system." (*Ibid*.)
>
> . . . We find the analysis in the 1982 opinion persuasive, and that analysis supports the conclusion that a UAAL such as the $100 million cited by the County in this case is an actuarial estimate projecting the impact of a change in a benefit plan, rather than a legally enforceable obligation measured at the time of the County's 2001 resolution approving the 3% at 50 formula.[124]

The same reasoning applies to the unfunded projected costs of retiree health benefits that are reported by counties, which have adopted a pay-as-you-go approach, in their annual financial statements prepared in accordance with GASB 45. Those unfunded amounts, like pension projections, are simply estimates prepared by actuaries. With a pay-as-you-go approach, those amounts do not become actual debt or enforceable obligations until after the employee retires. And, as indicated above, amounts paid by a county in a current fiscal year after the employee retires are *not* costs that have been transferred by the test claim statute. Nor are those projected costs considered "actual costs incurred" within the meaning of article XIII B, section 6 because the projected estimates do not require the county to expend its limited tax revenues in the reporting year.[125]

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[124] *Ibid.*

[125] *County of Fresno, supra*, 53 Cal.3d at page 487.

However, some local government employers have recently started to prefund their retiree health benefits, making annual contributions as current year costs.[126] In its comprehensive annual financial report for the fiscal year ending June 30, 2012, the County of Los Angeles reported that the county's contribution during fiscal year 2011-2012 for health care benefits for retirees and their dependents was on a pay-as-you-go basis only. However, in May 2012, the County established a trust account for the purpose of holding and investing assets to prefund the retiree health program. The report states the following:

> The OPEB Trust is the County's first step to reduce its OPEB unfunded liability. It will provide a framework where the Board of Supervisors can begin making contributions to the trust and transition, over time, from "pay-as-you-go" to "pre-funding." The OPEB Trust does not modify the County's benefit programs.[127]

In the County's annual financial report for fiscal year ending June 30, 2013, it reports that the "During FY 2012-2013, the County made contributions to prefund the growing liability for retiree healthcare benefits in the amount of $448.8 million."[128] The report shows a 2012-2013 contribution made by the county in the amount of $889,871 for retiree health benefits for county employees, a portion of which would be applicable to county sheriff employees providing sheriff court security services in criminal and delinquency matters.[129]

Thus, the Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to prefund the future retiree health benefit costs earned in the current fiscal year of an employee providing court security services in criminal and delinquency matters are the costs that represent the new program or higher level of service for the sheriff court security program and require the county to expend tax revenues in that fiscal year. This finding is consistent with the Office of Management and Budget (OMB) Circular A-87 (2 CFR Part 225, Appendix B(f)), a provision contained in all parameters and guidelines adopted by the Commission, which allows reimbursement for only those retiree health benefit costs that are funded for that fiscal year and have been paid to either (a) an insurer or other benefit provider as current year costs or premiums, or (b) an insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

OMB Circular A-87 also allows as a reimbursable cost for retiree health benefits, actual amounts paid by a county in a current fiscal year to an insurer, benefit provider, or trustee to cover any existing unfunded liability attributable to the retiree health benefit costs earned in prior years by county employees providing sheriff court security services in criminal and delinquency matters,

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[126] Exhibit --, LAO Review of proposed 2014 initiative on the Pension Reform Act, December 19, 2013.

[127] Exhibit --, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2012, pages 79-82.

[128] Exhibit --, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2013, page 86.

[129] *Ibid.*

if that liability is amortized over a period of years. In this respect, 2 CFR Part 225, Appendix B(f)(4) states that "when a governmental unit converts to an acceptable actuarial cost method and funds PRHB [post-retirement health benefit] costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency." The Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to reduce an existing unfunded liability of health benefit costs earned by county employees providing court security services in criminal and delinquency matters are also costs that represent the new program or higher level of service for the sheriff court security program and require the county to expend tax revenues in that fiscal year.

Accordingly, the Commission finds that Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do not constitute a new program or higher level of service for counties.

D. The 2009 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Even though the transfer of costs in the circumstances described above is new and increases the level of service provided by counties, the Judicial Council argues that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, it argues that any transfer of costs is triggered by a discretionary decision of the county and is not mandated by the state.

In order for the retiree health benefit costs to be eligible for reimbursement, the costs incurred must be mandated by the state. Whether a statute imposes a "mandate" has been the subject of litigation, and the issue turns on four leading cases. In *City of Merced*, the court held that a statute amending the eminent domain law to require compensation for business goodwill is not a reimbursable cost since the city was not required by state law to obtain property by eminent

domain.[130] The program permitting the use of the eminent domain power was voluntary. The court stated the following:

> [W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[131]

In *Kern High School Dist.*, the California Supreme Court held that statutes requiring school site councils and advisory committees for certain grant-funded educational programs to provide a notice and agenda of their meetings was not mandated by the state.[132] The Supreme Court determined that school districts had the option of participating in the funded programs and, thus, they were not legally compelled to incur the notice and agenda costs. The court affirmed the holding in *City of Merced*, finding that "the core point . . . is that activities undertaken at the option or discretion of a local government entity (that is, action undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate …."[133]

The school districts in *Kern* also argued that the legal compulsion standard is too narrow and that they should be reimbursed because school districts have "had no true option or choice but to participate in these [underlying education-related] programs. This absence of a reasonable alternative to participation is a de facto mandate."[134] The Supreme Court summarized its response as follows:

> Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program – claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of the various funded programs "too good to refuse" – even though, as a condition of participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.[135]

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[130] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[131] *Id.* at page 783.

[132] *Kern High School Dist., supra*, 30 Cal.4th 727, 745.

[133] *Id*. at page 742.

[134] *Id*. at page 748.

[135] *Id.* at page 731.

The school districts in *Kern* finally argued that the notice and agenda requirements were imposed for the first time many years *after* school districts decided to participate in the education programs and, thus, they were not free to stop their participation in the programs mid-stream. The court rejected the argument, finding that "a school district's *continued* participation in the programs would be no less voluntary. …[S]chool districts have been, and remain, legally free to decline to continue to participate in the eight programs here at issue."[136]

In *San Diego Unified School Dist.*, the key issue was whether the state requirements for expulsion hearings - which were not compelled by state criteria for expulsion, but in a sense discretionary – were mandated by the state.[137] The court's holding did not reach the mandate issue, since the court determined the costs were mandated by federal due process requirements. The court, however, discussed the reach of the *City of Merced* rationale, and rejected extending it whenever some element of discretion in incurring the cost existed; e.g., when costs for a fire protection program are higher because of the decision how many firefighters to hire into a fire department. The court stated the following:

> Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.[138]

More recently, the court in *Department of Finance v. Commission on State Mandates* held that school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties are not

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[136] *Id.* at page 754, fn. 22.

[137] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 888-890.

[138] *Id.* at pages 887-888.

mandated by the state to comply with the requirements of the Peace Officer Procedural Bill of Rights Act (POBRA).[139] The court stated that "[t]he result of the cases discussed above is that, if a local government participates 'voluntarily,' i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement."[140] The court further held that the Legislature's recognition of the need for local governmental entities to employ peace officers when necessary to carry out their basic functions did not persuasively support a claim of practical compulsion. The "necessity" that is required is facing "certain and severe penalties such as double taxation or other draconian consequences," based on concrete evidence in the record.[141] "Instinct is insufficient to support a legal conclusion" of a state-mandated program.[142] The court stated the following:

> Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission's argument would be forceful. However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.[143]

The court further explained that:

> …the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the *only reasonable means* to carry out their core mandatory functions.[144]

In this case, there is no dispute that counties are legally compelled to participate in the sheriff court security services program for criminal and delinquency matters pursuant to Government Code section 69922. However, the Judicial Council is correct that the state does not require counties to provide retiree health care benefits to employees. Counties are authorized by Government Code sections 53200 et seq., to provide those benefits and a county, like other local agencies, is required by the Meyers-Milias-Brown Act (MMBA) to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510.) The

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[139] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357.

[140] *Id*. at pages 1365-1366.

[141] *Id.* at page 1366.

[142] *Id.* at page 1369, concurring opinion by Presiding Justice Scotland.

[143] *Id*. at page 1367.

[144] *Id.* at page 1368, emphasis added.

purpose of the MMBA is to "promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations.[145] The MMBA requires public agencies to negotiate exclusively with the collective bargaining units. Once a memorandum of understanding (MOU) has been negotiated, it is reviewed and approved by the governing body of the public entity and the membership of the bargaining unit.[146] Generally, when an MOU has expired, the parties may negotiate changes to its provisions.[147] An MOU is binding on both parties for its duration and the public employer may not later deny the employee the means to enforce the agreement.[148] Both the state and federal Constitutions provide that a law impairing the obligation of contracts may not be passed by the public entity.[149] Thus, the contract clause of the state and federal Constitutions limits the power of public entities to unilaterally modify their own contracts with employees during the terms of the MOU.[150]

1) The test claim statute does not result in costs mandated by the state for new employees, hired after the effective and operative date of the test claim statute (July 28, 2009), to perform sheriff court security services in criminal and delinquency matters.

The Commission finds that the state, with the enactment of the 2009 test claim statute, has not mandated counties to incur costs for retiree health benefits for *new employees* performing sheriff court security services in criminal and delinquency matters that are *hired after* the effective and operative date of the test claim statute (July 28, 2009). After that date, counties are on notice that retiree health benefits will no longer be covered by the trial court funding program and can properly plan and budget for new employees providing those services. Counties continue to have the authority to provide retiree health benefits to new employees pursuant to Government Code section 53200 et seq., but are not required by state law to do so. Moreover, there is no evidence in the record that a county is practically compelled to provide retiree health benefits to new employees hired after July 28, 2009, to perform the required program. Such a showing requires concrete evidence in the record showing that a county has no alternative, but is forced to hire new employees to provide sheriff court security services in criminal and delinquency matters in order to comply with their contracts with the court, and forced to offer retiree health

[145] Government Code section 3500.

[146] Government Code section 3505.

[147] Government Code section 3505.1.

[148] *San Bernardino Public Employees Assn. v. City of Fontana* (1998) 67 Cal.App.4th 1215, 1220; *Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1182.

[149] California Constitution, article 1, section 9; U.S. Constitution, article I, section 10.

[150] *San Bernardino Public Employees Assn, supra,* 67 Cal.App.4th at page 1222.

benefits as part of the compensation package to obtain qualified employees. Without concrete evidence in the record, the Commission cannot make such a finding based on instinct alone.[151]

2) The test claim statute imposes costs mandated by the state for the payment of retiree health benefits to employees hired before July 28, 2009, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits.

The same finding cannot be made, however, with respect to employees existing when the 2009 test claim statute became operative and effective, if those employees had a vested right to retiree health benefits. Vested rights, once acquired, extend beyond the expiration of an MOU and a county has no discretion to unilaterally change or impair vested rights of existing employees. Such an action is barred by the contracts clause of the United States and California Constitutions.[152] Vested obligations in public employment that are protected by the contract clause include the right to the payment of salary which has been earned.[153] The courts have also found that "since a pension right is 'an integral portion of contemplated compensation' [citation omitted] it cannot be destroyed, once it has vested, without impairing a contractual obligation."[154] These findings have also been applied to retiree health benefits.[155] Thus, once retiree health benefits are vested, the right cannot be destroyed without impairing the contract in violation of the Constitution.[156]

The determination of whether an employee has a vested right to retiree health benefits depends on the interpretation of the public employment contract. Contracts between counties and their employees are interpreted by the same rules as private contracts, unless otherwise provided in the law.[157] Contractual rights that extend beyond the term of an MOU and, thus, become vested, occur when the statutory language "clearly … evince a legislative intent to create private rights of a contractual nature enforceable against the [government body.]"[158] Where the legislation

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[151] *Department of Finance, supra,* 170 Cal.App.4th 1355, 1369, concurring opinion by Presiding Justice Scotland.

[152] *International Brotherhood v. City of Redding* (2013) 210 Cal.App.4th 1114, 1119, citing *Litton Fin. Printing Div. v. NLRB* (1991) 501 U.S. 190, 207; *San Bernardino Public Employees Assn, supra,* 67 Cal.App.4th at page 1222.

[153] *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853.

[154] *Ibid.*

[155] *Thorning v. Hollister School Dist.* (1993) 11 Cal.App.4th 1598, 1609, finding that retired board members had a vested right in post-retirement health benefits provided by the school district as an element of their compensation during the term of public office.

[156] *Ibid*; *Betts v. Board of Administration of the Public Employees' Retirement System* (1978) 21 Cal.3d 859, 863.

[157] *Retired Employees, supra,* (2011) 52 Cal.4th 1171, 1177-1178.

[158] *Id.* at page 1187.

itself is the ratification or approval of a contract, the intent to make a contract is "clearly shown."[159]

For example, in *International Brotherhood v. City of Redding*, the city agreed to participate in paying employees' health insurance premiums and, since 1979, the MOUs contained a provision that "the City will pay fifty percent (50%) of the group medical insurance program premium for each retiree and dependents, if any, presently enrolled *and for each retiree in the future* who goes directly from active status to retirement and continues the group medical insurance without a break in coverage. …" (Emphasis added.) The MOU further stated that it would remain in full force and effect, unless modified by mutual agreement. Thirty years later, in 2010, the city and the labor union started negotiating for a new collective bargaining agreement, and failed to reach an agreement after the city proposed to reduce the retiree health benefits. The city then unilaterally reduced the retiree health benefit to provide a subsidy of only 2 percent per year of service, up to a maximum of 50 percent.[160] The court reversed the ruling on the demurrer, holding that the express language in the original MOU promising to pay retiree health benefits "for each retiree in the future," constituted a vested benefit to those employees subject to that MOU, which could not be impaired by the city.[161]

An employee may acquire a vested right to retiree health benefits upon acceptance of employment based on the system then in effect. If retiree health benefits are later conferred during the term of employment, the benefits become vested at that time.[162] The right to retiree health benefits may also be subject to subsequent conditions and contingencies that require the employee to work for the employer for a specified number of years before the employee is eligible to receive retiree health benefits.[163] In such cases, the employee has a vested right to those benefits upon employment or when later conferred during the term of employment, which cannot later be impaired by the employer. But the obligation to actually provide those benefits is subject to the condition that the employee work the required years of service.[164] For example,

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[159] *Ibid.*

[160] *Id.* at page 1117.

[161] *Id*. at page 1122.

[162] *Betts v. Board of Administration, supra*, 21 Cal.3d 859, 866, where the Supreme Court determined that "[a]n employee's contractual pension expectations are measured by benefits which are in effect not only when employment commences, but which are thereafter conferred during the employee's subsequent tenure." See also, *Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1606, extending the *Betts* finding to retiree health benefits.

[163] *United Firefighters of Los Angeles City v. City of Los Angeles* (1989) 210 Cal.App.3d 1095, 1103; LAO Review of proposed 2014 initiative, December 19, 2013.

[164] In this respect, the courts have held that "public employment is not held by contract but by statute and that, insofar as the duration of such employment is concerned, no employee has a vested contractual right to continue in employment beyond the time or contrary to the terms and conditions fixed by law." In other words, there are no vested contractual rights to continue working for any specified period of time. Thus, the fact that a pension right is vested, for example, will not prevent its loss upon the occurrence of a condition subsequent, such as lawful

in 1982, the County of Los Angeles adopted an ordinance that provided for a health insurance program for retired employees and their dependents. In 1994, the County amended the agreements to continue to support the retiree health insurance benefits program regardless of the status of active member insurance. The benefits earned by the employees of the County of Los Angeles are dependent on the number of completed years of retirement service credited to the retiree upon retirement. The benefits earned range from 40 percent of the benchmark plan cost with ten completed years of service to 100 percent of the benchmark plan cost with 25 or more completed years of service.[165]

Retiree health benefits may also be vested without an express contract. In 2011, the California Supreme Court, in *Retired Employees Association of Orange County, Inc. v. County of Orange*, determined that even if a future benefit is not expressly provided in the MOU, the right may still be vested and continue beyond the term of the MOU if a contract can be *implied* from a county ordinance or resolution.[166] The court issued its decision following a request by the United States Court of Appeals for the Ninth Circuit, asking the following question: "Whether, as a matter of California law, a California county and its employees can form an implied contract that confers vested rights to health benefits on retired county employees." The facts in the underlying federal case involved a 1966 offer by the County of Orange for group medical insurance to its retired employees. In 1985, the county began to combine active and retired employees into a single unified pool for purposes of calculating health insurance premiums. The single unified pool had the effect of subsidizing health insurance for retirees, in that it lowered retiree premiums below their actual cost, while raising active employee premiums above their actual cost. For budgetary reasons in 2007, the county passed a resolution splitting the pool of active and retired employees, increasing the health insurance premiums for retirees. The employee association sought an injunction prohibiting the county from splitting the pool of active and retired employees, arguing that the county's actions (i.e., its longstanding and consistent practice of pooling active and retired employees, along with the county's representations to employees regarding a unified pool) created an implied contractual right to a continuation of the single unified pool for employees who retired before a certain date and that the action constituted an impairment of contract in violation of the state and federal Constitutions.[167] The California Supreme Court answered the federal court's question by holding that a county may be bound by the terms of an implied contract as long as there is no legislative prohibition against such arrangements.[168] The

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termination of employment before completion of the period of service designated in the pension plan. Unlike tenure of civil service employment, pension rights are deferred compensation earned immediately upon performance of services for a public employer and cannot be destroyed without impairing a contractual obligation. *Miller v. State of California* (1977) 18 Cal.3d 808, 814-817.)

[165] Exhibit --, County of Los Angeles Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2012, page 79.

[166] *Retired Employees, supra*, 52 Cal.4th 1171.

[167] *Id.* at page 1177.

[168] *Id*. at page 1176.

court further affirmed that "[i]n California law, a legislative intent to grant contractual rights can be implied from a statute if it contains an unambiguous element of exchange of consideration by a private party for consideration offered by the state."[169] A clear showing that legislation was intended to create the asserted contractual obligation is required to ensure that neither the governing body nor the public will be blindsided by unexpected obligations.[170] "[A]s with any contractual obligation that would bind one party for a period extending far beyond the term of the contract of employment, implied rights to vested benefits should not be inferred without a clear basis in the contract or convincing extrinsic evidence."[171] The court concluded that a vested right to health benefits for retired county employees can be implied under certain circumstances from a county ordinance or resolution.[172]

In 2012, the First District Court of Appeal in *Requa v. Regents of the University of California,* applied the court's ruling in *Retired Employees Assn.* and found that former state university employees adequately pled that the university formed an implied contract to provide lifetime medical benefits.[173] The court based its conclusion on the allegations that the university authorized the benefits in 1961, the uninterrupted provision of those benefits for more than 50 years, and the university's publications assuring employees they would receive health benefits in retirement as long as they met certain eligibility requirements.[174]

Thus, a county's discretion to later change vested retiree health benefits acquired by existing employees is different than the situation in *Kern High School Dist*., where school districts had the discretion to avoid the costs of new state requirements by simply ending their participation in the underlying voluntary grant programs.[175] Here, vested retiree health benefit rights, whether created by express or implied contracts, could not have been unilaterally impaired or destroyed by a county when the test claim statute was enacted, without violating the United States and California Constitutions.[176] Thus, under these circumstances, once the test claim statute was

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[169] *Id*. at page 1186.

[170] *Id.* at pages 1188-1189.

[171] *Id.* at page 1191.

[172] *Id.* at page 1194.

[173] *Requa v. Regents of the University of California* (2012) 213 Cal.App.4th 213.

[174] *Id*. at pages 227-228.

[175] *Kern High School Dist., supra,* 30 Cal.4th 727.

[176] A constitutional bar against the destruction of such vested contractual rights, however, does not absolutely prohibit their modification. Although there are no reported cases interpreting employer modifications to vested retiree health benefits, the courts have explained allowable modifications to pension benefits. With respect to active employees, the courts have held that any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages. (*Miller, supra,* 18 Cal.3d 808, 816.)

enacted to exclude and shift the costs of retiree health benefits from the state to the counties for existing sheriff employees providing security services for criminal and delinquency matters, a county that contracted for those benefits did not have the discretion to stop honoring those vested rights.

Accordingly, the Commission finds that the new program or higher level of service imposed by Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, results in costs mandated by the state (from July 28, 2009, to June 27, 2012) for the payment of retiree health benefits to employees *hired before July 28, 2009*, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits. As described below, however, offsetting revenue in the form of realignment funds have been appropriated by the state to counties for fiscal year 2011-2012, which, if applied to pre-fund retiree health benefits of existing employees providing these services, reduces any costs incurred under this mandated program.

3) Offsetting revenue intended to pay for sheriff court security costs, including those costs for retiree health benefits, has been provided by the state for fiscal year 2011-2012.

In 2011, the Legislature enacted Assembly Bill 118 to implement the 2011 Public Safety Realignment Act. The bill created the account structure and allocations to fund realigned local costs in fiscal year 2011-12. Government Code section 30025 was added by the bill to create the Local Revenue Fund 2011, which includes the Trial Court Security Account. Funding transferred into the Local Revenue Fund shall be allocated exclusively for the services defined in section 30025(h). Section 30025(h)(1) defines "public safety services" to include "employing ... court security staff." Section 30025(f)(3) states that "the moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs." The bill also added section 30027 to the Government Code to allocate funds to the Controller for the Trial Court Security Account. Section 30027(c)(1) states that "no more than four hundred ninety-six million four hundred twenty-nine thousand dollars ($496,429,000) in total shall be allocated to the Trial Court Security Account, and the total allocation shall be reduced by the Director of Finance, as appropriate, to reflect any reduction in trial court security costs."

Thus, funding allocated for trial court security costs provided by county sheriffs and used by the county to pre-fund the costs of retiree health benefits of existing employees, shall be identified in any reimbursement claim and deducted from any costs claimed under this mandated program.

Courts have also held that considerations external to the functioning of the pension system, such as increased taxpayer hostility to felons or jealousy of employees not covered by the system will not justify a change to a pension right. The justification must relate to considerations internal to the pension system, e.g., its preservation or protection or the advancement of the ability of the employer to meet its pension obligations. Changes made to effect economies and save the employer money do "bear some material relation to the theory of a pension system and its successful operation. (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 666.)

V. CONCLUSION

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the trial court funding program before January 1, 2003, and only for existing employees *hired before July 28, 2009*, to provide sheriff court security services in criminal and delinquency matters, who have a vested right to such benefits:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 13, 2014, I served the:

Draft Staff Analysis and Proposed Statement of Decision,
Schedule for Comments, and Notice of Hearing

Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5
Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)
California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 13, 2014 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/13/14

Claim Number: 09-TC-02

Matter: Sheriff Court-Security Services

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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RECEIVED
August 22, 2014
Commission on
State Mandates

DEPARTMENT OF FINANCE
EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 22, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: Sheriff Court-Security Services, 09-TC-02

Dear Ms. Halsey:

The Department of Finance (Finance) submits these comments on the draft staff analysis of the above-referenced test claim. Finance respectfully disagrees with the analysis and recommends denial of the claim.

The 2009 amendment to Government Code section 69926(b) imposed no new program or higher level of service

The relevant question in this matter is whether the retiree health care benefit for sheriff court security employees is a required program. It is not.

Article XIIIB, section 6(c) is premised on the existence of a required program for which the state previously had complete or partial financial responsibility. As stated in the analysis, section 6(c) still requires a finding that there is a required program within the meaning of article XIII B, section 6 and costs mandated by the state. The test claim statute does not mandate any program. Nor was there ever a state requirement that a county provide retiree health care benefits for sheriff employees.

Neither did the test claim statute shift responsibility for funding retiree health benefits from the state to local government. First, the state did not have financial responsibility for the retiree health benefit program and providing retiree health benefits was not a state requirement. There is no evidence in the record to show that the state ever required retiree health benefits at all as part of providing court security or that the state did anything more than authorize or allow payment for those costs during a specific time period. Second, the test claim statute did not place any financial responsibility on local government for payment of the retiree health benefits. The test claim statute only ended the state's agreement to pay those costs. While the state paid those costs for a period of time, it did so voluntarily and absent any legal obligation to do so. This does not equate to the state's having "financial responsibility" within the meaning of section 6(c). The claim should be denied because there is no transfer of fiscal responsibility for a required program.

A reimbursable state mandate cannot be created by the Constitution and cannot result from a voluntary decision of local government

The draft staff analysis correctly observes that the state does not require counties to provide retiree health care benefits to employees but that counties may choose to do so through the collective bargaining process (see page 56). The analysis then mistakenly finds that because the counties that chose to offer the benefits (and allegedly created vested rights) could not later decide to stop, the state has required the counties to incur those costs and must provide reimbursement. The analysis reasons that the United States and California Constitutions bar the counties from impairing the rights of the sheriff court security employees hired before July 28, 2009, who have a vested right to such benefits. The counties may or may not have an obligation to continue to provide the benefits for these employees pursuant to the United States and California Constitutions, but if the obligation exists, it was voluntarily undertaken by the counties.

In a case involving the state's effort to issue bonds to finance the employer contribution to the state retirement system, the state attempted to rely on an "obligation imposed by law" exception to the state debt limit to validate the authority to issue the bonds. The court of appeal refused to accept that argument, observing that "[t]he fact that the state has a contractual obligation to maintain pension benefits does not mean the obligation is one imposed on the state by law. Rather (. . .) it is an obligation the Legislature has imposed on itself." (*State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc.* (2007) 152 Cal.App.4th 1386, 1406). Here, any county decision to offer vested retiree health benefits was made at the discretion of the county. The counties imposed that obligation on themselves. The law never required the state to pay these costs. Rather, as stated above, these costs were at one time paid by the state as authorized or allowable costs. This fact does not translate into state "fiscal responsibility" for purposes of state mandates. To suggest that historic state payment of local costs without the legal requirement to do so precludes the state from ceasing payment later without mandate implications cannot be accurate.

Further, the determination of whether a benefit is vested is complicated and fact intensive. The analysis would reimburse counties whose specified employees have a vested right to the retiree health benefits without saying who would make that determination and based on what criteria. If the test claim is approved, and it should not be, the State Controller may be required to assess the vested nature of the benefits for which reimbursement is sought. The vested nature of the benefits cannot be assumed.

The test claim should also be denied because county discretion to prefund (while the deputy is still employed) retiree health benefits or not determines whether the costs are reimbursable. This local policy decision inappropriately places the ability to receive mandate reimbursement within local control if the benefit costs are otherwise eligible for mandate reimbursement. This "too good to pass up" option is a new take on practical compulsion and should not dictate the mandate determination here.

For the reasons stated above, Finance asserts this test claim should be denied.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list.

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

for TOM DYER
Assistant Program Budget Analyst

Enclosure

Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), I am familiar with the duties of Finance, and I am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

8/22/2014
at Sacramento, CA

Michael Byrne

ICC: DYER, BYRNE, SCOTT, FEREBEE, GEANACOU, FILE

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C

Court of Appeal, Third District, California.
The STATE of California ex rel. **PENSION OBLIGATION BOND COMMITTEE**, Plaintiff and Appellant,
v.
ALL PERSONS INTERESTED IN the MATTER OF the VALIDITY OF the CALIFORNIA PENSION OBLIGATION BONDS TO BE ISSUED, etc., Defendant and Respondent.

No. C051749.
July 3, 2007.

Background: State, through its Pension Obligation Bond Committee, brought action to obtain a declaration of validity of a resolution authorizing issuance of bonds under certain limited circumstances to finance State's employer contribution to Public Employees Retirement System (PERS). The Superior Court, Sacramento County, No. 04AS04303,Raymond M. Cadei, J., concluded the resolution violated the constitutional debt limit. Committee appealed.

Holding: The Court of Appeal, Hull, J., held that proposed bonds did not fall within an exception to constitutional debt limit for obligations imposed by law.

Affirmed.

West Headnotes

[1] States 360 ⚿149

360 States
360IV Fiscal Management, Public Debt, and Securities
360k146 Bonds and Other Securities
360k149 k. Limitation of Amount. Most Cited Cases

Bonds proposed to be issued to finance State's employer contribution to Public Employees Retirement System (PERS) did not fall within an exception to constitutional debt limit for obligations imposed by law; to the extent that such an exception applied generally, it did not apply in the present case since State's obligation to fund PERS was one the Legislature voluntarily imposed upon itself, and, therefore, it was not an obligation imposed by law. West's Ann.Cal. Const. Art. 16, § 1; West's Ann.Cal.Gov.Code §§ 16910 et seq., 20790 et seq.
See Cal. Jur. 3d, Public Securities and Obligations, § 11 et seq.

[2] Constitutional Law 92 ⚿2350

92 Constitutional Law
92XX Separation of Powers
92XX(B) Legislative Powers and Functions
92XX(B)2 Encroachment on Judiciary
92k2350 k. In General. Most Cited Cases

A legislative declaration that essentially states a given enactment is constitutional is not binding on the courts.

****365** Bill Lockyer, Attorney General, Louis R. Mauro and Stacy Boulware Eurie, Senior Assistant Attorneys General, Jennifer K. Rockwell, Deputy Attorney General, Christopher E. Krueger, Supervising Deputy Attorney General, for Plaintiff and Appellant.

M. David Stirling, John H. Findley and Harold E. Johnson, Sacramento, for Defendant and Respondent.

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HULL, J.

***1390** The State of California (the State), through its Pension Obligation Bond Committee (the Committee), brought this action pursuant to Government Code section 16934 and Code of Civil Procedure section 860 et sequitur to obtain a declaration of the validity of recent legislation authorizing the issuance of bonds under certain limited circumstances to finance the State's employer obligation to fund pensions. The Committee argued the bonds fall within an exception to a state constitutional limitation on the creation of new debt (Cal. Const. art. XVI, § 1; unspecified article references that follow are to the California Constitution) for debts incurred to meet an obligation imposed by law. According to the Committee, the obligation to fund employee pensions is one imposed by law within the meaning of this exception.

The trial court disagreed with the Committee, concluding the pension obligation is one imposed by the State on itself and, therefore, does not fall within an exception for obligations imposed by law. The court entered judgment against the Committee.

We agree the bonds are not exempt from the constitutional debt limit and affirm the judgment.

STATUTORY AND PROCEDURAL BACKGROUND

I

Introduction

In 1929, a state commission on pensions recommended the establishment of a retirement system for state employees. (*Valdes v. Cory* (1983) 139 Cal.App.3d 773, 780, 189 Cal.Rptr. 212 (*Valdes*).) The commission "stressed ***1391** the need to place such a retirement system on a 'sound financial basis, where liabilities are provided for as they are *incurred,* rather than when they mature.' " (*Ibid.*)

The following year, the State Constitution was amended to empower the Legislature to create a state employee retirement system (former art. IV, § 22a; repealed Nov. 8, 1966). (*Valdes, supra,* 139 Cal.App.3d at p. 780, 189 Cal.Rptr. 212.) In 1931, "the Legislature established the State Employees' Retirement System, presently known as [the Public Employees Retirement System or] PERS. (Stats.1931, ch. 700, § 25, p. 1444; Gov.Code, [former] § 20004.) The system included a fund derived from mandatory employee payroll contributions (member contributions), contributions of the state, and earnings on the investment of the fund. (Stats.1931, ch. 700, §§ 41, p. 1445, 63, p. 1448, 65–74, pp. 1448–1451.)" (*Claypool v. Wilson* (1992) 4 Cal.App.4th 646, 653, 6 Cal.Rptr.2d 77, fn. omitted.) A board of administration (the ****366** PERS Board) was created to administer the system. (*Id.* at pp. 653–654, 6 Cal.Rptr.2d 77.)

The original enactments created a retirement benefit system commonly referred to as a "money purchase plan," whereby the amount of benefits provided depended on the amount of money in the pensioner's account at the time of retirement. (*Valdes, supra,* 139 Cal.App.3d at p. 781, 189 Cal.Rptr. 212; see Stats.1931, ch. 700, §§ 81–83.) These enactments were repealed in 1945 but reenacted in essential part as the State Employees' Retirement Law (the Retirement Law) (Stats.1945, ch. 123, §§ 1–2, pp. 535–609). (*Claypool v. Wilson, supra,* 4 Cal.App.4th at p. 654, 6 Cal.Rptr.2d 77.)

By 1947, PERS had become a defined benefit plan, with fixed benefits for pensioners and actuarially determined, fixed contribution rates for employers. (Stats.1947, ch. 732, § 1, p. 1784.) By 1968, The Legislature had empowered the PERS Board to adjust the fixed rates of employer contributions in accordance with updated actuarial valuations (Stats.1967, ch. 1631, §§ 29, p. 3903, 35, p. 3904). (*Valdes, supra,* 139 Cal.App.3d at p. 782, 189 Cal.Rptr. 212.)

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Beginning in 1982, both the Governor and the Legislature began devising means of balancing the state budget by limiting or delaying the state's employer contribution obligations to PERS. "For example, in 1982 legislation was enacted to bar the state from making a contribution for a portion of that year and to require the shortfall to be made up from the [PERS] reserve against deficiencies. [Citation.] Until 1990, the state paid employer contributions on a monthly basis. [Citation.] In 1990, the Legislature changed the payment schedule from monthly to quarterly. In 1991, the Legislature temporarily changed the payment schedule from quarterly to semiannually. In 1992, legislation 'changed the schedule to "semiannually, six months in arrears." ***1392** Legislation in 1993 changed the schedule to "annually, 12 months in arrears." ' [Citation.] In 1991, legislation was passed to repeal statutes providing for cost of living benefits to retirees, and to use these funds to meet the state's employer contribution requirement. [Citation.] Also in 1991, legislation was passed transferring the actuarial function to the Governor." (*Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, 1100, 130 Cal.Rptr.2d 149.)

In November 1992, the voters adopted Proposition 162, the California Pension Protection Act of 1992, which, among other things, added to article XVI, section 17 "the requirement that the PERS Board have 'sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.' (Cal. Const., art. XVI, § 17, subd. (e).) Proposition 162 contained a statement of 'Findings and Declaration,' which stated in part: ' "Politicians have undermined the dignity and security of all citizens who depend on pension benefits ... by repeatedly raiding their pension funds.... [¶] ... To protect the financial security of retired Californians, politicians must be prevented from meddling in or looting pension funds." ' (Historical Notes, 3 West's Ann. Const. (1996 ed.) art. XVI, § 17, p. 114 [Prop. 162, § 2, subds. (c)-(d)].) Proposition 162 also contained a statement of 'Purpose and Intent,' in which the voters declared their purpose and intent in passing Proposition 162 was, inter alia, ' "to strictly limit the Legislature's power over [public pension] funds, and to prohibit the Governor or any executive or legislative body of any political subdivision of this state from tampering with public pension funds." ' (Historical Notes, 3 West's Ann. Const., *supra,* art. ****367** XVI, § 17, p. 114 [Prop. 162, § 3, subd. (e)].)" (*Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1121, 61 Cal.Rptr.2d 207.)

In 1996, the Legislature repealed and reenacted the Retirement Law. (Stats.1995, ch. 379, §§ 1, p.1955, 2, p.1955.) Chapter 9 of the current law addresses employer contributions. (Gov.Code, § 20790 et seq.; further undesignated section references are to the Government Code.) Section 20814 reads:

"(a) Notwithstanding any other provision of law, the state's contribution under this chapter shall be adjusted from time to time in the annual Budget Act according to the following method. As part of the proposed budget submitted pursuant to Section 12 of Article IV of the California Constitution, the Governor shall include the contribution rates submitted by the actuary of the liability for benefits on account of employees of the state. The Legislature shall adopt the actuary's contribution rates and authorize the appropriation in the Budget Act.

***1393** "(b) The employer contribution rates for all other public employers under this system shall be determined on an annual basis by the actuary and shall be effective on the July 1 following notice of a change of rate."

In each fiscal year, the State pays to PERS the employer contribution as determined by the PERS Board. Appropriations are made from the General Fund on a quarterly basis to cover the employer's contribution (§ 20822), except where the employee is

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compensated from a special fund, in which case the employer's contribution is taken from that special fund (§ 20824).

The State has never issued bonds to finance its PERS contributions.

II

The Financing Act and Resolution No. 2003–1

In 2003, the Legislature enacted the California Pension Obligation Financing Act (the Financing Act) (§ 16910 et seq., added by Stats.2003, 1st Ex.Sess., ch. 11, § 5.) The Financing Act authorized "the issuance of bonds and the creation of ancillary obligations ... for the purpose of funding or refunding the state's pension obligations...." (Legis. Counsel's Dig., Sen. Bill No. 29 (2003–2004 1st Ex.Sess.); see § 16921, subd. (a).) It also established the Committee for the purpose of issuing and selling the bonds and ancillary obligations authorized by the Financing Act (§ 16920, added by Stats.2003, 1st Ex.Sess., ch. 11, § 1) and created the Pension Obligation Bond Fund for the deposit of funds generated through the issuance of bonds (§ 16929, added by Stats.2003, 1st Ex.Sess., ch. 11, § 1).

On May 27, 2003, the Committee adopted Resolution No.2003–1 authorizing the issuance of bonds in an amount not to exceed $2,003,000,000 to pay a portion of the State's employer contribution to PERS for fiscal year 2003–2004.

The next day, the Committee filed a validation action seeking a declaration of the legality of Resolution No.2003–1. In that action, the Committee asserted bonds issued pursuant to the Financing Act are exempt from article XVI, section 1. As shall be described in more detail below, that constitutional provision prohibits the Legislature from creating debts in excess of $300,000 without a two-thirds vote and approval of the electorate.

The trial court ruled against the Committee, concluding the resolution violated the constitutional debt limit.

****368 *1394** III

The Bond Act and Resolution No. 2004–1

In 2004, the Legislature enacted pension reform legislation that, among other things, introduced an alternate retirement program for new state employees. (Stats.2004, ch. 214, § 1.) According to the Legislative Counsel's Digest, this legislation provides "that state employees who become members of the Public Employees' Retirement System after the effective date of the bill shall not make contributions to the system, nor receive service credit for their service, and the state employer shall not make contributions on their behalf, during their first 24 months of employment." (Legis. Counsel's Dig., Sen. Bill No. 1105 (2003–2004 Reg. Sess.) Stats.2004, ch. 214.) Instead, those employees would be required "to contribute 5% of their monthly compensation to an alternate retirement program, to be developed by the Department of Personnel Administration." (*Ibid.*) Thereafter, the employee "may elect to receive service credit for that 24–month period of service and transfer his or her accumulated contributions in the alternate retirement program from that program to the retirement system." (*Ibid.*)

The Legislature also enacted the California Pension Restructuring Bond Act of 2004 (the Bond Act) (§ 16940 et seq.), which became effective as an emergency measure on August 11, 2004. (Stats.2004, ch. 215, § 6.) According to the Legislative Counsel's Digest, the Bond Act authorizes "the issuance, during any 2 fiscal years after June 30, 2004, of up to $2 billion of bonds and the creation of ancillary obligations, as defined, for the purpose of funding or refunding the state's obligations to the Public Employees' Retirement Fund." (Legis. Counsel's Dig., Sen. Bill No. 1106 (2003–2004 Reg. Sess.).)

The legislative intent underlying the Bond Act is stated in section 16941: "It is the intent of the Legis-

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lature, in enacting this chapter, to provide for an efficient, equitable, and economical means of satisfying certain pension obligations of the state. Bonds shall be issued pursuant to this chapter only when the Director of Finance determines that the state's pension obligations are anticipated to be reduced as a result of changes in the Public Employees' Retirement Law that reduce contributions to the Public Employees' Retirement System, and it is in the best interest of the state to issue bonds pursuant to this chapter to accelerate a portion of the state's anticipated lower pension obligations."

Under the Bond Act, the Committee is authorized, among other things, to, "[u]pon the request of the Director of Finance, and following receipt of the determination of the Director of Finance pursuant to Section 16941, issue ***1395** taxable or tax-exempt bonds for the purpose of funding or refunding pension obligations, paying related costs and ancillary obligations, or refunding any bonds previously issued pursuant to [the Bond Act]." (§ 16945, subd. (a).) Such bonds shall be a debt of the state payable from the General Fund. (§ 16946.) However, "[t]he cumulative amount of outstanding bonds issued pursuant to [the Bond Act] may not exceed the lesser of (1) the sum of two billion dollars ($2,000,000,000); or (2) the amount which, when added to all anticipated interest and related costs of the bonds, does not exceed the anticipated reduction of the state's pension obligations as a result of changes in the retirement law that reduce contributions to the retirement system, as determined by the Director of Finance." (§ 16947, subd. (a).) In addition, the cumulative amount of bonds issued in any one fiscal year "may not exceed the total unpaid amount of the state's pension obligations for that fiscal year." (§ 16947, subd. (b).)

****369** The proceeds of any bonds issued under the Bond Act "shall be applied to the funding or refunding of pension obligations, or refunding of bonds previously issued" or "the prepayment of pension obligations." (§ 16949.)

"In the discretion of the [C]ommittee, any bonds issued under [the Bond Act] may be secured by a trust agreement, indenture, or resolution between the state and any trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company chartered under the laws of any state or the United States and designated by the Treasurer...." (§ 16952.)

On October 14, 2004, the Chief Deputy Director of Finance (Deputy Director), on behalf of the Director of Finance, requested the Committee to authorize the issuance of bonds in the amount of $960 million to pay a portion of the State's employer contribution to PERS for fiscal year 2004–2005. The Deputy Director determined that changes to the Retirement Law adopted in the pension reform legislation described above are anticipated to reduce the State's employer contributions to PERS by in excess of $2.881 billion over the next 20 years and it is in the best interest of the State to accelerate these savings by issuing bonds. This estimated savings was later revised downward to $1.678 billion.

On October 20, 2004, the PERS Board determined the State's employer contribution for fiscal year 2004–2005 was $1,910,523,132.

The following day, October 21, 2004, the Committee adopted Resolution No.2004–1, authorizing the issuance of bonds under the Bond Act to pay a portion of the State's pension obligation. Resolution No.2004–1 provides that the amount of bonds authorized may not exceed the lesser of (1) the unpaid amount of the State's employer pension obligation for the fiscal year, ***1396** 2) $960 million, or (3) "the amount which, when added to all anticipated interest and related costs of the Bonds, does not exceed the amount of the anticipated reduction of the State's pension obligations as a result of changes in the Retirement Law...."

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Resolution No.2004–1 also presented a form trust agreement to be entered into between the Committee and the State Treasurer (the Trust Agreement). Pursuant to the Trust Agreement, all proceeds from the sale of bonds under Resolution No.2004–1 will be deposited in the Pension Obligation Bond Fund and disbursed to PERS to meet the State's employer contribution requirement.

IV

The Present Action

On October 22, 2004, the Committee filed the present action seeking a determination of the legality of Resolution No.2004–1. The trial court issued an order of publication, and the Committee complied with that order.

Fullerton Association of Concerned Taxpayers (FACT) is an unincorporated association dedicated to promoting sound and prudent policies of government taxing and spending. On December 9, 2004, FACT filed a verified answer to the complaint.

Following a hearing on the Committee's claims, the trial court issued a tentative decision in favor of FACT, concluding the issuance of bonds under Resolution No.2004–1 will violate article XVI, section 1. The court later confirmed its tentative decision and, on November 30, 2005, entered judgment for FACT.

The Committee appeals.

****370 DISCUSSION**

I

Introduction

Code of Civil Procedure section 860 authorizes a public agency to bring an action to determine the validity of certain public agency bonds, assessments, contracts with other agencies, or the public agency itself. ***1397**(*Walters v. County of Plumas* (1976) 61 Cal.App.3d 460, 466, 132 Cal.Rptr. 174.) Within their proper scope, such validation actions serve an important function in eliminating legal uncertainty that could impair a public agency's ability to operate, market bonds, or the like. (*Id.* at p. 468, 132 Cal.Rptr. 174.)

The present matter involves the validity of bonds proposed to be issued by the Committee pursuant to the Bond Act in order to finance a portion of the State's employer contributions to PERS. The question presented is whether the legislation authorizing these bonds violates the State Constitution.

Article XVI, section 1 reads, in relevant part: "The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars ($300,000), except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work ...; but no such law shall take effect unless it has been passed by a two-thirds vote of all the members elected to each house of the Legislature and until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election...."

This provision prohibits the State Legislature from creating any indebtedness greater than $300,000 unless that indebtedness has been approved by a two-thirds vote of the Legislature and a majority vote of the people.

In the present matter, it is undisputed the Bond Act was not approved by a two-thirds vote of the Legislature or a majority of the people and the bonds proposed to be issued under Resolution No.2004–1 will exceed $300,000 in value. The sole issue litigated by the parties in this validation action is whether the bonds proposed to be issued fall within an exception to article XVI, section 1 for obligations imposed by law.

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As we shall explain, we conclude no such exception applies under the circumstances presented.

II

Article XVI, Section 18

Article XVI, section 1 limits the State Legislature's ability to incur debt. A similar restriction applies to local governments. Article XVI, section 18, subdivision (a) reads, in relevant part: "No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose...."

***1398** The underlying purpose for the foregoing provision was to put an end to the practice common at the time among local governments of incurring liabilities in excess of income in order to finance extravagance, thereby creating a floating debt to be repaid from the income of future years. (*City of Long Beach v. Lisenby* (1919) 180 Cal. 52, 56, 179 P. 198 (*Lisenby*); *San Francisco Gas Co. v. Brickwedel* (1882) 62 Cal. 641, 642.) As such, the provision is ****371** more accurately viewed as a balanced budget requirement than a debt limit. (*Rider v. City of San Diego* (1998) 18 Cal.4th 1035, 1045, 77 Cal.Rptr.2d 189, 959 P.2d 347.)

Three exceptions have been recognized to the local debt limit of article XVI, section 18. One exception applies whenever debts are incurred that will be repaid from revenues held in a special fund. (*Rider v. City of San Diego, supra,* 18 Cal.4th at p. 1045, 77 Cal.Rptr.2d 189, 959 P.2d 347.) For example, in *San Francisco S. Co. v. Contra Costa Co.* (1929) 207 Cal. 1, 276 P. 570, the state high court found the debt limit inapplicable where the county issued bonds for the improvement of streets and the bonds were to be repaid through special assessments on the properties benefiting from the improvements. (*Id.* at pp. 4–5, 276 P. 570.) In effect, because the bonds were to be repaid from this special fund rather than the general fund, no debt had been incurred.

In *City of Oxnard v. Dale* (1955) 45 Cal.2d 729, 290 P.2d 859, the high court clarified that a debt repayable from a special fund is not a debt within the meaning of article XVI, section 18 only if the governmental body is not required to maintain the special fund from its general fund or through the exercise of its taxing powers. (*Id.* at p. 737, 290 P.2d 859.)

Another exception to article XVI, section 18 applies where the local government enters into a contingent obligation. "A sum payable upon a contingency is not a debt, nor does it become a debt until the contingency happens." (*Doland v. Clark* (1904) 143 Cal. 176, 181, 76 P. 958.) This exception has been applied to uphold multiyear contracts, such as leases, in which local governments agree to pay a sum in each of succeeding years in exchange for land, goods, or services to be provided during those years. (*Rider v. City of San Diego, supra,* 18 Cal.4th at p. 1047, 77 Cal.Rptr.2d 189, 959 P.2d 347.)

For example, in *City of Los Angeles v. Offner* (1942) 19 Cal.2d 483, 122 P.2d 14, the city entered into an agreement for the construction and leasing to the city of a rubbish incinerator. The court found this to be outside the scope of article XVI, section 18, explaining: "It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines ***1399** liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision." (*Id.* at pp. 485–486, 122 P.2d 14.)

The third exception, and the one at issue here,

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applies to obligations imposed by law. In *Lewis v. Widber* (1893) 99 Cal. 412, 33 P. 1128, the state high court concluded an obligation to pay the salary of a county treasurer was exempt from the local debt limit because the office was mandated by state law. (*Id.* at p. 415, 33 P. 1128.) According to the court, article XVI, section 18 "refers only to an indebtedness or liability which one of the municipal bodies mentioned has itself incurred—that is, an indebtedness which the municipality has contracted, or a liability resulting, in whole or in part, from some act or conduct of such municipality. Such is the plain meaning of the language used. The clear intent expressed in the said clause was to limit and restrict the power of the municipality as to any indebtedness or liability which it has discretion to incur or not incur. But the stated salary of a public officer fixed by statute is a matter over which the municipality has no control, and ****372** with respect to which it has no discretion; and the payment of his salary is a liability established by the legislature at the date of the creation of the office. It, therefore, is not an indebtedness or liability incurred by the municipality within the meaning of said clause of the constitution." (*Id.* at p. 413, 33 P. 1128.)

In *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694, 227 P.2d 4, the high court held the cost of constructing a courthouse was not subject to the constitutional debt limit, because the county had a legal duty, imposed by state law, to provide "adequate quarters" for the courts. (*Id.* at p. 699, 227 P.2d 4.) This duty was enough to take the matter outside the constitutional debt limit, even though the county retained wide discretion regarding what kind of courthouse to construct and at what cost.

In order for state law to impose a nondiscretionary duty on a local governmental entity within the meaning of this exception, the state law must do more than impose a general duty to perform some function. It must impose a special duty on the entity to expend its money on that function. (*Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82, 91, 211 Cal.Rptr. 231.) Thus, in *Arthur v. City of Petaluma* (1917) 175 Cal. 216, 165 P. 698, the court concluded a debt incurred to print a city charter did not fall within the exception to the constitutional debt limit for obligations imposed by law. Although state law required a city to print its charter in a local newspaper for 20 days whenever it chose to adopt a charter, the city's decision to adopt a charter was itself discretionary. In other words, the obligation to pay the printing charge came about only because the city voluntarily chose to adopt the charter. Hence, this was not an obligation imposed by law.

***1400** III

Does the Exception for Obligations Imposed by Law Apply to Article XVI, Section 1?

The Committee contends "debt" within the meaning of article XVI, section 1, the state debt limit, should be interpreted the same as in article XVI, section 18, the local debt limit, and should be subject to the same exceptions.

In *Dean v. Kuchel* (1950) 35 Cal.2d 444, 218 P.2d 521, our Supreme Court applied the contingency exception of article XVI, section 18 to article XVI, section 1. There, the state leased land to a developer under an arrangement whereby the developer was to construct a building on the land and lease the building to the state for a period of 25 years. The court concluded this arrangement did not create a debt within the meaning of article XVI, section 1, because, as in *City of Los Angeles v. Offner, supra,* 19 Cal.2d 483, 122 P.2d 14, the payment of rent in future years was contingent on continued availability of the building in those years. The court indicated "the same principles apply to both constitutional provisions." (*Dean v. Kuchel, supra,* at p. 446, 218 P.2d 521.)

In *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 131 Cal.Rptr. 361, 551 P.2d 1193, the court applied the special fund exception to article XVI, section 1. There, state law authorized the

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issuance of bonds to pay for low-income housing, with the bonds to be repaid using revenues generated from the housing or, if necessary, a reserve fund appropriated at the time the law was enacted. Citing *City of Oxnard v. Dale, supra,* 45 Cal.2d 729, 290 P.2d 859, the court concluded no debt had been created by this arrangement within the meaning of article XVI, section 1, because neither the general fund nor the ****373** state's taxing authority was implicated. (*California Housing Finance Agency v. Elliott, supra,* at p. 587, 131 Cal.Rptr. 361, 551 P.2d 1193.)

The Committee cites no case in which the exception to article XVI, section 18 for obligations imposed by law has been applied to article XVI, section 1. We have not been able to find any either.

FACT contends it is not surprising no reported case has applied this exception to article XVI, section 1. FACT argues such exception "logically applies only in the context of lower levels of government" where "the government is constrained to make a certain expenditure by legal mandates from above." According to FACT, this exception "does not fit logically with the nature of state government, while it is precisely applicable to local government." FACT further argues that, because article XVI, section 1 contains express exceptions, this court is precluded from creating new ones.

***1401** FACT's arguments read the exception for obligations imposed by law too narrowly. Even assuming there is no higher governmental authority, such as the federal government or international law, that could impose a financial obligation on the state, the exception is not limited to government-imposed obligations. As the state high court explained in *Lewis v. Widber, supra,* 99 Cal. at page 413, 33 P. 1128, the purpose of the local debt limit is to "restrict the power of the municipality as to any indebtedness or liability which it has discretion to incur or not to incur." In *Lisenby, supra,* 180 Cal. 52, 179 P. 198, the city issued bonds to pay tort judgments that had been entered against it. Although the aggregate amount of the bonds exceeded the city's income for the year, the court concluded the local debt limit did not apply, because this was not an obligation voluntarily incurred by the city. (*Id.* at pp. 57–58, 179 P. 198.)

The same purpose underlies the state debt limit of article XVI, section 1—to restrict the power of the State Legislature to incur debt *voluntarily.* Consequently, it may be argued that a debt incurred involuntarily, such as one to satisfy a tort judgment against the state, would be outside the scope of article XVI, section 1. Furthermore, it may be noted that all of the exceptions recognized under article XVI, section 18 are just restatements of the general principle that the local debt limit applies only in circumstances where the governmental entity has *created* a *debt.* The contingency exception applies because no debt is created until the contingency occurs. The special fund exception applies because no debt has been established, inasmuch as the obligation will be repaid from the earnings of the project and not the general fund. The exception for obligations imposed by law applies because a debt already exists and, hence, has not been created. Because article XVI, section 1, like article XVI, section 18, limits the power of the governmental entity to create debt, that limitation should not apply if no debt has been created.

At any rate, it is unnecessary to decide here if the exception for obligations imposed by law applies to article XVI, section 1. As we shall explain in the next section, the legislation at issue here does not fall within the scope of such an exception.

IV

Does the Exception Apply Here?

[1] The Committee contends that, because the amount of the State's contribution to PERS is within the sole discretion of the PERS Board, and the Legislature has no choice but to fund at the level dictated by the board, "the obligation to ****374** pay the pension obligation at issue in this action constitutes an obliga-

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tion imposed by law." The Committee cites as support Proposition 162, ***1402** the California Pension Protection Act of 1992, which, as briefly described above, added to article XVI, section 17 the following provisions:

"(a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system. [¶] ... [¶]

"(e) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system...."

The Committee argues that, through Proposition 162, "the voters created a unique constitutionally-sanctioned state employer pension obligation with which neither the Legislature nor the Governor can tamper" and, therefore, the pension obligation is "an 'obligation imposed by law.' "

The Committee further cites section 20831, which reads: "Notwithstanding any other provision of law, neither the state, any school employer, nor any contracting agency shall fail or refuse to pay the employers' contribution required by this chapter or to pay the employers' contributions required by this chapter within the applicable time limitations."

Finally, the Committee cites section 16912, where the Legislature declared: "[T]he state's obligations to make payments to certain public retirement systems are obligations imposed by law not subject to Section 1 of Article XVI...."

The trial court rejected the Committee's arguments, explaining: "Plaintiff attempts to bring this case within the reach of the local government cases by arguing that pension obligations have been 'imposed upon' the State by the Public Employees Retirement System acting as the actuary for the state pension system under the authority granted to it by the State Constitution in Article [XVI], section 17. The Court finds this argument to be unpersuasive, as it is based on an artificial distinction in status between enactments of the Legislature and those of the voters, in which the latter are somehow viewed ***1403** as separate from, and superior to, the former. Such a view is not in harmony with the concept of the State's legislative power as set forth in the Constitution. Article [II], section 1 of the Constitution states the basic concept that all political power is inherent in the people. Article [IV], section 1 states that the legislative power of the State is vested in the Legislature, but the people reserve to themselves the powers of initiative and referendum. Under Article [II], section 8(a), initiative is the power of the electors to propose and adopt or reject statutes and amendments to the State Constitution. Thus, statutes enacted by the Legislature and statutes and constitutional provisions enacted by the electorate through the initiative process are equally exercises of the legislative power of the State. Accordingly, the pension obligations of the State, whether created by the Legislature through statute or by ****375** the people enacting constitutional provisions through the initiative process, both ultimately derive from the legislative power of the State. In essence, the State has chosen to impose pension obligations upon itself, which is inconsistent with the concept of an 'obligation imposed by law' by a separate and higher legal authority, as that concept has been set forth in the case law."

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The Committee contends the trial court's analysis is flawed because it fails to recognize the fundamental limit on article XVI, section 1—that it expressly applies only to actions of the Legislature, not the people. In this way, article XVI, section 1 differs from article XVI, section 18. The latter applies to any action of the local government, not just its legislative body.

The Committee argues article XVI, section 1 does not restrict the power of the *people* to adopt legislation or amend the State Constitution and thereby create binding obligations. The Committee asserts the people represent "a separate and higher power to the Legislature." According to the Committee, once the people have created such an obligation, it is one *imposed by law,* and the Legislature is not prohibited by article XVI, section 1 from incurring debt to satisfy that obligation. The Committee asserts the people "authorized the creation of a pension system" in 1930. The Committee further asserts the people created a binding obligation to fund the system "when they empowered the [PERS] Board to determine how much the State must pay in any given year."

The Committee argues the trial court also ignored the difference between statutory and constitutional provisions. According to the Committee, the State Constitution is "a separate and higher power" and "the constitutional empowerment of the [PERS] Board to determine the amount of the State's annual employer contribution acts to create an obligation imposed by law."

Finally, the Committee argues the issuance of bonds under the Bond Act is not the creation of a debt within the meaning of article XVI, section 1 but the ***1404** conversion of a preexisting debt—the obligation to fund the various retirement plans—into another form.

FACT counters that the language of article XVI, section 1 is clear and prohibits the creation of any debt greater than $300,000 without voter approval. FACT further argues there can be no doubt the bonds proposed to be issued under the Bond Act are a debt subject to the constitutional debt limit.

However, the question here is not whether the bonds represent a debt as that term is commonly understood. The question, as posited by the Committee, is whether the debt represented by the bonds already existed by virtue of the state's obligation to fund pension benefits, such that issuance of the bonds is not the creation of a debt but a change in the form of a preexisting indebtedness.

[2] FACT argues the Committee's reliance on section 16912, where the Legislature declared the obligation to make payments to public retirement systems is an obligation imposed by law, is misplaced. We agree. A legislative declaration that essentially states a given enactment is constitutional is not binding on the courts. (*McClure v. Nye* (1913) 22 Cal.App. 248, 252, 133 P. 1145.) "The question before us is simply one of construction or interpretation of an act of the [L]egislature and of a provision of the [C]onstitution, and that is a judicial question." (*Ibid.*)

FACT argues recognition of an exception to the debt limit under the circumstances presented here, where the State Constitution does not expressly require ****376** pension contributions, would effectively "devour" the debt limitation. According to FACT, the exception would likewise apply to debt incurred to fund constitutionally established state agencies, the executive branch, the judicial branch, the civil service, state educational institutions, and the Legislature itself. In effect, FACT argues, government debt could be created without voter approval "for a wide range of the regular costs of government."

However, this does not mean a financial obligation adopted by the people through the power of ini-

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tiative necessarily creates an obligation imposed by law within the meaning of the exception to article XVI, section 1. But we need not decide that issue here. Assuming this to be so, neither the 1930 authorization to create a pension system nor the California Pension Protection Act of 1992 created an obligation to fund retirement benefits. The 1930 authorization was just that, an authorization. It did not bind the Legislature to create a pension system and, a fortiori, did not bind the Legislature to fund such a system.

The provisions of the California Pension Protection Act of 1992 grant to "the retirement board of a public pension or retirement system" plenary ***1405** authority over "investment of moneys and administration of the [retirement] system." (Cal. Const., art. XVI, § 17.) They also give such retirement board "sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system" and "sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services...." (Cal. Const., art. XVI, § 17, subd. (a).) Finally, the retirement board is given "sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system." (Art. XVI, § 17, subd. (e).)

Nothing in the foregoing requires the Legislature to fund the Retirement System. It does no more than grant the PERS Board, and similar retirement boards, power to control the assets invested in the retirement system. Although the provisions give the PERS Board actuarial authority, they do not require funding in accordance with the board's calculations. That requirement comes from section 20790 et sequitur.

We also need not decide if a financial obligation originating in the State Constitution can create an obligation imposed by law within the meaning of the exception to the constitutional debt limit. Except for article XVI, section 17, the Committee cites nothing in the State Constitution that imposes an obligation on the Legislature to fund the Retirement System.

As concluded by the trial court, the obligation to fund pension benefits is essentially an obligation imposed by the Legislature on itself. This is not changed by the fact that the obligation has existed for over 75 years. The Legislature retains the power to eliminate or amend the obligation, as it did in the 2004 pension reform legislation described above.

The Committee cites as contrary authority our decision in *Valdes, supra,* 139 Cal.App.3d 773, 189 Cal.Rptr. 212. In that case, we concluded balanced-budget legislation unilaterally cancelling otherwise continuously appropriated employer contributions to pension systems interfered with the vested contractual rights of PERS members. The legislation in question prohibited the payment of previously-appropriated state employer contributions to the Public Employees' Retirement Fund for the last three months of the fiscal year and reversion of those contributions to the general fund. ****377**(*Id.* at pp. 777–778, 189 Cal.Rptr. 212.) It also required the PERS Board to transfer an amount equal to the state employer contribution from the reserve portion of the Public Employees' Retirement Fund. (*Id.* at p. 778, 189 Cal.Rptr. 212.)

Regarding the nature of the pension rights at issue, we noted: "While some jurisdictions view public employees' retirement rights as a gratuity (see cases collected in Annot., 52 A.L.R.2d 437), a long line of California decisions ***1406** establishes that 'A public employee's pension constitutes an element of compensation, and a vested contractual right to pension benefits accrues upon acceptance of employment. Such a pension right may not be destroyed, once vested, without impairing a contractual obligation of the employing public entity.' " (*Valdes, supra,* 139 Cal.App.3d at pp. 783–784, 189 Cal.Rptr. 212.) We concluded: "[T]he state and other public employers are contractually bound in a constitutional sense to pay the withheld appropriations to the PERS fund. The

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explicit language in the retirement law constitutes a contractual obligation on the part of the state as employer to abide by its 'continuing obligation' [citation] to make the statutorily set payment of monthly contributions to PERS unless and until such time as the board *or* the Legislature, after due consideration of the actuarial recommendations by the board, deems such contributions inappropriate." (*Id.* at p. 787, 189 Cal.Rptr. 212.)

Our decision in *Valdes* does not assist the Committee. The fact that the state has a contractual obligation to maintain pension benefits does not mean the obligation is one imposed on the state by law. Rather, as explained above, it is an obligation the Legislature has imposed on itself.

The Committee asserts California case law "conclusively supports" the Legislature's finding and declaration in section 16942 that the pension obligations at issue here are "imposed by law not subject to Section 1 of Article XVI of the California Constitution and that the bonds authorized to be issued under this chapter have the same character under the Constitution as the pension obligations funded or refunded." (§ 16942.) The Committee cites *City of Los Angeles v. Teed* (1896) 112 Cal. 319, 44 P. 580 (*Teed*) and *Lisenby, supra,* 180 Cal. 52, 179 P. 198.

In *Teed,* the city council enacted an ordinance providing for the issuance of bonds to raise money to refund other bonds that were coming due. (*Teed, supra,* 112 Cal. at p. 324, 44 P. 580.) On the defendant's argument that the new bonds conflicted with the predecessor to article XVI, section 18 because they did not provide for the consent of the voters, the court concluded: "[W]e do not think there is any such conflict. It is true that the sections in question do not provide for obtaining the assent of the voters, but no such assent was necessary. The only indebtedness authorized by these provisions to be funded or refunded is such as existed prior to the time when the constitutional provision in question took effect; and merely to fund or refund an existing debt is not to 'incur an indebtedness or liability.' " (*Teed, supra,* at pp. 326–327, 44 P. 580.)

In *Lisenby,* as previously described, the city issued bonds to pay tort judgments that had been entered against it and the court concluded the local debt limit did not apply, because this was not an obligation voluntarily ***1407** incurred by the city. (*Lisenby, supra,* 180 Cal. at pp. 57–58, 179 P. 198.) Again, the debt already existed and the bonds were issued to pay it. In effect, the debt represented by the tort judgments was converted to a debt represented by the bond obligations.

****378** The Committee's reliance on *Teed* and *Lisenby* is misplaced. In *Teed,* the debt already existed in the form of bonds issued *before* enactment of the constitutional debt limit. Thus, it did not matter if the original debt was voluntarily incurred. No new debt was created by issuance of replacement bonds. In *Lisenby,* the tort debt already existed at the time of issuance of bonds to pay it and this original obligation had not been *voluntarily* incurred. Issuance of bonds was merely conversion of this involuntary debt from one form to another.

In the present matter, the state has an obligation to fund pension benefits. However, this is an obligation voluntarily undertaken by the Legislature. Furthermore, the continuing obligation to fund such benefits is subject to additional legislative action. (See *Betts v. Board of Administration* (1978) 21 Cal.3d 859, 863–864, 148 Cal.Rptr. 158, 582 P.2d 614.) As such, it is a matter at least in part subject to legislative discretion and not one imposed by law.

V

Conclusion

The Bond Act authorizes the issuance of bonds under certain limited circumstances in order to raise money to pay a portion of the state's annual employer

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contribution to PERS. Pursuant to the Bond Act, the Committee adopted Resolution No.2004–1, authorizing the issuance of $960 million in bonds to pay a portion of the State's employer contribution to PERS for fiscal year 2004–2005.

The amount of the bonds proposed to be issued under the Bond Act exceeds the threshold of article XVI, section 1. However, those bonds were not approved by a two-thirds vote of the Legislature or a majority vote of the people, as required by that constitutional provision.

The Committee asserts the bonds fall within an exception to the constitutional debt limit for obligations imposed by law.

We have concluded that, to the extent such an exception applies generally to article XVI, section 1, it does not apply here, because the State's obligation ***1408** to fund PERS is one the Legislature voluntarily imposed upon itself. Therefore, we conclude the trial court correctly ruled against the Committee in this validation action.

DISPOSITION

The judgment is affirmed. FACT is awarded its costs on appeal.

We concur: SCOTLAND, P.J., and BLEASE, J.

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END OF DOCUMENT

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

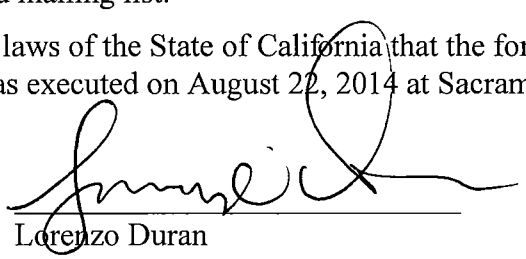
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 22, 2014, I served the:

DOF Comments
Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920 et al.
County of Los Angeles, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 22, 2014 at Sacramento, California.



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Date of Hearing: March 12, 1997

ASSEMBLY COMMITTEE ON JUDICIARY
Martha M. Escutia, Chairwoman

AB 233 (Escutia) - As Amended: March 10, 1997

KEY ISSUE : SHOULD FUNDING FOR TRIAL COURT OPERATIONS BE CONSOLIDATED AT THE STATE LEVEL BEGINNING NEXT FISCAL YEAR (1997-98), WITH COUNTY FUNDING OF THE COURTS FROZEN AT THE 1994-95 LEVEL?

SUMMARY : This bill transfers principal funding responsibility for trial court operations to the state beginning in the 1997-98 fiscal year (FY) while freezing county contributions at the FY 1994-95 levels. It also raises certain civil court fees; creates task forces regarding court facilities and the status of court employees; requires the Judicial Council (JC) to decentralize trial court management; and provides for a civil delay reduction team. The bill also assumes that the JC has adopted rules of court governing court employee labor relations and provides that those rules shall be interpreted and may be enforced pursuant to existing labor law.

FISCAL EFFECT :

1) Caps counties' general fund (GF) support of the trial courts at $879 million and caps the fines and forfeitures equivalent (remitted by counties) at $280 million.

2) Eliminates the county GF obligation to the trial courts for the 20 smallest counties.

3) Generates approximately $88 million annually in new revenue from civil fee adjustments beginning in 1997-98 FY.

EXISTING LAW :

1) Presently, trial court operations are funded by the state (approximately 40%) and the counties (approximately 60%).

2) The state share of trial court operations costs for the current year is approximately $621 million, including $174.5 million appropriated from the GF to the Trial Court Trust Fund (TCTF); $156 million from various civil fees appropriated in the TCTF; and $290.5 million in fine and penalty revenues appropriated from the GF to the TCTF.

BACKGROUND :

1) Existing law , as embodied in the Trial Court Realignment and Efficiency Act of 1991, provides for the state to fund specified court operations costs as appropriated annually in the Budget Act. The remainder of court costs (approximately 60%) are funded by the counties.

This bill enacts the Trial Court Funding and Improvement Act of 1997 to provide for a permanent restructuring of trial court funding beginning in FY 1997-98. The bill provides that, beginning in the FY 1997-98, funding of the trial courts will be consolidated at the state level and that the state shall have responsibility for court costs over the FY 1994-95 level of expenditure, as determined in the annual state budget process.

2) Existing law does not limit the trial court funding obligation of the counties.

This bill provides that county contributions to trial court operations shall be capped permanently at the level at which counties supported the courts in FY 1994-95 based on: a) the amount of county GF dollars provided to the courts; and b) the amount of fines and penalties the county remitted to the state in FY 1994-95.

3) Existing law does not specifically provide for relief to certain counties for the costs of operating the trial courts.

This bill provides that counties with a population of 70,000 or less as of January 1, 1996, that have met specified trial court coordination requirements, shall have their annual contribution reduced by the county GF amount provided to the courts in FY 1994-95.

4) Existing law , Section 77003 of the Government Code and Rule 810 of the California Rules of Court, define what are "court operations" for the purposes of trial court funding.

This bill clarifies the respective responsibilities of the state and the counties for funding the courts, with the state having responsibility for court operations and the counties having responsibility for facility operations. This bill also provides a mechanism for adjusting a county's base year contribution to the trial courts.

5) Existing law , Government Code Section 68073, authorizes a court to order a county to provide funding for court functions not adequately funded by the state.

This bill eliminates that authority except as it relates to the counties' continuing responsibility to provide suitable court facilities.

6) Existing law requires counties to remit to the state certain fine, penalty and forfeiture revenues collected by the courts.

This bill provides that all such fine and penalty revenues collected by the courts shall be retained by the counties to offset their trial court funding obligation. It also provides that the growth in such revenues shall be split with the state, as specified. Funds remitted to the state under these provisions would be deposited into the Trial Court Improvement

Fund (TCIF) and ear-marked for court-related costs.

7) Existing law provides for certain local court authority over the expenditure of state funding for the courts.

This bill clarifies that authority and acknowledges the need for independent local court management by providing that the JC shall provide for a Trial Courts Bill of Financial Management Rights and establish a decentralized system of trial court management no later than January 1, 1998.

8) Existing law provides for the creation of local trial court operations funds to be established in each county treasury for the purposes of trial
court funding.

This bill establishes a Trial Court Operations Fund (TCOF) in each county treasury into which all funds appropriated in the Budget Act shall be deposited for trial court funding. The Controller is authorized to provide fiscal and compliance audits of this fund at the request of the Legislature or the JC.

9) Existing law sets the amount of various civil fees.

This bill adjusts specified civil fees to generate an estimated $88 million for the support of the trial courts. (See attached chart of these fee adjustments.)

10) Existing law establishes the Trial Court Improvement Fund to be used for specified court purposes.

This bill provides that the JC shall reserve in the Trial Court Improvement Fund up to 1% of the annual total trial court funding appropriation for allocation by the JC for urgent court needs, to reward court coordination, and to fund statewide projects for the benefit of the trial courts.

11) Existing law , as embodied in the Meyer-Milias-Brown Act (MMBA), governs the labor-management relationships of California local governments. MMBA recognizes the right of local public employees to join and be represented by employee organizations of their own choosing. In 1988, the Legislature amended MMBA

to include trial court employees. The 1988 amendment mandated that municipal and superior court employees be considered employees of the county for all matters within the scope of representation. In American Federation of State, County, and Municipal Employees v. County of San Diego (1992) 11 Cal. App. 4th 506, the court held that other statutory law provides that a majority of the judges of the superior courts must determine "noneconomic" benefits of superior court employees and that in doing so the judges are not required to meet and confer with court employees. Noneconomic benefits are those benefits within the courts' (as opposed to the counties') authority to determine.

This bill makes a finding that the JC has adopted rules of court which create a mechanism for setting the terms and conditions of employment between a trial court and its employees, or their representatives; recognize that these rules have the full force and effect of law; and provide that they shall be interpreted and may be enforced pursuant to existing law. This bill further provides that in enacting these provisions, the legislature's purpose is to create an equitable and effective method of resolving potential labor conflicts between the courts and their employees.

12) Existing law does not address the status of court employees under a state funded trial court system.

This bill establishes a Task Force on Court Employees to recommend by June 1, 1999, an appropriate system of employment and governance for trial court employees. The bill expresses legislative intent to enact a court personnel system to take effect on or before January 1, 2001.

13) Existing law does not allow the use of county funds to pay for a judge's member contribution to the Judges Retirement Fund (JRF).

This bill would authorize a county, upon adoption of a resolution by the Board of Supervisors, to pay for a judge's member contribution to the JRF.

14) Existing law does not address the responsibilities of state and local government to provide for court facilities under a state funded trial court system.

This bill establishes a Task Force on Trial Court Facilities to: a) identify the needs related to trial and appellate court facilities; b) make recommendations for funding court facility maintenance, improvements, and expansion; and c) to submit a report to the JC, the Legislature, and the Governor on or before July 1, 2001.

15) Existing law does not statutorily authorize the JC to provide by rule of court for racial, ethnic, gender bias, and sexual harassment training for judicial officers.

This bill statutorily permits, but does not require, the JC to provide for such training by rule of court.

16) Existing law does not provide for a special program to reduce civil delay in the trial courts.

This bill establishes a Civil Delay Reduction Team comprised of assigned judges under the authority of the Chief Justice to assist counties and courts in reducing or eliminating the delay in adjudicating civil cases.

RELATED PRIOR AND PENDING LEGISLATION: AB 2553 (Isenberg) of 1995-96 and AB 86 (Pringle) of 1997.

ARGUMENTS IN SUPPORT : The author states the following: "This bill

fully implements the long-term trial court funding agreement entered into by the courts, the counties, and the court employee groups. The bill promotes fiscal responsibility and accountability by the trial courts in managing scarce resources in the most efficient and effective manner. By consolidating trial court funding at the state level, this bill addresses the long-standing problem of funding stability and alleviates the courts from the funding crisis that exists as a result of split funding between the state and the counties. The current funding mechanism has also made it difficult for the courts, the state and the counties to engage in long term planning, limits a fair allocation of resources among all courts, and impairs equal access to justice. In addition, my bill preserves the right of court employees to engage in collective bargaining same as county employees. Finally, my bill authorizes but does not mandate the JC to provide for bias and harassment training. As eloquently documented in the recent hearing about the JC's own examination of racial and ethnic bias in the courts, this training is critically needed for all of our judicial officers. Currently, only judges appointed since 1996 are required to receive it."

ARGUMENTS IN OPPOSITION : None

COMMENTS : The two bills before the Committee today, AB 233 (Escutia) and AB 86 (Pringle) both provide for restructuring of trial court funding. The primary differences between the two bills are as follows:

1) AB 86 implements the court funding restructuring in the current FY at an estimated GF cost of approximately $101 million, including an estimated $11 million to buy-out the contribution of the 20 smallest counties. AB 233 implements the restructuring of trial court funding and the small county buy-out beginning in FY 1997-98 (as proposed in the Governor's Budget), and therefore will not result in the estimated $101 million GF cost this FY.

2) AB 233 references Rules of Court to be adopted by the JC that would extend to trial court employees the right to meet and confer on certain terms and conditions of employment. AB 86 does not address this collective bargaining issue.

3) AB 233 authorizes the JC to provide by rule of court for racial, ethnic, gender bias, and sexual harassment training for judicial officers. AB 86 does not address the issue.

PROPOSED AMENDMENTS :

Technical

Section 68073 (b):

Substitute on page 20, line 10:

"1997" for "1996"

Substantive

Amendments proposed by Los Angeles County would allow that county to reduce its funding obligation to the state in support of trial court funding by the amount the county determines it paid for court facility costs in FY 1994-95. The amendments further provide that no offset of this funding reduction is required by the State. This amendment could result in an estimated reduction in trial court funding of approximately $20 million in FY 1997-98.

Other provisions of AB 233 already provide a mechanism to reimburse these costs over a three year period through projected increases in criminal fine revenues. Adoption of these amendments would not reflect the agreement reached by the courts, counties and court employees for long-term restructuring of trial court funding.

REGISTERED SUPPORT / OPPOSITION :

Support	Opposition
The Alameda County Courts	
American Federation of State, County and Municipal Employees	

(AFSCME)
CA. State Assoc. of Counties (CSAC)
Judicial Council
Service Employees International Union
(SEIU)

Analysis prepared by : Drew Liebert / ajud / (916) 445-4560

SENATE RULES COMMITTEE AB 92
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THIRD READING

Bill No: AB 92
Author: Cardoza (D)
Amended: 8/24/98 in Senate
Vote: 21

All Prior Votes Not Relevant

SUBJECT : Courts: security services

SOURCE : Author

DIGEST : Senate Floor Amendments of 8/24/98 delete the provisions of the bill dealing with the California Tax Credit Allocation Committee's voting membership and the application and appeals procedures.

This is a new bill. This bill requires a county to enter into an agreement with the sheriff to provide security services for the court.

ANALYSIS : Existing law requires the sheriff in certain counties to provide security services to the trial courts.

This bill would require the trial courts in such a county, commencing July 1, 1999, and thereafter, to enter into an agreement with the sheriff's department that was providing court security services as of July 1, 1998, regarding the provision of court security services.

Background

These amendments insert an non-controversial aspect of AB 468 (Cardoza) relative to court security staffing. AB 468 was heard in the Senate Judiciary committee, and passed out on consent. AB 468 was a bill which was intended to allow the state to supply goods and services for courts within the counties which the state has taken over court funding responsibilities. Concern was raised by unions that transfer of "services" currently provided to courts by county employees to state employees had not been well thought out. The sponsors agreed and dropped the bill.

However, there is agreement that security services will not transfer from the counties where Sheriffs currently provide security, to the CHP (which is the state agency which would provide court security if the state supplied the personnel. These amendments simply reflect that agreement, restate existing law, and codify existing practice.

Prior Legislation

AB 468 (Cardoza), on Senate Inactive File.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT : (Verified 8/24/98)

City of San Jose
Peace Officers Research Association of California
Association for Los Angeles Deputy Sheriffs, Inc.
California State Sheriffs Association

ARGUMENTS IN SUPPORT : The California State Sheriffs

Association states, "This legislation requires municipal and superior courts to enter into an agreement with the sheriff's department in each county where the department was providing bailiff and court security services on July 1, 1998. AB 92 will assure a smooth transition of court security services as a result of the state now financing all of the courts of California."

RJG:ctl 8/27/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

CONCURRENCE IN SENATE AMENDMENTS
AB 92 (Cardoza)
As Amended August 24, 1998
Majority vote

ASSEMBLY: (May 5, 1997) SENATE: 38-0 (August 28, 1998)
(vote not relevant)

Original Committee Reference: H. & C.D.

SUMMARY : Requires trial courts to contract with county sheriffs to provide security services.

The Senate amendments delete the Assembly version of the bill, and instead,
require county trial courts to enter into an agreement with the sheriff's department to provide security services for those trial courts where court security services are otherwise required by law to be provided by the sheriff's department as of July 1, 1998.

EXISTING LAW requires the sheriff in certain counties to provide security services to the trial courts.

AS PASSED BY THE ASSEMBLY , this bill established procedures for voting, membership, and due process in the operation of the California Tax Credit Allocation Committee.

FISCAL EFFECT : This bill may be a state-mandated local program.

COMMENTS : AB 233 (Escutia), Chapter 850, Statutes of 1997, provided that funding of trial courts be paid for by the state.

This bill clarifies that the status quo shall be maintained where the sheriff's department currently provides security services (e.g., bailiffs) to the trial courts as of July 1, 1998. The supporters of this bill are concerned that under current trial court funding law it is unclear how security services shall be provided. This bill requires county sheriffs to continue to provide deputies for trial court security under contract.

Currently county sheriffs provide security services for trial courts in 53
counties. Marshals provide security as court employees in the remaining five counties. The trial courts that employ Marshals are not required to hire sheriffs under this bill.

Currently state appellate courts are funded by the state and security is provided by the California Highway Patrol.

Supporters assert that the bill would ensure a continuity of public safety services in California trial courts.

Analysis prepared by : Hubert Bower / algov / (916) 319-3958

FN

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County of Los Angeles, California
Comprehensive Annual Financial Report

Fiscal Year Ended June 30, 2012
Wendy L. Watanabe • Auditor-Controller

8. OTHER POSTEMPLOYMENT BENEFITS

Plan Description

LACERA administers a cost-sharing, multi-employer defined benefit Other Postemployment Benefit (OPEB) plan on behalf of the County. As indicated in Note 7-Pension Plan, because the non-County entities are immaterial to its operations, the disclosures herein are made as if LACERA was a single employer defined benefit plan.

In April 1982, the County of Los Angeles adopted an ordinance pursuant to Government Code Section 31691, which provided for a health insurance program and death benefits for retired employees and their dependents. In 1994, the County amended the agreements to continue to support LACERA's retiree insurance benefits program regardless of the status of active member insurance.

LACERA issues a stand-alone financial report that includes the required information for the OPEB plan. The report is available at its offices located at Gateway Plaza, 300 North Lake Avenue, Pasadena, California 91101-4199.

Funding Policy

Health care benefits earned by County employees are dependent on the number of completed years of retirement service credited to the retiree by LACERA upon retirement; it does not include reciprocal service in another retirement system. The benefits earned by County employees range from 40% of the benchmark plan cost with ten completed years of service to 100% of the benchmark plan cost with 25 or more completed years of service. In general, each completed year of service after ten years reduces the member's cost by 4%. Service includes all service on which the member's retirement allowance was based.

Health care benefits include medical, dental, vision, Medicare Part B reimbursement and death benefits. In addition to these retiree health care benefits, the County provides long-term disability benefits to employees, and these benefits have been determined to fall within the definition of OPEB, per GASB 45. These long-term disability benefits provide for income replacement if an employee is unable to work because of illness or injury. Specific coverage depends on the employee's employment classification, chosen plan and, in some instances, years of service.

The County's contribution during 2011-2012 is on a pay-as-you-go basis. During the 2011-2012 fiscal year, the County made payments to LACERA totaling $379.7 million for retiree health care benefits. Included in this amount was $38.0 million for Medicare Part B reimbursements and $6.9 million in death benefits. Additionally, $36.0 million was paid by member participants. The County also made payments of $36.7 million for long-term disability benefits.

Establishment of OPEB Trust

Pursuant to the California Government Code, the County established an irrevocable Other Post-Employment Benefit (OPEB) Trust for the purpose of holding and investing assets to pre-fund the Retiree Health Program, which LACERA administers. On May 15, 2012, the Los Angeles County Board of Supervisors entered into a trust and investment services agreement with the LACERA Board of Investments to act as trustee and investment manager. The County established an OPEB trust fund and there were no financing activities during the current year.

8. OTHER POSTEMPLOYMENT BENEFITS-Continued

Establishment of OPEB Trust-Continued

The OPEB Trust is the County's first step to reduce its OPEB unfunded liability. It will provide a framework where the Board of Supervisors can begin making contributions to the trust and transition, over time, from "pay-as-you-go" to "pre-funding." The OPEB Trust does not modify the County' s benefit programs.

Annual OPEB Cost and Net OPEB Obligation

The County's Annual OPEB cost (expense) is calculated based on the annual required contribution (ARC), an amount actuarially determined in accordance with the parameters of GASB 45. The OPEB cost and OPEB obligation were determined by the OPEB health care actuarial valuation as of July 1, 2010, and the OPEB long-term disability actuarial valuation as of July 1, 2011. The following table shows the ARC, the amount actually contributed and the net OPEB obligation (in thousands):

	Retiree Health Care	LTD	Total
Annual OPEB required contribution (ARC)	$ 1,853,600	$ 70,509	$1,924,109
Interest on Net OPEB obligation	261,488	5,892	267,380
Adjustment to ARC	(199,587)	(3,928)	(203,515)
Annual OPEB cost (expense)	1,915,501	72,473	1,987,974
Less: Contributions made (pay-as-you-go)	379,744	36,701	416,445
Increase in Net OPEB obligation	1,535,757	35,772	1,571,529
Net OPEB obligation, July 1, 2011	5,229,762	117,829	5,347,591
Net OPEB obligation, June 30, 2012	$ 6,765,519	$ 153,601	$6,919,120

Annual OPEB Cost and Net OPEB Obligation

Retiree Health Care Trend Information (in thousands)

Fiscal Year Ended	Annual OPEB Cost	Percentage of OPEB Cost Contributed	Net OPEB Obligation
June 30, 2010	$ 1,687,657	22.8%	$ 3,707,862
June 30, 2011	1,897,487	19.8%	5,229,762
June 30, 2012	1,915,501	19.8%	6,765,519

LTD Trend Information (in thousands)

Fiscal Year Ended	Annual OPEB Cost	Percentage of OPEB Cost Contributed	Net OPEB Obligation
June 30, 2010	$ 62,479	53.6%	$ 90,139
June 30, 2011	62,962	56.0%	117,829
June 30, 2012	72,473	50.6%	153,601

8. OTHER POSTEMPLOYMENT BENEFITS-Continued

Funded Status and Funding Progress

As of July 1, 2010, the most recent actuarial valuation date for OPEB health care benefits, the funded ratio was 0%. The actuarial value of assets was zero. The actuarial accrued liability (AAL) was $22.9 billion, resulting in an unfunded AAL of $22.9 billion. The covered payroll was $6.7 billion and the ratio of the unfunded AAL to the covered payroll was 342.62%.

As of July 1, 2011, the most recent actuarial valuation date for OPEB long-term disability benefits, the funded ratio was 0%. The assumptions remained the same from the last actuarial valuation completed in 2009. The actuarial value of assets was zero. The AAL was $1.019 billion, resulting in an unfunded AAL of $1.019 billion. The covered payroll was $6.7 billion and the ratio of the unfunded AAL to the covered payroll was 15.22%.

The schedules of funding progress are presented as RSI following the notes to the financial statements. These RSI schedules present multi-year trend information.

Actuarial Methods and Assumptions

Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continued revision as actual results are compared to past expectations and new estimates are made about the future.

Actuarial calculations are based on the benefits provided under the terms of the substantive plan in effect at the time of each valuation and on the pattern of sharing of costs between the employer and plan members to that point.

The projection of benefits for financial reporting purposes does not explicitly incorporate the potential effects of legal or contractual funding limitations on the pattern of cost sharing between the employer and plan members in the future.

Actuarial calculations reflect a long-term perspective. Actuarial methods and assumptions used include techniques designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets.

While the actuarial valuations for OPEB health care and OPEB long-term disability benefits were prepared by two different firms, they both used the same methods and assumptions, with one exception noted below. The projected unit credit cost method was used. Both valuations assumed an annual investment rate of return of 5%, an inflation rate of 3.5% per annum and projected general wage increases of 4%. The increases in salary due to promotions and longevity do not affect the amount of the OPEB program benefits. An actuarial asset valuation was not performed. Finally, the OPEB valuation report used the level percentage of projected payroll over a rolling (open) 30-year amortization period. The OPEB Long-Term Disability valuation report used the level dollar of projected payroll over a rolling (open) 30-year amortization period.

8. OTHER POSTEMPLOYMENT BENEFITS-Continued

Actuarial Methods and Assumptions-Continued

The healthcare cost trend initial and ultimate rates, based on the July 1, 2010 actuarial valuation, are as follows:

	Initial Year	Ultimate
LACERA Medical Under 65	8.09%	5.05%
LACERA Medical Over 65	6.81%	5.05%
Firefighters Local 1014 (all)	6.55%	5.05%
Part B Premiums	8.25%	4.95%
Dental (all)	2.43%	4.50%

9. LEASES

Operating Leases

The following is a schedule of future minimum rental payments required under operating leases entered into by the County that have initial or remaining noncancelable lease terms in excess of one year as of June 30, 2012 (in thousands):

Year Ending June 30	Governmental Activities
2013	$ 86,056
2014	65,740
2015	55,118
2016	30,725
2017	20,390
2018-2022	42,533
2023-2027	17,884
2028-2032	12,210
Total	$ 330,656

Rent expenses related to operating leases were $97,144,000 for the year ended June 30, 2012.

Capital Lease Obligations

The following is a schedule of future minimum lease payments under capital lease obligations together with the present value of future minimum lease payments as of June 30, 2012 (in thousands):

Year Ending June 30	Governmental Activities
2013	$ 26,914
2014	24,474
2015	21,827
2016	21,340
2017	19,990
2018-2022	101,098
2023-2027	79,108
2028-2032	67,622
2033-2037	40,984
2038-2042	1,360
Total	404,717
Less: Amount representing interest	213,971
Present value of future minimum lease payments	$ 190,746

County of Los Angeles, California
Comprehensive Annual Financial Report
Fiscal Year Ended June 30, 2013

Prepared by the Office of Auditor-Controller
Wendy L. Watanabe • Auditor-Controller

8. PENSION PLAN-Continued

Actuarial Methods and Assumptions

The annual required contribution was calculated using the entry age normal method. The June 30, 2012 actuarial valuation also assumed an annual investment rate of return of 7.60%, and projected salary increases ranging from 4.11% to 10.08 %, with both assumptions including a 3.35% inflation factor. Additionally, the valuation assumed post-retirement benefit increases of between 2% and 3%, in accordance with the provisions of the specific benefit options. The actuarial value of assets was determined utilizing a five-year smoothed method based on the difference between the expected market value and the actual market value of assets as of the valuation date. The assumptions remained the same from the prior actuarial valuation completed as of June 20, 2011.

The County contribution rate to finance the unfunded AAL is 17.54% and 19.82% of payroll, which is a weighted average for all LACERA plans, as determined by the June 30, 2011 and 2012 actuarial valuations, respectively.

LACERA uses the accrual basis of accounting. Member and employer contributions are recognized in the period in which the contributions are due, and benefits and refunds are recognized when payable in accordance with the terms of each plan.

9. OTHER POSTEMPLOYMENT BENEFITS

Plan Description

LACERA administers a cost-sharing, multi-employer defined benefit Other Postemployment Benefit (OPEB) plan on behalf of the County. As indicated in Note 8-Pension Plan, because the non-County entities are immaterial to its operations, the disclosures herein are made as if LACERA was a single employer defined benefit plan.

In April 1982, the County of Los Angeles adopted an ordinance pursuant to Government Code Section 31691, which provided for a health insurance program and death benefits for retired employees and their dependents. In 1994, the County amended the agreements to continue to support LACERA's retiree insurance benefits program regardless of the status of active member insurance.

LACERA issues a stand-alone financial report that includes the required information for the OPEB plan. The report is available at its offices located at Gateway Plaza, 300 North Lake Avenue, Pasadena, California 91101-4199.

Funding Policy

Health care benefits earned by County employees are dependent on the number of completed years of retirement service credited to the retiree by LACERA upon retirement; it does not include reciprocal service in another retirement system. The benefits earned by County employees range from 40% of the benchmark plan cost with ten completed years of service to 100% of the benchmark plan cost with 25 or more completed years of service. In general, each completed year of service after ten years reduces the member's cost by 4%. Service includes all service on which the member's retirement allowance was based.

9. OTHER POSTEMPLOYMENT BENEFITS-Continued

Funding Policy-Continued

Health care benefits include medical, dental, vision, Medicare Part B reimbursement and death benefits. In addition to these retiree health care benefits, the County provides long-term disability benefits to employees, and these benefits have been determined to fall within the definition of OPEB, per GASB 45. These long-term disability benefits provide for income replacement if an employee is unable to work because of illness or injury. Specific coverage depends on the employee's employment classification, chosen plan and, in some instances, years of service.

As discussed in Note 8, the County's pension contribution requirements for FY 2012-2013 were partially funded by LACERA Credit Reserves of $448.8 million, thereby reducing the County's cash contributions. The County utilized the $448.8 of pension contribution savings to prefund the liability for retiree healthcare benefits. In addition, the County fulfilled its "pay-as-you-go" contribution requirements of $441.1 million, thereby making total contributions of $889.9 for retiree health care. Included in this amount was $41.7 million for Medicare Part B reimbursements and $7.6 million in death benefits. Additionally, $40.4 million was paid by member participants. The County also made payments of $37.6 million for long-term disability benefits.

OPEB Trust

Pursuant to the California Government Code, the County established an irrevocable Other Postemployment Benefit (OPEB) Trust for the purpose of holding and investing assets to pre-fund the Retiree Health Program, which LACERA administers. On May 15, 2012, the Los Angeles County Board of Supervisors entered into a trust and investment services agreement with the LACERA Board of Investments to act as trustee and investment manager. During FY 2012-2013, the County made contributions to prefund the growing liability for retiree healthcare benefits in the amount of $448.8 million.

The OPEB Trust does not modify the County' s benefit programs.

Annual OPEB Cost and Net OPEB Obligation

The County's Annual OPEB cost (expense) is calculated based on the annual required contribution (ARC), an amount actuarially determined in accordance with the parameters of GASB 45. The OPEB cost and OPEB obligation were determined by the OPEB health care actuarial valuation as of July 1, 2012, and the OPEB long-term disability actuarial valuation as of July 1, 2011. The following table shows the ARC, the amount actually contributed and the net OPEB obligation (in thousands):

	Retiree Health Care	LTD	Total
Annual OPEB required contribution (ARC)	$ 2,036,300	$ 70,509	$2,106,809
Interest on Net OPEB obligation	294,300	7,680	301,980
Adjustment to ARC	(241,575)	(5,120)	(246,695)
Annual OPEB cost (expense)	2,089,025	73,069	2,162,094
Less: Contributions made	889,871	37,598	927,469
Increase in Net OPEB obligation	1,199,154	35,471	1,234,625
Net OPEB obligation, July 1, 2012	6,765,519	153,601	6,919,120
Net OPEB obligation, June 30, 2013	$ 7,964,673	$ 189,072	$8,153,745

9. OTHER POSTEMPLOYMENT BENEFITS-Continued

Annual OPEB Cost and Net OPEB Obligation-Continued

Retiree Health Care Trend Information (in thousands)

Fiscal Year Ended	Annual OPEB Cost	Percentage of OPEB Cost Contributed	Net OPEB Obligation
June 30, 2011	$ 1,897,487	19.8%	$ 5,229,762
June 30, 2012	1,915,501	19.8%	6,765,519
June 30, 2013	2,089,025	42.6%	7,964,673

LTD Trend Information (in thousands)

Fiscal Year Ended	Annual OPEB Cost	Percentage of OPEB Cost Contributed	Net OPEB Obligation
June 30, 2011	$ 62,962	56.0%	$ 117,829
June 30, 2012	72,473	50.6%	153,601
June 30, 2013	73,069	51.5%	189,072

Funded Status and Funding Progress

As of July 1, 2012, the most recent actuarial valuation date for OPEB health care benefits, the funded ratio was 0%. The actuarial value of assets was zero. The actuarial accrued liability (AAL) was $25.733 billion, resulting in an unfunded AAL of $25.733 billion. The covered payroll was $6.620 billion and the ratio of the unfunded AAL to the covered payroll was 388.73%.

As of July 1, 2011, the most recent actuarial valuation date for OPEB long-term disability benefits, the funded ratio was 0%. The assumptions remained the same from the last actuarial valuation completed in 2009. The actuarial value of assets was zero. The AAL was $1.019 billion, resulting in an unfunded AAL of $1.019 billion. The covered payroll was $6.620 billion and the ratio of the unfunded AAL to the covered payroll was 15.39%.

The schedules of funding progress are presented as RSI following the notes to the financial statements. These RSI schedules present multi-year trend information.

Actuarial Methods and Assumptions

Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future. Actuarially determined amounts are subject to continued revision as actual results are compared to past expectations and new estimates are made about the future.

Actuarial calculations are based on the benefits provided under the terms of the substantive plan in effect at the time of each valuation and on the pattern of sharing of costs between the employer and plan members to that point.

The projection of benefits for financial reporting purposes does not explicitly incorporate the potential effects of legal or contractual funding limitations on the pattern of cost sharing between the employer and plan members in the future.

9. OTHER POSTEMPLOYMENT BENEFITS-Continued

Actuarial Methods and Assumptions–Continued

Actuarial calculations reflect a long-term perspective. Actuarial methods and assumptions used include techniques designed to reduce short-term volatility in actuarial accrued liabilities and the actuarial value of assets.

The actuarial valuations for OPEB health care and OPEB long-term disability benefits were prepared by two different firms, with some differences in the methods and assumptions used. In both valuations, the projected unit credit cost method was used. The valuation for OPEB health care assumed an annual investment rate of return of 4.35% and projected general wage increase of 3.85% per annum. The valuation for OPEB long-term disability benefits assumed an annual investment rate of return of 5% and projected general wage increase of 4% per annum. The valuations for OPEB health care and OPEB long-term disability benefits factored in annual inflation rates of 3.35% and 3.5%, respectively. The increases in salary due to promotions and longevity do not affect the amount of the OPEB program benefits. An actuarial asset valuation was not performed. Finally, the OPEB valuation report used the level percentage of projected payroll over a rolling (open) 30-year amortization period. The OPEB Long-Term Disability valuation report used the level dollar of projected payroll over a rolling (open) 30-year amortization period.

The healthcare cost trend initial and ultimate rates, based on the July 1, 2012 actuarial valuation, are as follows:

	Initial Year	Ultimate
LACERA Medical Under 65	0.30%	5.10%
LACERA Medical Over 65	0.59%	5.10%
Firefighters Local 1014 (all)	7.00%	5.10%
Part B Premiums	5.90%	5.10%
Dental (all)	3.13%	3.40%

10. LEASES

Operating Leases

The following is a schedule of future minimum rental payments required under operating leases entered into by the County that have initial or remaining noncancelable lease terms in excess of one year as of June 30, 2013 (in thousands):

Year Ending June 30	Governmental Activities
2014	$ 84,810
2015	72,407
2016	44,649
2017	32,762
2018	20,925
2019-2023	53,307
2024-2028	40,335
2029-2033	30,723
Total	$ 379,918

Rent expenses related to operating leases were $95,978,000 for the year ended June 30, 2013.

GASB STATEMENT 45 ON OPEB ACCOUNTING BY GOVERNMENTS
A FEW BASIC QUESTIONS AND ANSWERS

1. Why was Statement 45 on OPEB accounting by governments necessary?

Statement 45 was issued to provide more complete, reliable, and decision-useful financial reporting regarding the costs and financial obligations that governments incur when they provide postemployment benefits other than pensions (OPEB) as part of the compensation for services rendered by their employees. *Postemployment healthcare benefits,* the most common form of OPEB, are a very significant financial commitment for many governments.

2. How was OPEB accounting and financial reporting done prior to Statement 45?

Prior to Statement 45, governments typically followed a "pay-as-you-go" accounting approach in which the cost of benefits is not reported until after employees retire. However, this approach is not comprehensive—only revealing a limited amount of data and failing to account for costs and obligations incurred as governments receive employee services each year for which they have promised future benefit payments in exchange.

3. What does Statement 45 accomplish?

- When they implement Statement 45, many governments will report, for the first time, annual OPEB cost and their unfunded actuarial accrued liabilities for past service costs. This will foster improved accountability and a better foundation for informed policy decisions about, for example, the level and types of benefits provided and potential methods of financing those benefits.

The Standard also:

- Results in reporting the estimated cost of the benefits as expense each year *during the years that employees are providing services* to the government and its constituents in exchange for those benefits.
- Provides, to the diverse users of a government's financial reports, more accurate information about the *total cost of the services* that a government provides to its constituents.
- Clarifies whether the amount a government has paid or contributed for OPEB during the report year has covered its annual OPEB cost. Generally, the more of its annual OPEB cost that a government chooses to defer, the higher will be (a) its unfunded actuarial accrued liability and (b) the cash flow demands on the government and its tax or rate payers in future years.
- Provides better information to report users about a government's *unfunded actuarial accrued liabilities* (the difference between a government's total obligation for OPEB and any assets it has set aside for financing the benefits) and changes in the *funded status of the benefits* over time.

4. What are the most common misconceptions about Statement 45?

a. That it requires governments to fund OPEB. Statement 45 establishes standards for *accounting and financial reporting.* How a government actually finances benefits is a policy decision made by government officials. The objective of Statement 45 is to more accurately reflect the financial effects of OPEB transactions, including the amounts paid or contributed by the government, whatever those amounts may be.

b. That it requires immediate reporting of a financial-statement liability for the entire unfunded actuarial accrued liability. Statement 45 does not require immediate recognition of the unfunded actuarial accrued liability (UAAL) as a financial-statement liability. The requirements regarding the reporting of an OPEB liability on the face of the financial statements work as follows:

- Governments may apply Statement 45 prospectively. At the beginning of the year of implementation, nearly all governments will start with zero financial-statement liability.
- From that point forward, a government will accumulate a liability called the *net OPEB obligation,* if and to the extent its actual OPEB contributions are less than its annual OPEB cost, or expense.
- The net OPEB obligation (not the same as the UAAL) will increase rapidly over time if, for example, a government's OPEB financing policy is pay-as-you-go, and the amounts paid for current premiums are much less than the annual OPEB cost.

Statement 45 does, however, also require the *disclosure* of information about the *funded status* of the plan, including the UAAL, in the notes to the financial statements—and the presentation of multi-year funding progress trend information as a required supplementary schedule.

c. That it requires governments to report "future costs" for OPEB. It is misleading and incorrect to describe accrual accounting for OPEB as requiring the expensing of "future costs." From an accrual accounting standpoint (the basis of accounting required for all transactions in the government-wide financial statements), the reported expenses relate entirely to transactions (exchanges of employee services for the promised future benefits) that *already have occurred.* Statement 45 requires governments to report costs and obligations incurred as a consequence of receiving employee services, for which benefits are owed in exchange. The *normal cost* component of annual expense is the portion of the present value of estimated total benefits that is attributed to services received in the current year. The annual expense also includes an amortization component representing a portion of the UAAL, which relates to past service costs. Estimated benefit costs associated with *projected future years of service* are *not reported.*

SPECIAL REPORT

TRIAL COURT FUNDING

JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS • SEPTEMBER 1997

Landmark Court Funding Bill Passes

San Francisco—After years of seeking an effective financing system for the state courts, leaders of California's bench and bar hailed the passage of landmark legislation that creates a stable, long-term funding solution for the trial courts.

"We have finally achieved enactment of our long-awaited plan for assumption—by the state—of the major responsibility for funding our trial courts," Chief Justice Ronald M. George told an enthusiastic audience during his State of the Judiciary Address shortly after the bill won passage on September 13, 1997. In remarks before the State Bar's Conference of Delegates in San Diego, the Chief Justice declared, "The bill establishes the foundation upon which our court system can build to meet

Continued on page 2

INSIDE THIS ISSUE

Chief Justice George Applauds Passage of Court Funding Bill

In his State of the Judiciary Address on September 13, Chief Justice Ronald M. George celebrated the passage of the landmark trial court funding restructuring legislation. Here are key points from the Chief Justice's address, which was delivered just hours after passage of the bill:

- Obtaining a stable and adequate source of funding for our courts is without doubt one of the most important reforms in the California justice system in the 20th century.
- The bill provides stable funding to permit us to avoid the sorry spectacle of having to return once again to the Legislature for emergency funding to keep the courthouse doors open.
- This will be a transition year, during which we will plan for the full implementation of state trial court funding.
- Trial court funding has been the Judicial Council's first and foremost priority, and with the bill's passage, the council can focus on those critical areas where funding is most urgently needed and make funding decisions in the best interests of the entire court system.
- We are now able to move much closer to our goal of providing equal access to justice for all, regardless of the financial health of individual counties.
- Our direction is now firmly set, and the state stands ready to assume full responsibility for funding the trial courts.

Landmark

Continued from page 1

the challenges of the century that is about to begin."

"This is a great day for everyone who wishes access to trial courts and justice in this state," said Judge Dwayne Keyes, new president of the California Judges Association. "It is a tribute to all who took part in the process. We will look back in 10 years and say that this was a great event for the trial courts of California."

Los Angeles attorney Tony Vittal, co-chair of the Statewide Bench/Bar Coalition, said, "This legislation has been five long years in the making, with the active participation of bar leaders and judges from every corner of California. With the passage of the bill, we finally have hope for adequate, stable funding for our trial courts, enabling them to reclaim their position as the preeminent trial courts in the nation and to once again focus their attention on dispensing justice."

KEY PROVISIONS OF THE BILL

The Lockyer-Isenberg Trial Court Funding Act of 1997 is contained in Assembly Bill 233 by Assembly Members Martha Escutia and Curt Pringle. The bill and related measures passed both houses of the California Legislature shortly before the close of the Legislature's 1997 session.

Governor Pete Wilson is expected to sign the bill, which will take effect January 1, 1998. Until then, counties will remain responsible for funding court costs.

The funding legislation will:

- Consolidate all court funding at the state level, giving the Legislature authority to make appropriations and the Judicial Council responsibility to allocate funds to state courts.
- Cap counties' financial responsibility at the fiscal year 1994–95 level.
- Require the state to fund all future growth in court operations costs.
- Authorize the creation of 40 new judgeships, contingent on an appropriation made in future legislation.
- Require the state to provide 100 percent funding for court operations in the 20 smallest counties beginning July 1, 1998.
- Raise a number of civil court fees to generate about $87 million annually for trial court funding.

LEGISLATURE, OTHERS ACKNOWLEDGED

In his State of the Judiciary Address, the Chief Justice expressed his appreciation to both houses of the Legislature for coming to an agreement on this measure. He thanked the California State Association of Counties, the Judicial Council, the Trial Court Budget Commission, and countless trial court judges, court administrators, court employee organizations, and local and state bar associations for their tireless efforts on behalf of making state trial court funding a reality. Chief Justice George also thanked the Administrative Office of the Courts for its dedication and support on behalf of state trial court funding. He particularly noted the efforts of William C. Vickrey, Administrative Director of the California Courts, and Ray LeBov, Director of the Office of Governmental Affairs.

IMPACT OF INADEQUATE FUNDING

The lack of adequate court funding has had a dramatic impact on the courts' ability to provide effective services to the public, the Chief Justice said. Of his recent visits to the courts in each of California's 58 counties, Chief Justice George remarked, "At courthouse after courthouse, I heard stories of woefully inadequate facilities, insufficient staff, unavailable interpreter services, and antiquated information-processing systems incapable of meeting current court needs."

For two years in a row, the Legislature has appropriated supplemental funds to avoid a partial or complete shutdown of trial court operations. "Courts cannot be left to rely upon the disparate and fluctuating health of local government as the source of the funding required to perform their basic tasks—and the people of our state deserve a court system that is truly there for them with open doors during the entire workweek," the Chief Justice declared. "They also deserve safe facilities and sufficient judges and staff to ensure that the public's needs and concerns are adequately met."

The Lockyer-Isenberg Trial Court Funding Act will go a long way toward meeting the critical needs of the courts and will enable them to dramatically improve services to the public, he said.

The courts' financing problems result from a funding scheme in which courts have had to rely on often financially strapped county governments as well as the state to pay for court-related costs.

The Administrative Office of the Courts will follow up with periodic communication to California courts on state trial court funding. If you have concerns or questions, please call George Nichols, AOC Budget Manager, at 415-356-6673.

GOVERNOR, LEGISLATORS PRAISE TRIAL COURT FUNDING REFORM

Governor Pete Wilson


Governor Pete Wilson

When I proposed my budget in January, I called upon the Legislature to approve our trial court restructuring plan that would achieve two important goals: give long-term fiscal relief to counties and provide a stable and reliable source of funding for trial courts.

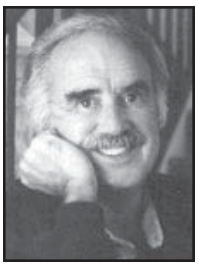
Not only does this agreement with the Legislature fulfill my proposal from January, it provides several hundred million dollars in additional fiscal relief to local governments, and provides for 40 new and needed judgeship positions. I'm extremely pleased that the Legislature has adopted our proposal, and that we have been able to provide further assistance to both the counties and the courts.


Assembly Member Martha Escutia

Assembly Member Martha Escutia

I am very proud to be the author of this vital bill that ensures the fiscal health of our state trial courts and provides much-needed relief to the counties. AB 233 is an important accomplishment for the people of California, who will now have better access to justice throughout the state. The Judicial Council can be especially proud of this years-long effort and its effective governmental affairs operation in Sacramento that helped to make the trial court funding bill a reality.

Senator John Burton


Senator John Burton

With all that we expect the courts to do, a secure and stable funding source is a fundamental requirement. Now that AB 233 has passed, the courts can better focus on other statewide needs, such as technology and modernization.

Senate President Pro Tempore Bill Lockyer


Senate President Pro Tempore Bill Lockyer

This represents the most meaningful reform of the California judicial system in this century. The state has recognized its essential responsibility to ensure that there is equal access to a quality judicial system statewide.

Assembly Speaker Cruz M. Bustamante


Assembly Speaker Cruz M. Bustamante

Our courts should focus on dispensing justice and not have to worry from year to year about closing down due to lack of funding. By putting a long-term trial court funding plan in place, the Legislature has braced up the backbone of our justice system and provided badly needed relief to cash-strapped counties.

Assembly Member Curt Pringle


Assembly Member Curt Pringle

Assembly Bill 233 (Escutia & Pringle) represents one of the Legislature's most significant accomplishments of the session. In passing this historic legislation, we have taken the necessary step toward ensuring that our justice system serves the people of California responsibly and fairly. A financially healthy system of justice will improve the overall well-being of the state.

Assembly Member Bill Morrow


Assembly Member Bill Morrow

It's a long time in coming and thank God it's here. For the last two years we came far too close to closing down the courts in many counties in the state. By enacting this legislation we've provided crucial stability to the funding that enables our courts to continue to deliver both civil and criminal justice to the people of California.

Trial Court Funding Implementation Issues

Key issues for the 1997–98 fiscal year

The budget for each court is the budget allocated by the Judicial Council based on the appropriation approved in the fiscal year 1997–98 State Budget Act.

- In total, counties will pay the total amount of funding they paid in the 1994–95 fiscal year to support courts ($890 million statewide) and remit to the state the amount in criminal fine revenues plus half of the growth in these revenues over the 1994–95 level ($292 million statewide plus growth).
- For the first half of the 1997–98 fiscal year, counties remain responsible for paying for court costs above the available state funding allocation. Beginning January 1, 1998, counties will be allowed to seek a credit against their base funding requirement for the amount they spent on court operations costs through December 31, 1997, up to the county's total obligation.
- For the first half of the 1997–98 fiscal year, counties continue to remit to the state criminal fine revenues. Beginning January 1, 1998, counties will be allowed a credit against their base requirement for the amount remitted through December 31, 1997.
- After January 1, 1998, the Judicial Council will allocate the remainder of the trial court funding budget. The funds are to be deposited into the local trial court operations fund of each county.
- Beginning January 1, 1998, courts will charge new civil fee amounts to ensure proper collection of revenues to support the court operations budget.

Key issues for the 1998–99 fiscal year

- The budget for the courts will be the budget adopted by the Legislature for trial court funding and allocated by the Judicial Council.
- Trial court funding will be allocated by the Judicial Council in four installments: on July 15, or within 10 days of state budget enactment; on October 15; on January 15; and on April 15.
- The counties' base obligation to the state will be reduced from $890 million to $605 million, including a "buyout" of the 20 smallest counties with populations less than 70,000.
- The counties' criminal revenue obligation to the state will be reduced from $292 million to $226 million, including a transfer of certain traffic fine revenues to cities and relief for five "donor counties."

Summary of the Lockyer-Isenberg Trial Court Funding Act of 1997

Assembly Bill 233—Escutia and Pringle

The trial court funding restructuring legislation becomes operative on January 1, 1998, and includes the following:

- States the legislative declaration that the judiciary of California is a separate and independent branch of government, recognized by the Constitution and statutes of California as such.
- Provides that the state assume full responsibility for funding trial court operations,* beginning with the 1997–98 fiscal year, in a single trial court funding budget. Beginning in fiscal year 1998–99, requires the Judicial Council to allocate the full trial court funding budget to the courts in four installments on July 15, October 15, January 15, and April 15.
- Requires the Judicial Council to submit an annual trial court budget to the Governor for inclusion in the state budget that meets the needs of all trial courts in a manner that promotes equal access to the courts statewide.
- Provides that counties annually pay to the state the level of funding they contributed to courts in fiscal year 1994–95. Beginning in fiscal year 1998–99, the state will provide counties additional relief of $350 million.
- Establishes a mechanism for the counties and the courts to seek an adjustment to the base county contribution to correct errors and inequities that may result from the use of fiscal year 1994–95 as the base year. Also allows counties to adjust these amounts based on the amount of funding counties contribute to court funding between July 1 and December 31, 1997.
- Requires counties to continue funding court facilities and those court-related costs that are outside the definition of court operations as defined in statute and the California Rules of Court, including indigent defense, pretrial release, and probation costs.
- Adjusts various civil fees to raise an estimated $87 million annually to support trial court operations.
- Provides that growth in fine revenues over the amount collected in fiscal year 1994–95 will be split between counties and the Trial Court Improvement Fund.
- Directs the Judicial Council to adopt rules of court that ensure a decentralized system of trial court management.

Continued on page 6

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* Gov. Code, § 77003, and Cal. Rules of Court, rule 810, define "trial court operations" to include judicial officers' salaries and benefits, jury services, court reporting services, interpreter services, alternative dispute resolution, noncriminal court-appointed counsel, court security, information technology, staffing and operating expenses, and other indirect costs. Excluded are facilities-related costs, criminal indigent defense, probation, pretrial release, and other court-related costs.

Summary of the Lockyer-Isenberg Trial Court Funding Act of 1997

Continued from page 5

- Establishes task forces on the status of trial court employees and on trial court facilities to make recommendations to the Judicial Council and the Legislature on appropriate systems for addressing these issues.
- Establishes the Civil Delay Reduction Team, a team of retired judges assigned by the Chief Justice to assist courts in reducing or eliminating delay in civil cases.
- Creates the Judicial Administration Efficiency and Modernization Fund, subject to legislative appropriation, that the Judicial Council may use to promote improved access, efficiency, and effectiveness in trial courts that have improved to the fullest extent permitted by law, including providing support for education programs, improved technology, enhanced judicial benefits and educational sabbaticals, and improved legal research assistance.
- Makes effective California Rules of Court, rules 2201–2210, adopted by the Judicial Council, on trial court labor relations policies and procedures. A related measure, Assembly Bill 1438 (Escutia), ensures that these rules have full force and effect.
- Provides that the Judicial Council may authorize a trial court that has fully implemented court coordination under California Rules of Court, rule 991, to carry unexpended funds over from one fiscal year to the next.
- Authorizes municipal court judges to receive pay equivalent to that of superior court judges when cross-assigned by the Chief Justice pursuant to a Judicial Council–approved coordination plan and assigned pursuant to a Judicial Council–certified uniform county- or region-wide system for case assignment that maximizes existing judicial resources.

Policies Promoted by Trial Court Funding Restructuring

- Provides a stable, consistent funding source for the trial courts.
- Promotes fiscal responsibility and accountability by the trial courts in managing scarce resources in the most efficient and effective manner.
- Recognizes that the state is primarily responsible for trial court funding, thereby enabling the courts, the state, and the counties to engage in long-term planning.
- Enhances equal access to justice by removing disparities resulting from the varying ability of individual counties to address the operating needs of the courts and to provide basic and constitutionally mandated services.
- Provides significant financial relief in all 58 counties, which is desperately needed to allow the counties to redirect scarce local resources to critical programs that serve their local constituents.

SUMMARY OF OTHER KEY LEGISLATION

Following are court-related bills that were introduced in the California Legislature during the 1997 session.

Chaptered

CIVIL PROCEDURE

AB 380 (Pacheco) requires the Judicial Council, on or before January 1, 1999, to adopt a rule of court providing that, whenever a state statute or regulation has been declared unconstitutional by the court, notice of entry of judgment is mailed to the Attorney General and a certificate of that mailing is placed in the court's file. Status: Chapter 259, Statutes of 1997.

COURT INTERPRETERS

AB 1445 (Shelley) allows registered interpreters who are regularly employed by the courts to file an oath with the clerk of the court. The filed oath serves for all subsequent court proceedings until the appointment is revoked. Status: Chapter 376, Statutes of 1997. (Judicial Council–sponsored.)

DOMESTIC VIOLENCE

SB 564 (Solis) clarifies that the court may issue visitation orders under the Domestic Violence Prevention Act only to parties who have demonstrated a parent-child relationship. Status: Chapter 396, Statutes of 1997.

On the Governor's Desk

CIVIL AND SMALL CLAIMS

AB 246 (Lempert) increases from $5,000 to $7,500 the general jurisdiction of the small claims court. In the case of a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, increases the court's jurisdiction from $2,500 to $4,000, on or after January 1, 1999. Status: On the Governor's desk.

SB 119 (Kopp) allows any party in a civil action in a court with 10 or more judges to exercise one peremptory challenge to excuse a judicial officer without filing an affidavit stating that the judicial officer is prejudiced. Status: On the Governor's desk.

SB 653 (Calderon) repeals statutory changes made last year governing judicial review of adjudicatory decisions of the Public Utilities Commission (PUC). Provides for a discretionary writ of review in the Court of Appeal for all PUC decisions. Clarifies standards of review for PUC decisions. Status: On the Governor's desk.

CRIMINAL PROCEDURE

SB 513 (Lockyer and Pacheco) enhances the resources of the existing Office of the State Public Defender, which will represent inmates primarily in direct appeals; creates the California Habeas Resource Center, which will represent inmates in the state and federal habeas corpus proceedings, and will provide support for private counsel handling habeas corpus petitions; and increases the rate of compensation for private counsel appointed in either the direct appeal or the habeas corpus proceedings from $98 to $125 per hour. Status: On the Governor's desk.

SB 721 (Lockyer) simplifies felony sentencing laws by eliminating certain limitations on the imposition of sentence enhancements. Status: On the Governor's desk.

"The trial court funding legislation translates to access to our California courts. The leadership displayed by Chief Justice Ronald George and State Court Administrator Bill Vickrey is an example to all of us to keep up the struggle for what is right."

—Sheila Gonzalez
Executive Officer and Clerk
Ventura County Superior and Municipal Coordinated Courts

FAMILY LAW

AB 200 (Kuehl) modifies the legislative findings and declarations regarding the state's policy on custody decision making, stating that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children. Requires the court to state its reasons in writing or on the record when the court awards custody to a parent who is alleged to have perpetrated domestic violence or to have alcohol or substance abuse problems. Status: On the Governor's desk.

AB 1526 (Escutia) clarifies the role of counsel appointed to represent a child in a family law proceeding. It permits the court to request counsel

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Other Legislation

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to prepare a written statement of issues and contentions, and does not allow the attorney to be called as a witness. (Judicial Council–sponsored.) Status: On the Governor's desk.

FINES AND FORFEITURES

SB 162 (Haynes) extends the Comprehensive Court Collections program to January 1, 2000, and extends until December 31, 1998, the $24 fee charged to traffic violators who elect or are ordered to attend traffic violators school, among other provisions. Status: On the Governor's desk.

GRAND JURY

AB 829 (Thomson) revises grand jury procedures in the following areas: meeting with the subject of the investigation, clarifying recommendations, training, and meeting rooms. Status: On the Governor's desk.

JUVENILE DELINQUENCY

AB 1105 (Hertzberg) creates the Expedited Youth Accountability Program, operative in Los Angeles and in other volunteer counties, which allows for expedited law enforcement and judicial response to low-level juvenile offenders. Status: On the Governor's desk.

Following are court-related bills that are still pending in the California Legislature.

Two-Year Bills

CIVIL PROCEDURE

AB 1374 (Hertzberg) creates a five-year mediation pilot project in Los Angeles County. Authorizes the court to submit civil actions with more than $50,000 in controversy to early mediation. Status: Senate Judiciary Committee.

SB 19 (Lockyer) provides an arbitrator with the immunity of a judicial officer. Specifies an additional ground upon which a court may vacate an arbitrator's award in a consumer contract. Limits court-ordered discovery references to exceptional circumstances and requires that certain information be included in the reference order. Allows the recovery of opposing-party witness fees. Repeals the sunset on the mediation pilot project for civil cases with less than $50,000 in controversy. Creates an early mediation pilot project for civil cases with more than $50,000 in controversy. Status: Assembly Appropriations Committee.

FAMILY LAW

SB 779 (Calderon) establishes a Friend of the Court pilot project in up to five counties. The Friend of the Court is responsible for the enforcement of custody and visitation orders. Status: Assembly Judiciary Committee.

SB 1037 (Vasconcellos) permits the court to award visitation to a parent who meets the definition of a de facto parent when the court finds visitation to be in the best interest of the child. Status: Assembly Floor.

JURY REFORM

SB 14 (Calderon) increases juror fees from $5 to $16 per day to offset the cost of meals, travel, and other incidental expenses; reimburses jurors for parking; reimburses jurors traveling more than 50 miles to the court at the rate of 28 cents per mile for each mile actually traveled one way; and reimburses the actual, reasonable expenses of licensed child care to jurors who are unemployed and demonstrate financial hardship. (Judicial Council–sponsored.) Status: In Assembly.

"The passage of the trial court funding redesign legislation represents a tremendous achievement by a broad coalition. Trial courts now have the possibility of obtaining stable, adequate funding to provide the public mandated and necessary services. The successful passage of this legislative program represents a remarkable accomplishment and a successful collaboration model reflecting creativity, dedication, and determination."

—Ronald G. Overholt
Executive Officer, Administratively Consolidated Trial Courts of Alameda County

Vetoed

FAMILY LAW

AB 400 (Kuehl) regarding spousal support was vetoed. This bill would have deleted the requirement that the court make an admonition to the supported spouse regarding the expectation of making reasonable efforts to assist in his or her support.

Trial Court Budget Commission: Prepared to Meet New Challenge

With the passage of the landmark Lockyer-Isenberg Trial Court Funding Act of 1997, the Trial Court Budget Commission (TCBC) is looking forward to its responsibilities.

"Now, for the first time, we will be able to allocate in a meaningful way trial court funding dollars," says Shasta County Superior Court Judge Steven Jahr, the current TCBC chair who has been on the commission since its creation.

In the split-funding environment, he explains, courts submitted separate budgets to the counties and to the state through the TCBC process and hoped that one or both sources provided adequate funding to support them.

Given those difficult circumstances, the TCBC has not had the opportunity to meaningfully engage in one of its designated functions—allocation. "Because we have had so little state money to allocate, the historical allocation schedule has had a bias built into it, favoring courts in counties that are financially weaker," says Judge Jahr.

"With single-source state funding, we want to be able to allocate much more in line with the budgets that are approved, taking into account minimum service levels, proven innovative projects, the efficiencies of coordination, and techniques that most effectively utilize resources."

TCBC'S ROLE

For courts around the state, the process involving the TCBC is now a familiar one: the courts annually complete their budget requests in the form of budget development packages and submit them to the Budget Evaluation and Appeals Committee (BEAC) of the Trial Court Budget Commission (TCBC). BEAC also considers appeals by courts not satisfied with its assessment before it makes its final recommendations to the TCBC, which, in turn, presents them to the Judicial Council.

"Now, for the first time, we will be able to allocate in a meaningful way trial court funding dollars," says Shasta County Superior Court Judge Steven Jahr, the current TCBC chair who has been on the commission since its creation.

The process now seems straightforward, but that was not the case when Assembly Bill 1344 (Stats. 1992, ch. 696) was enacted, authorizing the establishment of a statewide funding commission to oversee both functions of the trial court budgeting process: budget building and fund allocation.

NEW FRONTIER

"Since there was no statewide system for budgeting and accounting for courts, we were essentially entering into uncharted territory," recalls Judge Jahr. "We discovered that the mechanism that each court system used in preparing budget requests was different from the others." For the young TCBC, this presented a major problem. "There was no means of comparing courts; we had no common methodology for budget request submissions. This was a critical barrier to developing an immediately smooth-running system," says Judge Jahr.

BUDGET SYSTEMS DEVELOPED

Rising to the challenge, the TCBC, composed of representatives from 10 geographic regions configured by the Judicial Council, developed a uniform format for courts to formulate and submit budget requests and a system of comparative statistics and performance measures to assist the TCBC in evaluating the requests.

The performance measures developed so far are expressed in terms of minimum service levels, explains Judge Jahr, or "floors for adequate funding for specific purposes" for several of the 11 functions ranging from jury services and court interpreters to court-appointed counsel and court security. Those requests are first reviewed by BEAC, which methodically reviews data and information provided by courts. BEAC is further assisted by court volunteers and Administrative Office of the Courts (AOC) staff who follow up with phone calls or site visits in BEAC's quest to obtain the most accurate information about each court.

"If a budget request seeks support that is less than minimum level, then we know the court is in dire need,"

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TCBC

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says Judge Jahr, adding, "If a budget request is for funds to obtain resources greater than minimum levels, that doesn't mean it's not warranted."

FROM UNEASE TO TRUST

"In the beginning, things were as new for the courts as they were for commission members," Judge Jahr confides, "and there was some unease, even though the commission was composed of judges and court administrators."

Over the years, that relationship has improved. "Trust comes from an ongoing relationship, an understanding of how a system works," observes Judge Jahr. "Particularly through AOC staff visits to the courts and regional representatives to answer questions, trial courts have gained a greater comfort level as we ask them to provide what we need and explain what we do in assessing their budget requests."

Still, the TCBC has been determined from its inception not to be a "pass-through for wish lists but instead [to] be responsible for the in-house policing of budget requests," says Judge Jahr, acknowledging, "The aggregate total of budget requests has been materially greater than the aggregate approved budget requests recommended to the Judicial Council." He explains, "The theory is that if we scrutinize the budget requests carefully, the product we forward to the Judicial Council will be more credible when it goes to the Governor and the Legislature. If it is more credible, then it will be given more weight."

SPLIT-FUNDING DILEMMA

While the TCBC has succeeded in overcoming the hodgepodge of county budgeting and accounting systems across the state, a greater barrier has existed: "That was the absence of adequate operations funding," states Judge Jahr. "Some county governments had more money to support courts than others [at the time the TCBC was created]. A number of counties were in dire financial circumstances; some courts were struggling to keep their doors open."

With the passage of the trial court funding measure, however, the TCBC is prepared to meet its new challenge. Says Judge Jahr, "We have been able to develop a high-quality budgeting process so we are ready to take on the responsibility of allocating funds now that the law has been enacted that will allow us to do that."

Members of the Trial Court Budget Commission are, left to right, front row: Judge Victor E. Chavez; Judge Marjorie Laird Carter; Ms. Nancy Piano; Judge Steven E. Jahr, Chair; Judge Patricia K. Sepulveda; Judge Paul C. Cole; Mr. John A. Clarke; Judge Ronald Evans Quidachay; back row: Judge John W. Runde; Judge Arthur E. Wallace; Judge Richard O. Keller; Judge Ray L. Hart; Judge Candace D. Cooper; Judge Robert H. O'Brien; Judge Dennis G. Cole; Judge Bruce A. Clark; Judge John Stephen Graham; Judge Theodore E. Millard; Mr. James Hlawek; Judge Jon M. Mayeda; Mr. Donald H. Lundy; Mr. Kenneth Martone; Judge Eugene "Mac" Amos, Jr.; Judge Dennis A. Cornell; and Judge Edward Forstenzer. Not pictured are Judge Lloyd G. Connelly; Judge Francis A. Gately, Jr.; Judge Jack P. Hunt; Mr. Michael Johnson; Judge William C. Pate; Judge Coleman A. Swart; and Judge Ronald L. Taylor. *Photo: Carl Gibbs.*

State Funding for California Trial Courts: A Brief History

1985

The Trial Court Funding Act of 1985 (Assem. Bill 19 (Robinson)) is enacted, providing for state funding of trial courts with retention of local administrative control. It marks the first major reform in trial court funding since the abolition of the proliferating city and police courts. The bill provides block grants to counties based on a formula of reimbursement for statutorily authorized judicial positions. However, no funds are appropriated to implement the law.

1988

The Brown-Presley Trial Court Funding Act becomes law (Sen. Bill 612 (Presley); Assem. Bill 1197 (W. Brown)), implementing and financing some state funding of the trial courts. With this act, California joins more than 30 other states that accept some significant state responsibility for funding their trial courts. The act provides partial state funding of the trial courts, with block-grant appropriations to each county based on total judicial positions. The initial funding period begins on January 1, 1989, and continues to the end of fiscal year 1988–89. The Governor also includes funding for trial courts in his 1989–90 budget.

1989–90

This fiscal year marks the first full year of state court funding under the Brown-Presley Trial Court Funding Act. California's growing fiscal problems are reflected in a drop of the state's share to 38 percent of total trial court costs during this year.

1990

The Judicial Council adopts a position that California must move toward adequate state funding of the courts and creates an Advisory Committee on State Court Funding. This committee is charged with (1) analyzing the current funding method, under which the state provides one-third of funding for the state courts and financially strapped counties provide the other two-thirds, and (2) exploring ways to achieve adequate state funding.

1991

Enactment in June of the Trial Court Realignment and Efficiency Act of 1991 (Assem. Bill 1297 (Isenberg)) provides increased state funding for trial courts and streamlines court administration through trial court coordination and financial information reporting. Under the law, the Legislature states its intent to raise its funding share to 50 percent and increase that level by 5 percent each year until 1995–96, when a 70 percent funding level would be attained.

"In order to ensure that our justice system runs smoothly, we must have sufficient trial court funding. I am deeply gratified by the passage of the new funding bill. This good news has been long awaited."

—Marc Adelman
President, State Bar of California

The act increases fines in criminal cases and appropriates to the state significant shares of the fine monies formerly distributed to cities and counties. The increased revenue to the state offsets the increase in the state's appropriation to trial courts. The act also requires the Judicial Council to report and recommend to the Legislature by March 1992 the most efficient and cost-effective methods available to include trial courts in the state's budget process and an equitable approach to allocating state funds for trial courts.

1992

In May, the Judicial Council adopts a long-term approach to including trial courts in the state's budget process, involving the creation of a single statewide trial court budget board—the Trial Court Budget Commission (TCBC)—

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which would review and approve trial court budgets for submission to the Legislature and allocate state funds appropriated for trial courts.

In September, the Governor signs into law Assembly Bill 1344 (Isenberg), which, among other things, reiterates the Legislature's intent to incrementally increase the state's share of trial court costs and to include trial court budgets in the state's Budget Act starting in the 1993–94 fiscal year. However, the state's share of support for the trial courts has continued to decline from the level provided in 1991: the total amount of funding has decreased, and the net amount of the state General Fund contribution has dramatically declined even after taking into account the transfer of local trial court revenue to the state.

"This legislation marks the beginning of a process that will provide courts with an adequate and stable funding source. In the end, I believe that the beneficiaries of this momentous change will be the public that we serve."

—Fritz Ohlrich, Court Administrator, Los Angeles Municipal Court

Assembly Bill 1344 also provides statutory authority for the establishment and powers of the TCBC, whose purpose is to direct and oversee the trial court budget submission and allocation processes for the state's share of costs. The bill makes uniform and increases filing fees and redistributes them from the county to the state to help address the state's fiscal responsibility.

1993

In February, the membership of the TCBC, consisting of 26 trial court judges from the TCBC's 10 geographic regions, is announced. Four court administrators and two county administrators are named as advisory members. The commission holds its first meeting in March.

In June, the Governor signs the 1993 Budget Act into law. According to the budget, the state will pay only about 43.5 percent of statewide trial court expenses in 1993–94—substantially below the 60 percent level intended by the Legislature when it passed the Trial Court Realignment and Efficiency Act of 1991. The state will now pay the full cost of the Assigned Judges Program, instead of sharing the expense with counties.

1994

The TCBC reviews funding requests from the trial courts for 10 functional categories of operations. These categories, established by the TCBC, are: (1) judicial officers, (2) jury services, (3) verbatim reporting, (4) court interpreters, (5) collection enhancement, (6) dispute resolution programs, (7) court-appointed counsel, (8) court security, (9) information technology, and (10) all other court operations, plus a category for county general services ("indirect costs"). The TCBC prepares and approves a consolidated trial court budget proposal, which it presents to the Governor and the Legislature.

In July, the Governor signs into law Assembly Bill 2544 (Isenberg), which declares the intent of the Legislature to create a Judicial Branch Budgeting System that protects the independence of the judiciary and optimizes local trial court control and responsibility, while preserving financial accountability to the overall state budget. The law also implements the transition from block-grant funding to function funding consistent with California Rules of Court, rule 810.

1995

In January, the Judicial Council adopts California Standards of Judicial Administration, section 30—Trial Court Performance. The section lists standards for trial court performance that are intended to be used by the trial courts, in cooperation with the Judicial Council, "for purposes of internal evaluation, self-assessment, and self improvement." They specifically address (1) access to justice; (2) expedition and timeliness; (3) equality, fairness, and integrity; (4) independence and accountability; and (5) public trust and confidence.

In July, the council adopts the TCBC's recommendations regarding its *Final Report on the Initial Statewide Minimum Standards for Trial Court Operations and Staffing,* prepared by the TCBC's Oversight Task Force—the chairs of each of the 10 functional budget-category subcommittees and the corresponding liaison members from the TCBC.

For the second year, the TCBC presents a consolidated trial court budget to the Governor and the Legislature. On the TCBC's recommendation, the Judicial Council amends California Rules of Court, rule 810, effective July 1, 1995, which identifies the costs eligible for state funding under the Trial Court Funding Program, to clarify al-

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lowable costs and to ensure greater consistency among counties in cost reporting.

1996

In January, the Judicial Council adopts the TCBC's *Report to the Legislature Regarding Performance Criteria for the Trial Courts.* The TCBC reports to the council that while the tools of output-based performance criteria are limited, they are a useful starting point in analysis of trial court performance. The TCBC concludes that it has succeeded in developing performance criteria and successfully applied the criteria in developing the 1996–97 TCBC Approved Budget. It notes that the criteria continue to evolve as the trial court budget process is refined.

"The enactment of AB 233 (Escutia) will hopefully begin a new era of stability in the funding and budgeting for California's trial courts. For the Orange County Superior Court, which has been locked in budget battles and litigation with the County of Orange over adequate funding for years, this legislation has been critically needed and is most welcome."

—Alan Slater, Executive Officer, Orange County Superior Court

At its March meeting, the council votes to support the six initial recommendations proposed by the Task Force on Trial Court Funding, appointed by the Chief Justice, regarding the Governor's proposed State Budget for Trial Court Funding. They are as follows: (1) request funding that meets the TCBC request of $1.727 billion for fiscal year 1996–97, which is $120 million above the Governor's proposal; (2) maintain the status quo with regard to employee status (that is, that employees be employed by the counties); (3) use the current TCBC processes to ensure local input and to preserve the flexibility and control of operations at the local court level; (4) allow courts and counties to continue to collaborate so that the ultimate goal of efficient fine collection is realized; (5) utilize the TCBC allocation process to provide mechanisms for emergency and mid-year changes in funding; and (6) authorize courts to negotiate nondirect administrative support heretofore provided by counties, including the individual contractor opinion.

At its May meeting, the Judicial Council accepts the final report and recommendations of the Task Force on Trial Court Funding.

On May 13, the Governor signs unprecedented emergency legislation, Senate Bill 99 (Kopp), which provides $25 million in state supplemental funding, to be matched by the counties, to trial courts with critical funding needs so they may perform their basic judicial functions for the remainder of the fiscal year. Without additional funding, some courts faced possible closure before June 30.

In the final days of the 1995–96 legislative session, Assembly Bill 2553 (Isenberg)—the landmark measure that would have consolidated funding of California's trial courts at the state level—fails passage. The measure would have remedied the current funding scheme under which the state provides one-third of funding for the state courts and the counties provide the other two-thirds. It receives wide support from the bench, bar, law enforcement, and the executive and legislative branches, but disagreement over the issue of court employee-employer relations prevents enactment. The bill's failure to pass creates a $300 million shortfall in the trial court funding budget.

1997

On March 4, the Governor signs Senate Bill 21 (Lockyer), which provides $290.5 million to fund court operations through the 1996–97 fiscal year ending June 30. The signing of the measure averts the immediate closure of numerous trial courts; however, the legislation makes no changes in the current bifurcated trial court funding structure. Chief Justice Ronald M. George acknowledges that he is "pleased that the immediate crisis facing California's trial courts has passed," but emphasizes, "This should not in any way lessen the impetus for a long-term state-funding solution to the fiscal needs of the judicial branch."

On April 23, the Judicial Council adopts California Rules of Court that address labor relations policies and procedures in the trial courts. The new rules would become operative if Assembly Bill 233 (Escutia, Pringle) or like legislation providing for state court funding is enacted into law and takes effect. Later that month, Assembly Bill 233 passes the Assembly with strong bipartisan support.

On September 13, the Legislature approves the landmark Lockyer-Isenberg Trial Court Funding Act of 1997 that restructures the beleaguered trial court funding system, taking giant strides toward solving a major problem that has plagued the judiciary.

Judicial Council of California

TO: Trial Court Presiding Judges
Trial Court Clerks/Executive Officers
County Boards of Supervisors
County Administrative/Executive Officers
County Auditor-Controllers

FROM: William C. Vickrey
Administrative Director of the Courts

DATE: December 19, 1997

SUBJECT: Resource Manual on Trial Court Funding

I am pleased to send you the enclosed Resource Manual for the Lockyer-Isenberg Trial Court Funding Act of 1997 (Assembly Bill 233). Passed by the Legislature and signed by the Governor last fall, this landmark legislation will take effect on January 1, 1998. Under the new law, funding of the trial courts will be consolidated at the state level to ensure equal access to justice throughout California.

Over the last several months, the Judicial Council and the Administrative Office of the Courts (AOC), along with the California State Association of Counties and the Department of Finance, have worked together to familiarize the state's judges, court administrators, and county executives with this historic new funding law. As part of that process, we are presenting this Resource Manual to assist you in understanding and implementing the new law.

The Manual contains 132 updated questions and answers on key provisions of the bill, agreed upon by the Department of Finance, the California State Association of Counties, and the AOC. The Manual also includes several documents prepared by the AOC's Council and Legal Services Division and Office of Governmental

~~civil decisions, provided the court provides an alternative method of obtaining the service or information in a free and timely manner, and informs individuals of this alternative in the message preceding the "900" information. The proceeds from these "900" telephone numbers shall be continuously and solely appropriated to the use of that court for staff, information, and data processing services for the purposes specified in this section.~~

SEC. 46. Article 3 (commencing with Section 77200) is added to Chapter 13 of Title 8 of the Government Code, to read:

Article 3. State Finance Provisions

77200. On and after July 1, 1997, the state shall assume sole responsibility for the funding of court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996. In meeting this responsibility, the state shall do all of the following:

STATE RESPONSIBILITY FOR TRIAL COURT FUNDING; CAP OF COUNTY FUNDING RESPONSIBILITY

State solely responsible for funding court operations

- *As of the 1997–98 fiscal year and every year thereafter, the state has the sole responsibility to fund trial "court operations." Prior to this act, the costs of court operations were shared between the state and the counties.*
- *"Court operations" is defined in Gov. Code, § 77003 and Cal. Rules of Court, rule 810, as it read on July 1, 1996.*
- *This shift of full responsibility to the state was effective July 1, 1997, even though AB 233 is not effective until January 1, 1998. The impact of the differences in these dates is explained in the commentary that accompanies Gov. Code, § 77201(g), discussed below.*

(a) Deposit in the State Trial Court Trust Fund, for subsequent allocation to or for the trial courts, all county funds remitted to the state pursuant to Section 77201.

(b) Be responsible for the cost of court operations incurred by the trial courts in the 1997–98 fiscal year and subsequent fiscal years.

(c) Allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council, but in no case shall the amount

- *The state must deposit the amounts counties are required to remit under Gov. Code, § 77201 into the Trial Court Trust Fund, and to allocate funds to the individual trial courts based on an allocation schedule adopted by the Judicial Council. The amount of funding the courts of a county receive*

allocated to the trial courts of a county be less than the amount remitted to the state by the county in which those courts are located pursuant to paragraphs (1) and (2) of subdivision (b) of Section 77201.

(d) The Judicial Council shall submit its allocation schedule to the Controller at least 15 days before the due date of any allocation.

must be at least the amounts paid by the county to the state under Gov. Code, §§ 77201(b)(1) and (b)(2).

- *The Judicial Council must submit an allocation schedule to the state Controller at least 15 days before the due date of any allocation.*

77201. (a) Commencing on July 1, 1997, no county shall be responsible for funding court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996.

State to fund trial courts

- *This section relieves counties of any direct responsibility to fund trial court operations costs, as defined. (Gov. Code, § 77200 shifts that responsibility to the state). Instead, the county is obligated to pay to the state an amount based on (1) the amount of county general fund money provided for support of the courts in fiscal year 1994–95 (hereinafter identified as "County General Fund Base Amount") and (2) the amount of specified fine and penalty revenues the county remitted to the state in fiscal year 1994–95 (hereinafter identified as "County Fine Base Amount").*

(b) In the 1997–98 fiscal year, each county shall remit to the state in four equal installments due on January 1, April 1, and June 30, the amounts specified in paragraphs (1) and (2), as follows:

- *Provides that the counties are required to pay to the state the amounts listed in paragraphs (1) and (2) of subdivision (b).*
- *Under subdivision (b), on January 1, 1998, counties are required to make a payment equal to one quarter of the amounts listed in paragraphs (1) and (2). Any adjustment(s) made under Gov. Code, § 77201(c) and (g) will be applied as a credit, on a prorated basis, to the payments counties are required to make under Gov. Code, § 77201(b)(1) on April 1, 1997, and*

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. *Indirect Costs*

1. General. Indirect costs are those: Incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term ''indirect costs,'' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Appendices C, D, and E to this part.

3. Limitation on indirect or administrative costs.

a. In addition to restrictions contained in 2 CFR part 225, there may be laws that further limit the amount of administrative or indirect cost allowed.

b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix C to this part.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Appendices C and E to this part must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices C and E to this part. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

APPENDIX B TO PART 225—SELECTED ITEMS OF COST

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25. Maintenance, operations, and repairs
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Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Advertising and public relations costs.*

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or

(4) Other specific purposes necessary to meet the requirements of the Federal award.

d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Costs identified in subsections c and d if incurred for more than one Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. (''Direct Costs'') and F. (''Indirect Costs'') are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections 1.c, d, and e of this appendix;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by , and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' are allowable. Also see 31 U.S.C. 7505(b) and section 230 (''Audit Costs'') of Circular A–133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect

cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A–133 under section 200(d) are allowable, subject to the conditions listed in A–133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar

benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Temporary Assistance to Needy Families (TANF), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection 8.h.(6)(c) of this appendix;

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection 8.h.(6)(a) of this appendix may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements

in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

9. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term ''contingency reserve'' excludes self-insurance reserves (see section 22.c. of this appendix), pension plan reserves (see section 8.e.), and post-retirement health and other benefit reserves (section 8.f.) computed using acceptable actuarial cost methods.

10. *Defense and prosecution of criminal and civil proceedings, and claims.*

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), ''Allowable costs under defense contracts.''

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

11. *Depreciation and use allowances.*

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefiting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (*e.g.*, buildings, office equipment, computer equipment, etc.) except as provided for in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the depreciation method is followed, the following general criteria apply:

(1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used.

(2) Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

e. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (*e.g.*, plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (*i.e.*, the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. Where the use allowance method is followed, the following general criteria apply:

(1) The use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and

sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs.

(2) The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost.

(3) When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (*e.g.*, plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (*e.g.*, dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6⅔ percent equipment use allowance limitation.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

12. *Donations and contributions.*

a. Contributions or donations rendered. Contributions or donations, including cash, property, and services, made by the governmental unit, regardless of the recipient, are unallowable.

b. Donated services received:

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the Federal Grants Management Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

13. *Employee morale, health, and welfare costs.*

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the governmental unit's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the governmental unit. Income generated from any of these activities will be offset against expenses.

14. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

15. *Equipment and other capital expenditures.*

a. For purposes of this subsection 15, the following definitions apply:

(1) ''Capital Expenditures'' means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(2) ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5000.

(3) ''Special purpose equipment'' means equipment which is used only for research,

medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) ''General purpose equipment'' means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to section 15.b(1), (2), and (3)of this appendix, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the awarding agency. In addition, Federal awarding agencies are authorized at their option to waive or delegate the prior approval requirement.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section 11 of this appendix, Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section 37 of this appendix, Rental costs, concerning the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

(7) When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

16. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

17. *Fund raising and investment management costs.*

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this and other appendices of 2 CFR part 225 are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Appendix A to this part.

18. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.*

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 11 and 15 of this appendix.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 22.d of this appendix.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the

relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection 18.a. of this appendix, *e.g.*, land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

19. *General government expenses.*

a. The general costs of government are unallowable (except as provided in section 43 of this appendix, Travel costs). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executive of federally-recognized Indian tribal government;

(2) Salaries and other expenses of a State legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judiciary branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by program statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

20. *Goods or services for personal use.* Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

21. *Idle facilities and idle capacity.*

As used in this section the following terms have the meanings set forth below:

(1) ''Facilities'' means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) ''Idle facilities'' means completely unused facilities that are excess to the governmental unit's current needs.

(3) ''Idle capacity'' means the unused capacity of partially used facilities. It is the difference between: that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) ''Cost of idle facilities or idle capacity'' means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

22. *Insurance and indemnification.*

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below.

However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims submitted and adjudicated but not paid, submitted but not adjudicated, and incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 8.f. for post retirement health benefits), are allowable in the year of payment provided the governmental unit follows a consistent costing policy and they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection 22.d of this appendix.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

23. *Interest*.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred which are associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable subject to the conditions in section 23.b.(1) through (4) of this appendix. Financing costs (including interest) paid or incurred on or after September 1, 1995 for land or associated with otherwise allowable costs of equipment is allowable, subject to the conditions in section 23.b. (1) through (4) of this appendix.

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) For debt arrangements over $1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal

entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(5) Interest attributable to fully depreciated assets is unallowable.

24. *Lobbying.*

a. General. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, ''New Restrictions on Lobbying'' (see Section J.24 of Appendix A to 2 CFR part 220), including definitions, and the Office of Management and Budget ''Government-wide Guidance for New Restrictions on Lobbying'' and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

b. Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

25. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, do not add to the permanent value of property or appreciably prolong its intended life, and are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 11 and 15 of this appendix).

26. *Materials and supplies costs.*

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

27. *Meetings and conferences.* Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section 14, Entertainment costs, of this appendix.

28. *Memberships, subscriptions, and professional activity costs.*

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

d. Costs of membership in organizations substantially engaged in lobbying are unallowable.

29. *Patent costs.*

a. The following costs relating to patent and copyright matters are allowable: cost of preparing disclosures, reports, and other documents required by the Federal award and of searching the art to the extent necessary to make such disclosures; cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections 32, Professional service costs, and 38, Royalties and

other costs for use of patents and copyrights, of this appendix).

b. The following costs related to patent and copyright matter are unallowable: Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award; costs in connection with filing and prosecuting any foreign patent application; or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government (but see section 38, Royalties and other costs for use of patents and copyrights, of this appendix).

30. *Plant and homeland security costs.* Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section 15, Equipment and other capital expenditures, of this appendix.

31. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

32. *Professional service costs.*

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the governmental unit, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section 10 of this appendix.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the governmental unit's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the governmental unit's business (*i.e.*, what new problems have arisen).

(5) Whether the proportion of Federal work to the governmental unit's total business is such as to influence the governmental unit in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by available or rendered evidence of bona fide services available or rendered.

33. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

34. *Publication and printing costs.*

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the governmental unit.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government; and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

36. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

37. *Rental costs of buildings and equipment.*

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under ''sale and lease back'' arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under ''less-than-arm's-length'' leases are allowable only up to the amount (as explained in section 37.b of this appendix) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a governmental unit; governmental units under common control through common officers, directors, or members; and a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a governmental unit may establish a separate corporation for the sole purpose of owning property and leasing it back to the governmental unit.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection 37.b of this appendix) that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting Standards Board Statement 13, Accounting for Leases, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 23 of this appendix. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the governmental unit purchased the facility.

38. *Royalties and other costs for the use of patents.*

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, *e.g.:*

(1) Royalties paid to persons, including corporations, affiliated with the governmental unit.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a governmental unit.

c. In any case involving a patent or copyright formerly owned by the governmental unit, the amount of royalty allowed should not exceed the cost which would have been allowed had the governmental unit retained title thereto.

39. *Selling and marketing.* Costs of selling and marketing any products or services of the governmental unit are unallowable (unless allowed under section 1. of this appendix as allowable public relations costs or under section 33. of this appendix as allowable proposal costs.

40. *Taxes.*

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision is applicable to taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

41. *Termination costs applicable to sponsored agreements.* Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth below. They

are to be used in conjunction with the other provisions of this appendix in termination situations.

a. The cost of items reasonably usable on the governmental unit's other work shall not be allowable unless the governmental unit submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the governmental unit, the awarding agency should consider the governmental unit's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the governmental unit shall be regarded as evidence that such items are reasonably usable on the governmental unit's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the governmental unit, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this and other appendices of 2 CFR part 225, except that any such costs continuing after termination due to the negligent or willful failure of the governmental unit to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the governmental unit,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The governmental unit makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for default (see Subpart __.44 of the Grants Management Common Rule (see §215.5) implementing OMB Circular A–102); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Subparts __.31 and __.32 of the Grants Management Common Rule (see §215.5) implementing OMB Circular A–102.

f. Claims under subawards, including the allocable portion of claims which are common to the Federal award, and to other work of the governmental unit are generally allowable. An appropriate share of the governmental unit's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in Appendix A to this part. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

42. *Training costs.* The cost of training provided for employee development is allowable.

43. *Travel costs.*

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the governmental unit. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the governmental unit's non-federally-sponsored activities. Notwithstanding the provisions of section 19 of this appendix, General government expenses, travel costs of officials covered by that section are allowable

with the prior approval of an awarding agency when they are specifically related to Federal awards.

b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as the result of the governmental unit's written travel policy. In the absence of an acceptable, written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code (''Travel and Subsistence Expenses; Mileage Allowances''), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under Federal awards (48 CFR 31.205–46(a)).

c. Commercial air travel.

(1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(a) Require circuitous routing;

(b) Require travel during unreasonable hours;

(c) Excessively prolong travel;

(d) Result in additional costs that would offset the transportation savings; or

(e) Offer accommodations not reasonably adequate for the traveler's medical needs. The governmental unit must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a governmental unit's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the governmental unit can demonstrate either of the following:

(aa) That such airfare was not available in the specific case; or

(b) That it is the governmental unit's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by governmental unit-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel, as provided for in subsection 43.c. of this appendix, is unallowable.

e. Foreign travel. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must receive such approval. For purposes of this provision, ''foreign travel'' includes any travel outside Canada, Mexico, the United States, and any United States territories and possessions. However, the term ''foreign travel'' for a governmental unit located in a foreign country means travel outside that country.

Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans

Table of Contents

A. *General.*

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of

Written August, 2004

Proposition 1A

Local Government Finance. Constitutional Amendment.

Background

Local Government Funding

California cities, counties, and special districts provide services such as fire and police protection, water, libraries, and parks and recreation programs. Local governments pay for these programs and services with money from local taxes, fees, and user charges; state and federal aid; and other sources. Three taxes play a major role in local finance because they raise significant sums of general-purpose revenues that local governments may use to pay for a variety of programs and services. These three taxes are the property tax, the uniform local sales tax, and the vehicle license fee (VLF). Many local governments also impose optional local sales taxes and use these revenues to support specific programs, such as transportation. Figure 1 provides information on these major revenue sources.

Figure 1

Local Government Taxes

Property Tax

- Local governments receive general-purpose revenues from a 1 percent property tax levied on real property.
- During the 2003-04 fiscal year, local governments received approximately $15 billion in property tax revenues. (An additional $16 billion in property taxes went to schools and community colleges.)
- There is wide variation in the share of property taxes received by individual local governments. This variation largely reflects differences among local agency property tax rates during the mid-1970s, the period on which the state's property tax allocation laws are based.

Vehicle License Fee (VLF)

- The VLF is a tax levied annually on the value of vehicles registered in the state.

- For about a half century, the VLF rate was 2 percent of vehicle value. In 1999, the Legislature began reducing the rate charged to vehicle owners, with the state "backfilling" the resulting city and county revenue losses.
- During 2003-04, the VLF (set at a rate of 0.65 percent of vehicle value) and the VLF backfill would have provided about $5.9 billion to cities and counties. The state, however, deferred payment of part of the backfill to 2006.
- Under current law, most VLF revenues are allocated to counties for health and social services programs. Some VLF revenues are allocated to cities for general purposes.

Local Sales Tax (Uniform)

- Cities and counties receive revenues from a uniform local sales tax levied on the purchase price of most goods—such as clothing, automobiles, and restaurant meals. This tax is sometimes called the "Bradley-Burns" sales tax.
- During 2003-04, this tax was levied at a rate of 1.25 percent and generated about $5.9 billion.
- Under current law, 80 percent of sales tax revenues are distributed to local governments based on where sales occur—to a city if the sale occurs within its boundaries, or to a county if the sale occurs in an unincorporated area. The remaining 20 percent of local sales tax revenues are allocated to counties for transportation purposes.
- Beginning in 2004-05, local governments will receive additional property taxes to replace some local sales tax revenues that are pledged to pay debt service on state deficit-related bonds, approved by voters in March 2004.

Local Sales Tax (Optional)

- Cities and counties can impose certain additional sales taxes for local purposes.
- During 2003-04, 40 jurisdictions levied these optional sales taxes and generated about $3.1 billion.
- Most revenues are used for transportation purposes.

State Authority Over Local Finance

The State Constitution and existing statutes give the Legislature authority over the taxes described in Figure 1. For example, the Legislature has some authority to change tax rates; items subject to taxation; and the distribution of tax revenues among local governments, schools, and community college districts. The state has used this authority for many purposes, including increasing funding for local services, reducing state costs, reducing taxation, addressing concerns regarding funding for particular local governments, and restructuring local finance. Figure 2 describes some of these past actions the Legislature has taken.

Figure 2

Major State Actions Affecting Local Finance

Increasing Funding for Local Services. In 1979, the state shifted an ongoing share of the property tax from schools and community colleges to local governments (cities, counties, and special districts). This shift limited local government program reductions after the revenue losses resulting from the passage of Proposition 13, but increased state costs to backfill schools' and

community colleges' property tax losses.

Reducing State Costs. In 1992 and 1993, the state shifted an ongoing share of property taxes from local governments to schools and community colleges. In 2004, the state enacted a similar two-year shift of property taxes ($1.3 billion annually) from local governments to schools and community colleges. These shifts had the effect of reducing local government resources and reducing state costs. The state also reduced its costs by deferring payments to local governments for state mandate reimbursements (most notably in 2002, 2003, and 2004) and for a portion of the vehicle license fee (VLF) "backfill" (2003), described below.

Reducing Taxation. Beginning in 1999, the state reduced the VLF rate to provide tax relief. The state backfilled the resulting city and county revenue losses.

Addressing Concerns Regarding Funding for Specific Local Governments. In the past, the state has at various times adjusted the annual allocation of property taxes and VLF revenues to assist cities that received very low shares of the local property tax.

Restructuring Local Finance. In 2004, the state replaced city and county VLF backfill revenues with property taxes shifted from schools and community colleges.

Requirement to Reimburse for State Mandates

The State Constitution generally requires the state to reimburse local governments, schools, and community college districts when the state "mandates" a new local program or higher level of service. For example, the state requires local agencies to post agendas for their hearings. As a mandate, the state must pay local governments, schools, and community college districts for their costs to post these agendas. Because of the state's budget difficulties, the state has not provided in recent years reimbursements for many mandated costs. Currently, the state owes these local agencies about $2 billion for the prior-year costs of state-mandated programs. In other cases, the state has "suspended" state mandates, eliminating both local government responsibility for complying with the mandate and the need for state reimbursements.

Proposal

Limitations on Legislature's Authority to Change Local Revenues

This measure amends the State Constitution to significantly reduce the state's authority over major local government revenue sources. Under the measure the state could not:

- ***Reduce Local Sales Tax Rates or Alter the Method of Allocation.*** The measure prohibits the state from: reducing any local sales tax rate, limiting existing local government authority to levy a sales tax rate, or changing the allocation of local sales tax revenues. For example, the state could not reduce a city's uniform or optional sales tax rate, or enact laws that shift sales taxes from a city to the county in which it is located.
- ***Shift Property Taxes From Local Governments to Schools or Community Colleges.*** The measure generally prohibits the state from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any fiscal year under the laws in effect as of November 3, 2004. The measure also specifies that any change in how property tax revenues are shared among local governments within a county must be approved by two-thirds of both houses of the Legislature (instead of by majority votes). For example, state actions

that shifted a share of property tax revenues from one local special district to another, or from a city to the county, would require approval by two-thirds of both houses of the Legislature. Finally, the measure prohibits the state from reducing the property tax revenues provided to cities and counties as replacement for the local sales tax revenues redirected to the state and pledged to pay debt service on state deficit-related bonds approved by voters in March 2004.

- ***Decrease VLF Revenues Without Providing Replacement Funding.*** If the state reduces the VLF rate below its current level, the measure requires the state to provide local governments with equal replacement revenues. The measure also requires the state to allocate VLF revenues to county health and social services programs and local governments.

The measure provides two significant exceptions to the above restrictions regarding sales and property taxes. First, beginning in 2008-09, the state may shift to schools and community colleges a limited amount of local government property tax revenues if: the Governor proclaims that the shift is needed due to a severe state financial hardship, the Legislature approves the shift with a two-thirds vote of both houses, and certain other conditions are met. The state must repay local governments for their property tax losses, with interest, within three years. Second, the measure allows the state to approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county.

State Mandates

The measure amends the State Constitution to require the state to suspend certain state laws creating mandates in any year that the state does not fully reimburse local governments for their costs to comply with the mandates. Specifically, beginning July 1, 2005, the measure requires the state to either fully fund each mandate affecting cities, counties, and special districts or suspend the mandate's requirements for the fiscal year. This provision does not apply to mandates relating to schools or community colleges, or to those mandates relating to employee rights.

The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local governments financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.

Related Provisions in Proposition 65

Proposition 65 on this ballot contains similar provisions affecting local government finance and mandates. (The nearby box provides information on the major similarities and differences between these measures.) Proposition 1A specifically states that if it and Proposition 65 are approved and Proposition 1A receives more yes votes, none of the provisions of Proposition 65 will go into effect.

Propositions 1A and 65

Propositions 1A and 65 both amend the State Constitution to achieve three general objectives regarding state and local government finance. The similarities and differences between the two measures are highlighted below.

Limits State Authority to Reduce Major Local Tax Revenues

Effect on 2004-05 State Budget.

- *Proposition 65's* restrictions apply to state actions taken over the last year, and thus would prevent a major component of the 2004-05 budget plan (a $1.3 billion property tax shift in 2004-05 and again in 2005-06) from taking effect unless approved by the state's voters at the subsequent statewide election.

- *Proposition 1A's* restrictions apply to future state actions only, and would allow the planned $1.3 billion property tax shift to occur in both years.

Effect on Future State Budgets.

- *Proposition 65* allows the state to modify major local tax revenues for the fiscal benefit of the state, but only with the approval of the state's voters.
- *Proposition 1A* prohibits such state changes, except for limited, short-term shifting of local property taxes. The state must repay local governments for these property tax losses within three years.

Reduces State Authority to Reallocate Tax Revenues Among Local Governments

Effect on Revenue Allocation.

- *Proposition 65* generally requires state voter approval before the state can reduce any individual local government's revenues from the property tax, uniform local sales tax, or vehicle license fee (VLF).
- *Proposition 1A* prohibits the state from reducing any local government's revenues from local sales taxes, but maintains some state authority to alter the allocation of property tax revenues, VLF revenues, and other taxes. Proposition 1A does not include a state voter approval requirement.

Local Governments Affected.

- *Proposition 65's* restrictions apply to cities, counties, special districts, and redevelopment agencies.
- *Proposition 1A's* restrictions do not apply to redevelopment agencies.

Restricts State Authority to Impose Mandates on Local Governments Without Reimbursement

- *Proposition 65* authorizes local governments, schools, and community college districts to decide whether or not to comply with a state requirement if the state does not fully reimburse local costs.
- *Proposition 1A's* mandate provisions do not apply to schools and community colleges. If the state does not fund a mandate in any year, the state must eliminate local government's duty to implement it for that same time period.

Fiscal Effects

Proposition 1A would reduce state authority over local finances. Over time, it could have significant fiscal impacts on state and local governments, as described below.

Long-Term Effect on Local and State Finance

Higher and More Stable Local Government Revenues. Given the number and magnitude of past state actions affecting local taxes, this measure's restrictions on state authority to enact such measures in the future would have potentially major fiscal effects on local governments. For example, the state could not enact measures that permanently shift property taxes from local governments to schools in order to reduce state costs for education programs. In these cases, this measure would result in local government revenues being more stable—and higher—than otherwise would be the case. The magnitude of increased local revenues is unknown and would depend on future actions by the state. Given past actions by the state, however, this increase in local government revenues could be in the billions of dollars annually. These increased local revenues could result in higher spending on local programs or decreased local fees or taxes.

Lower Resources for State Programs. In general, the measure's effect on state finances would be the *opposite* of its effect on local finances. That is, this measure could result in decreased resources being

available for state programs than otherwise would be the case. This reduction, in turn, would affect state spending and/or taxes. For example, because the state could not use local government property taxes permanently as part of the state's budget solution, the Legislature would need to take *alternative* actions to resolve the state's budget difficulties—such as increasing state taxes or decreasing spending on other state programs. As with the local impact, the total fiscal effect also could be in the billions of dollars annually.

Less Change to the Revenue of Individual Local Governments. Proposition 1A restricts the state's authority to reallocate local tax revenues to address concerns regarding funding for specific local governments or to restructure local government finance. For example, the state could not enact measures that changed how local sales tax revenues are allocated to cities and counties. In addition, measures that reallocated property taxes among local governments in a county would require approval by two-thirds of the Members of each house of the Legislature (rather than majority votes). As a result, this measure would result in fewer changes to local government revenues than otherwise would have been the case.

Effect on Local Programs and State Reimbursements

Because the measure appears to expand the circumstances under which the state is required to reimburse local agencies, the measure may increase future state costs or alter future state actions regarding local or jointly funded state-local programs. While it is not possible to determine the cost to reimburse local agencies for potential future state actions, our review of state measures enacted in the past suggests that, over time, increased state reimbursement costs may exceed a hundred million dollars annually.

Return to Propositions

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December 19, 2013

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed a constitutional initiative related to pensions for state and local governmental employees in California (A.G. File No. 13-0043).

BACKGROUND

Government Employee Compensation

Three Main Elements of Compensation. State and local government employers compete with other government and nongovernment employers to attract workers in the labor market. As part of their compensation packages, government employers generally offer full-time employees a salary, retirement benefits (including pension and perhaps retiree health benefits, discussed in more detail below), and health benefits for employees and their dependents.

Compensation for Most Employees Established Through Collective Bargaining. Through the collective bargaining process, government employer and employee representatives negotiate terms and conditions of employment generally culminating in a contract, or "memorandum of understanding." (If an agreement is not reached, state and local collective bargaining laws sometimes provide for mediation and/or a fact-finding process from a neutral third party.) Under certain circumstances, when these efforts have been exhausted after good-faith efforts at negotiating, collective bargaining laws allow employers to declare an impasse and impose terms and conditions of employment for some groups of employees. The process can take several months and is subject to administrative and judicial appeals.

Current law establishes the collective bargaining process for most nonmanagement state and local government employees. These laws establish who is subject to collective bargaining and what elements of compensation are within the scope of collective bargaining. Government employers generally have broad authority to establish compensation for employees who are not subject to collective bargaining. While pension benefits for members of the California State Teachers' Retirement System (CalSTRS) and nonteaching school employees who are members of the California Public Employees' Retirement System (CalPERS) are established by the

Legislature and generally not subject to collective bargaining, school and community college districts establish other terms and conditions of employment for these employees through the collective bargaining process.

Government Employee Pension Benefits

State and Local Governments Sponsor "Defined Benefit" Retirement Plans for Their Employees. As part of employment, the state provides defined benefit retirement plans for its employees and for those of public schools and community colleges. CalPERS administers the retirement plans for state employees, California State University (CSU) faculty and staff, and nonteaching school and community college employees. The University of California administers its own retirement plan for its faculty and staff. CalSTRS administers plans for school and community college teaching employees. Local governments generally also provide these types of plans for their employees. Some cities, counties, and special districts have their own retirement boards to administer their plans. Most cities, counties, and special districts have CalPERS or their county retirement systems administer their plans.

Pension Benefits Based on Formula. When a government employee retires, he or she receives a pension that is determined using a formula. A typical formula is the number of years of service credited to the employee multiplied by a rate of accrual (determined by the employee's age at the time of retirement) multiplied by the employee's final salary level. Often, retirees receive a cost-of-living adjustment (COLA) each year to at least partially offset erosions in purchasing power resulting from inflation. For example, the rate of accrual for a typical state worker hired before 2007 who retires at the age of 55 years is 2 percent per year. If this employee earns $60,000 in his or her final year of service before retiring after working 18 years for the state, he or she will retire with an annual pension of $21,600 (18 x .02 x 60,000). This pension may increase by up to 2 percent each year, depending on actual inflation. (In the event that the employee's pension allowance falls below 75 percent of its original purchasing power, the state provides additional inflation protection.)

Contractual Benefits. Contracts related to pensions sometimes are included in collective bargaining agreements or in statutes. In other cases, however, they may be "implicit" (or unwritten) commitments based on an employer's past practices. Both the U.S. and California Constitutions contain a clause—known as the Contract Clauses—that prohibit the state or its voters from impairing contractual obligations. Interpreting these Contract Clauses, California courts have ruled for many decades that pension benefits generally vest on the day an employee is hired. As a result, pension benefits for current and past public employees can be reduced only in rare circumstances—generally, when public employers provide a benefit that is comparable and offsets the pension contract that is being impaired or when employers previously have reserved the right to modify pension arrangements. In addition, in some cases, local governments may be able to alter contracts when they seek protection under Chapter 9 of the U.S. Bankruptcy Code.

Defined Benefit Funding. Defined benefit plans have three main sources of funding.

- ***Investment Returns.*** Investment returns are the biggest component of defined benefit funding. In the case of CalPERS, the system reports that most pension benefits paid to

retirees are paid from investment returns. Revenues from investment returns vary significantly year to year depending on market performance. In 2010-11, we estimate that pension systems expected to receive at least $40 billion from investment returns.

- ***Employee and Employer Contributions for Normal Costs.*** The normal cost is the amount estimated to be necessary—combined with future investment returns—to pay for benefits earned by employees in that year. These costs typically are split between the employer and employee, with the employer paying about half (or somewhat more) of the total cost. Statewide in 2010-11, employers' contributions to normal costs totaled over $8 billion. Total employee contributions to normal costs were in the range of several billion dollars.
- ***Employer Contributions for Unfunded Liabilities.*** To the extent that a pension plan does not have enough money over time to pay for benefits, an unfunded liability results. Employers generally bear all of the responsibility to pay for unfunded liabilities. Pension boards typically set employer rates to pay off any unfunded liabilities over a specified number of years—known as an amortization period. The longer an amortization period, the lower an employer's annual costs to pay off any unfunded liabilities but the higher the employer's total costs over the entire amortization period. Because a fund can incur losses or gains in any given year, the unfunded liability—and consequently, the employer's contributions—can vary year to year depending on investment returns. A plan is considered fully funded when actuaries determine that the plan—based on an assumed rate of future investment returns and other assumptions—has sufficient assets to pay for all future benefit payments earned to date. Statewide, public employer contributions for unfunded liabilities in 2010-11 exceeded $8 billion.

In most cases, the amount of resources from each of these three sources fluctuates based on market conditions, actuarial assumptions, and other factors. In the case of funding for CalSTRS pension and related benefits, however, (1) state contributions provide a fourth source of funding (around $1.2 billion in 2010-11) and (2) all contributions (from the state, school or community college district employer, and employees) are fixed in statute.

Large Pension and Retiree Health Unfunded Liabilities. The total unfunded liabilities associated with pension and retiree health plans offered by California government employers is in the range of hundreds of billions of dollars. To close this funding gap, most pension systems have required employers to make additional payments toward pensions. With regard to retiree health plans, most employers do not prefund their plans, but pay benefits to retirees on a pay-as-you-go basis. These health care costs are significant and have generally been rising for most government employers as health premiums and the number of retirees increase.

Efforts to Reduce Pension Costs. Many government employers have made efforts in recent years to reduce their annual pension costs by shifting some of the costs onto employees and/or reducing benefits for future employees. In some cases, these changes were negotiated with employee representatives. In 2012, the Legislature passed legislation making these types of changes for most government pension plans in California. In addition, some local government

employers—including the cities of San Diego and San Jose—have attempted to change benefits for *current* employees. These cities' pension changes are the subject of ongoing legal challenges.

Pension Boards as Fiduciary. In 1992, voters approved Proposition 162. This proposition amended the California Constitution to give the board of each public pension system plenary authority and fiduciary responsibility for investment of moneys and administration of the pension system. As a result of this proposition, the California Constitution makes a pension board the exclusive authority over the investment decisions and administration of its respective pension system. In managing the pension system, pension boards determine how much risk the pension fund should be exposed to by determining the fund's investment asset allocation. The pension board also adopts all actuarial assumptions used to calculate normal cost and unfunded liabilities—including the amortization period of the unfunded liabilities and discount rate. In the case of the discount rate, the board's decision is largely based on its investment strategy and assumed rate of return.

Plan Termination. From time to time, government employers terminate their relationship with a pension board. While the procedures pension boards follow vary, some pension boards require the terminating agency to pay any unfunded liabilities in a lump sum and calculate the unfunded liability using a discount rate that is lower than the discount rate used for active plans. The lower discount rate, which increases the unfunded liability amount, reflects the pension board's assessment that it must invest this portion of the plan's assets to minimize risk.

Government Retiree Health Benefits

State and Many Local Governments Provide Retiree Health Benefits. The state and many local governments provide health benefits to retired employees. In some cases, these benefits expire when an employee becomes eligible to enroll in Medicare; in other cases, the employer-sponsored retiree health benefit becomes a supplemental insurance to the coverage provided by Medicare. Some government employers—including the state—require employees to work for the employer for a specified number of years before the employee is eligible to receive employer-sponsored retiree health benefits.

Few Government Employers Prefund Retiree Health Benefits. Unlike pension plans, few government employers prefund retiree health benefits. That is, most government employers and employees do not make annual contributions to either the normal cost or unfunded liabilities associated with the benefit. Instead, employers pay premium costs for retiree health benefits as they incur after employees have retired—a method of payment referred to as "pay-as-you-go." Some government employers recently have started prefunding these benefits. In 2010-11, the state paid about $1.4 billion towards these benefits for retired state and CSU employees. We estimate that local employers paid an equal or greater sum for these benefits for their employees and retirees.

PROPOSAL

This measure amends the California Constitution to expand the authority of state and local government employers to change public employee pension and retiree health benefits for work performed in the future. Under the measure, the Legislature is considered the government

employer for members of CalSTRS for purposes of pension benefits and school and community college districts are the government employer for purposes of retiree health benefits.

Alters Automatic Vesting for Pension and Retiree Health Benefits for Future Service. Under the measure, pension and retiree health benefits for future government employees would be earned and vested as the employee performs work and only in proportion to the work performed. With regard to current government employees, the measure specifies that their pension or retiree health benefits generally would be considered vested contractual rights only for work the employees have already performed.

Allows Employers to Reduce Pension and Health Benefits for Future Service. A government employer could reduce future pension and retiree health benefits for current and future employees if the government employer (1) finds its pension or retiree health care plan is substantially underfunded and at risk of not having sufficient funds to pay benefits to retirees or future retirees or (2) declares a fiscal emergency. With regard to pension and retiree health benefits, a government employer could (1) reduce the rate of accrual for benefits to be earned in the future, (2) reduce the rate of COLAs to be made in the future, (3) increase the retirement age for benefits earned in the future, (4) require employees to pay a larger share of the cost, or (5) make any other reductions or modifications agreed upon during collective bargaining. If any of the benefit changes are within the scope of collective bargaining, the measure requires the government employer to submit the changes to collective bargaining. If good-faith efforts at negotiating, mediation, and/or fact-finding have been exhausted, the measure appears to permit employers to impose—to the extent permissible under collective bargaining laws for some groups of employees—the benefit changes summarized above under numbers one through four. In cases where these changes are not within the scope of collective bargaining, the government employer could implement the changes directly.

Requires Most Employers to Develop Pension and/or Retiree Health Care Funding Status Reports. The measure requires government employers to prepare a funding status report for any pension or retiree health plan with assets equaling less than 80 percent of its liabilities. The report must specify actions designed to fully fund the benefit plan within 15 years—including any changes in benefits or employer and employee annual costs. The government employer would be required to hold a public hearing on the funding status report (or reports) each year until the benefit plan's actuary finds that it is fully funded.

Restricts Pension Plan Administrator Authority in Certain Cases. The measure requires retirement plan administrators to use the same discount rate in their management of plans that have been modified, frozen, or terminated as they use for active plans. Pension boards could not use different discount rates to account for different asset allocations between plans.

Requires Employers With Terminated Plans to Make Annual Payments. The measure requires retirement plan administrators to establish contributions for employers with terminated plans using the same amortization schedule and other methodologies that govern the retirement plan administrator's other plans. This means that—instead of current practice where some terminating employers make a one-time payment of the unfunded liability calculated with a lower discount rate—terminating employers would make annual payments to the unfunded liability calculated with the same discount rate as other plans.

FISCAL EFFECTS

There is significant uncertainty as to the measure's fiscal effects on state and local governments. The measure gives government employers authority to reduce current and future government employee retirement benefits for work not yet performed. Many of these provisions could be subject to a variety of legal challenges, including suits alleging that the measure impairs contract obligations under the U.S. and/or California Constitutions. Our analysis discusses the possible fiscal effects for state and local governments assuming the measure's provisions are fully implemented.

Report Development and Plan Administrator Costs

Developing Funding Status Reports. Based on the current funding status of government employee pension and retiree health plans, most government employers would be required to develop funding status reports for their pension and retiree health plans. Because California has several thousand public agencies and most employers have multiple pension and retiree health plans, the measure could require government employers statewide to prepare over 8,000 reports. The cost to government employers to develop these reports and update them annually until fully funded (possibly 15 years or longer) would depend on many factors, including the extent to which they relied upon actuarial and legal specialists to develop them or used standard cost estimating models developed by plan administrators. If the average cost to develop a report was in the range of $5,000 to $20,000, the total statewide costs to develop the reports would be in the range of tens of millions to hundreds of millions of dollars. The annual costs to government employers to update these reports likely would be less.

Plan Administrator Costs. Pension and health plan administrators likely would experience some administrative costs to comply with the terms of the measure. These costs—which would be passed on to government employers—could include costs to (1) modify information technology systems to reflect reductions in benefits provided to employees for future work and (2) provide each agency in a "pooled" pension plan with agency-specific information regarding its funding status. (Plan administrators frequently pool the pension assets and liabilities of smaller government employers to achieve economies of scale.) Overall, these administrative costs to state and local governments are not known, but could total tens of millions of dollars initially and likely lesser sums annually thereafter.

Potential Net Decrease in Annual Personnel Costs

Potential Reduced Personnel Costs… The measure gives government employers the authority to reduce pension and/or retiree health benefits earned for future work performed by (1) employees hired after the date this measure is approved, (2) managers and supervisors not subject to collective bargaining, and (3) teachers and other employees whose pension and/or retiree health benefits generally are outside the scope of collective bargaining. In addition, the measure increases government employers' authority to negotiate changes in benefits for other government employees through the collective bargaining process up to and including—when applicable—imposing such changes after negotiating efforts have been exhausted. Government employers could use this authority to reduce their costs for pensions and retiree health care by decreasing benefits and/or shifting a share of these costs to employees. Because government

employers currently pay over $20 billion each year for pensions and retiree health care, even small changes (such as reducing future benefits or shifting a share of the normal costs to employees) could result in major near-term savings by government employers, potentially in the range of hundreds of millions of dollars each year or more. Over the longer term, benefit reductions could result in savings in the billions of dollars annually.

… Offset by Increases in Other Elements of Compensation. The potential savings discussed above would be at least partially offset by increases in salary and/or other elements of employee compensation. The magnitude of these potential offsetting costs relative to the savings from government actions discussed above would likely vary significantly by employer. In some cases, for example, a government's annual savings from reducing its costs for retiree benefits could be fully offset by pressure to increase wages or other benefits paid to employees. In other cases, however, governments would only agree to compensation changes that resulted in net savings over time.

Potential Long-Term Net Savings to Pay Unfunded Liabilities

Potential Increased Costs to Implement Funding Status Reports. The total unfunded liabilities associated with pension and retiree health plans offered by California government employers is in the range of hundreds of billions of dollars. In the case of government pension plans, most employers are making payments towards these liabilities based on an approximately 30-year amortization period. With regards to retiree health plans, most employers do not prefund their plans, but pay benefits to retirees on a pay-as-you-go basis. Under the measure, most employers would be required to create detailed funding status reports specifying actions designed to fully fund their pension and retiree health plans within 15 years. Using a 15-year amortization period to pay pension and retiree health unfunded liabilities would greatly increase government employer costs relative to what is paid today—possibly by tens of billions of dollars annually for at least the next 15 years. While the measure does not require government employers to implement the provisions in their reports, some government employers might take some actions to do so in response to the measure's provisions enhancing public visibility of these unfunded liabilities. While the amount of these potential increased contributions by state and local government cannot be predicted with precision, the sum could be major—potentially hundreds of millions or billions annually over the next few decades if government employers choose to change their funding practices.

Accelerating Payment of Liabilities Reduces Future Costs. To the extent that some government employers increase employer and/or employee contributions in the near term to accelerate payment of pension and retiree health liabilities, those government employers could increase their retirement funds' assets and investment returns and dramatically reduce the amount of employer contributions needed over the long term. These state and local government savings would depend on the extent to which these government employers contribute additional resources to accelerate payment of their unfunded liabilities. These government employers would experience major savings, beginning in a few decades. Over time, this future savings generally would more than offset the higher near-term costs associated with accelerating payment of the liabilities.

Other Effects

Savings and Long-Term Costs for Terminated Plans. The measure changes how pension plan administrators calculate unfunded liabilities for government employers that terminate pension plans in the future. Under the measure, pension plan administrators no longer could require these government employers to pay unfunded liabilities in a lump sum calculated using a lower discount rate. Instead, the plan administrator must establish employer contributions for unfunded liabilities using the same amortization schedule and other methodologies that they use for other plans. This change would have different fiscal effects on employers, depending in part on whether they were planning to terminate their pension plans under current law. Specifically, employers that would have terminated their plans under current law could experience short-term savings and higher long-term costs under the measure. It is not possible to determine the magnitude of these fiscal effects on these employers. In other cases, however, employers may decide to terminate their pension plans due to the measure's provisions that reduce the up front costs associated with a plan termination. Over the long term, these employers terminating their pension plans could realize significant savings—particularly if the employers do not replace their terminated pension plans with other defined benefit pension plans. The amount of these savings would depend, in part, on other actions the employer takes to increase salary or other benefits to employees.

Potential Broader Economic Effects. The potential reduction in government spending for pensions and retiree healthcare also could have broad effects on the economy that are difficult to predict. For example, some public employees might spend less of their salaries during their years of active employment and invest these funds in private retirement savings plans. This could affect the level of state and local tax revenues and the level of resources available for capital investment. Alternatively, some public employees might not increase their savings and find that they have insufficient funds to support themselves in retirement. This could increase the likelihood that some government retirees eventually rely on health or social services funded in part by state and local governments. The magnitude of these indirect economic effects would in all likelihood be smaller than the direct effects on employer costs and employee wages.

Summary of Fiscal Effects

This measure would result in the following major fiscal effects for state and local governments.

- Potential net reduction of hundreds of millions to billions of dollars per year in state and local government costs. Net savings—emerging over time—would depend on how much governments reduce retirement benefits and increase salary and other benefits.
- Increased annual costs—potentially in the hundreds of millions to billions of dollars—over the next two decades for those state and local governments choosing to increase contributions for unfunded liabilities, more than offset by retirement cost savings in future decades.

- Increased annual costs to state and local governments to develop retirement system funding reports and to modify procedures and information technology. Costs could exceed tens of millions of dollars initially, but would decline in future years.

Sincerely,

_____
Mac Taylor
Legislative Analyst

_____
Michael Cohen
Director of Finance

(Note: In April 2007, the Legislative Analyst's Office launched a web site, Retiree Health Care News and Reports, which features noteworthy items concerning public sector retiree health benefits and costs across the country.)

Retiree Health Care: A Growing Cost For Government

The costs of providing health care to retired state employees and their dependents-now approaching $1 billion per year-are increasing significantly. Many other public employers (including the University of California, school districts, cities, and counties) face similar pressures. This report discusses health benefits provided to retired public employees, focusing on state retirees. We find that the current method of funding these benefits defers payment of these costs to future generations. Retiree health liabilities soon will be quantified under new accounting standards, but state government liabilities are likely in the range of $40 billion to $70 billion-and perhaps more. This report describes actions that the Legislature could take to address these costs.

Introduction

Background. Like many employers, governments in California often pay for health and dental insurance for their employees and eligible family members after retirement. Costs for retiree health benefits have been rising rapidly-increasing faster than both inflation and the overall growth rate of government spending.

Retiree Health Benefits Are Not Prefunded...Unlike Pensions. Almost all public entities in the United States pay for retiree health benefits in the year the benefits are used by retirees. This is sometimes called the "pay-as-you-go" approach, and it differs from the prefunding model used for most pension benefits-where most costs are funded in advance during employees' working years and invested until paid to retirees. The pay-as-you-go approach has led to the accumulation of massive financial liabilities to pay for future retiree health benefits. These liabilities will be quantified under new government accounting rules that come into effect in 2007-08.

Structure of This Report. This report focuses on the state's costs for providing benefits to its own retired employees, while also discussing similar issues for the University of California (UC), local governments, and school districts. The report first describes existing benefits for retirees and then outlines the new accounting rules. We then discuss the magnitude of financial liabilities for retiree health benefits and offer policy recommendations and options for governments to address these liabilities.

State Retiree Health Benefits

History

In 1961, the Legislature for the first time appropriated funds to the State Employees' Retirement System-the predecessor to the California Public Employees' Retirement System (CalPERS)-to provide health benefits to state employees and retirees. The state paid most of the costs of a basic employee and retiree health plan-with state contributions per employee set at $5 per month in 1961-62. Total costs at that time were $4.8 million (then under 0.3 percent of General Fund spending). The $5 state contribution mirrored the provisions of the new federal employee health program, which began operations in 1960. Figure 1 lists key events in the evolution of the state's retiree health program over the past half century. Since 1974, the state has paid a percentage of health costs, rather than a fixed amount.

Figure 1

State Retiree Health Benefits—Key Historical Events

Year	Event
1961	State contributions of $5 per month begin.
1967	Local agencies begin contracting with CalPERS for health benefits.

1974	State pays 80 percent of employee/retiree and 60 percent of dependent costs.
1978	State pays 100 percent of employee/retiree and 90 percent of dependent costs.
1984	State costs exceed $100 million. Legislature increases years required for employees to vest in retiree health benefits.
1991	State begins to pay less than 100/90 formula for current employees. The 100/90 formula continues for retirees.
2006	The *2006-07 Governor's Budget* projects that costs will exceed $1 billion.

The 100/90 Formula

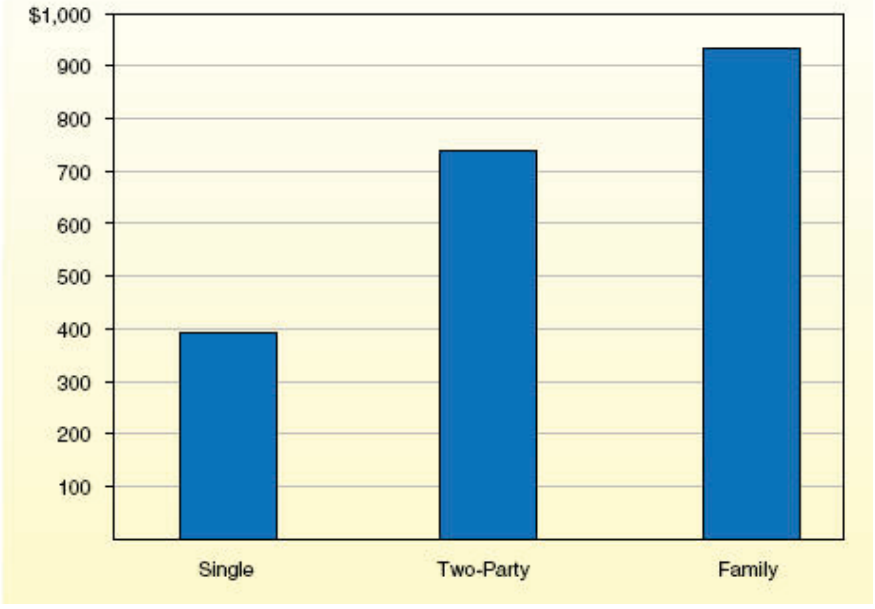
Current law provides state contributions for retiree health benefits on the basis of a "100/90 formula." Under the formula, the state's contributions are equal to 100 percent of a weighted average of retiree health premiums and 90 percent of a similar weighted average for additional premiums necessary to cover eligible family members of retirees. The formula bases payments on the weighted average of premium costs for single enrollees in the four basic health plans with the largest state employee enrollment during the prior year. The formula applies to all eligible retirees, including those from the California State University system.

Vesting Requirements for State Contributions. Most state employees hired since 1985 receive full state contributions only after a period of vesting. Retirees and their eligible family members generally receive no state health contributions with less than ten years of service. They receive 50 percent of the contribution with ten years of service, increasing 5 percent annually until the 100 percent level is earned after 20 or more years of employment. State employees hired prior to 1985 are fully vested for health benefits upon retirement.

2006 State Contribution Levels. Legislative approval of funding for retiree health and dental benefits occurs in the budget act, following CalPERS' negotiation of health plan rates for the upcoming calendar year. For 2006, the 100/90 formula contributions are based on the premium costs for the four largest CalPERS health plans: Blue Shield's health maintenance organization (HMO), Kaiser Permanente's HMO, the PERSCare preferred provider organization (PPO), and the PERS Choice PPO. This results in a 2006 required state contribution of $394 per month for a single retiree, $738 per month for a retiree and a family member, and $933 per month for a retiree family, as shown in Figure 2.

Figure 2

2006 Monthly State Contributions For Retiree Health Care



State Benefits and the Individual Retiree

Retirees Under Age 65. A retiree's vested state contribution amount may or may not cover the entire premium cost for a desired health care plan. For instance, for a fully vested 60-year-old retiree with a spouse or domestic partner of the same age, the 100/90 formula results in state contributions of $738 per month. In 2006, the state contribution for this couple covers all premiums for the Kaiser Permanente HMO plan. To join a Blue Shield HMO plan in 2006, the couple must pay $33 extra per month above the state contribution. To join PERSCare-with its flexible PPO options, including the ability to switch physicians or see specialists without referral-the family must pay $609 extra per month. (The 2006 monthly premiums for selected health plans administered by CalPERS are listed in Figure 3. Retirees under age 65 enroll in the basic plans listed in the top part of the figure.)

Figure 3

2006 Monthly Premiums for Selected State Employee Health Plans

	Single	Two-Party	Family
Basic Plan Premiums			
Kaiser Permanente Basic HMO	$365	$730	$949
Blue Shield Basic HMO	386	771	1,003
PERS Choice Basic PPO	401	801	1,042
PERSCare Basic PPO	674	1,347	1,752
Medicare Plan Premiums			
Kaiser Permanente HMO Medicare Advantage	$219	$437	$656
Blue Shield HMO Medicare Supplement	286	573	859
PERS Choice PPO Medicare Supplement	322	644	966
PERSCare PPO Medicare Supplement	347	694	1,042

HMO = Health Maintenance Organization. PPO = Preferred Provider Organization.

For many retirees from state service who are between the ages of 50 and 65, retirement brings no immediate change in health plans or coverage. These persons can remain in the same CalPERS basic health plan they had when they worked for the state. Rather, the changes they experience after retirement are largely financial. During their working years, these individuals and their family members probably received health benefits under 80/80 or 85/80 state contribution formulas included in collective bargaining agreements between the state and employee bargaining units. After retirement, the new retirees and their families typically receive benefits under the more generous 100/90 formula. Upon retirement, therefore, an individual may experience a reduction in the premium expenses he or she pays-with the state contributing an increased share.

Retirees, Age 65 and Over. Upon reaching age 65, most state retirees receive coverage under the federal government's Medicare Part A program (for hospital and similar benefits). Eligible state retirees must join Medicare Part A and Part B (for outpatient benefits), and at that time, they become eligible for coverage under one of CalPERS' Medicare health plans. These CalPERS plans supplement the federal government's health coverage and reduce the out-of-pocket costs required under Medicare-including premiums, deductibles, and copayments. Because the federal government covers a significant portion of health costs for retirees on Medicare, the premiums for CalPERS' Medicare plans are lower than those of CalPERS' basic health plans for current state employees and retirees under age 65. Monthly premiums in 2006 for some of CalPERS' Medicare plans are listed in the bottom part of Figure 3.

Retirees over age 65 and eligible family members receive the same monthly state contribution for health premiums as younger retirees. For a fully vested 67-year-old state retiree with a spouse or domestic partner of the same age, for example, this means that the state contribution for 2006 covers all monthly premium costs for the four CalPERS Medicare plans listed in Figure 3. After providing for these premium costs, $301 of the state contribution is unused if the couple enrolls in the Kaiser Permanente Medicare Advantage plan, and $44 is unused if the couple enrolls in the PERSCare Medicare Supplement plan. State law provides that this unused portion of the state contribution may be used to pay all or part of Medicare Part B premiums for retirees and eligible family members. (In 2006, monthly Medicare Part B premiums are just under $89.) If any portion of the state contribution remains

unused after paying these costs, it will remain unused since the retiree does not receive a refund for any remaining amount.

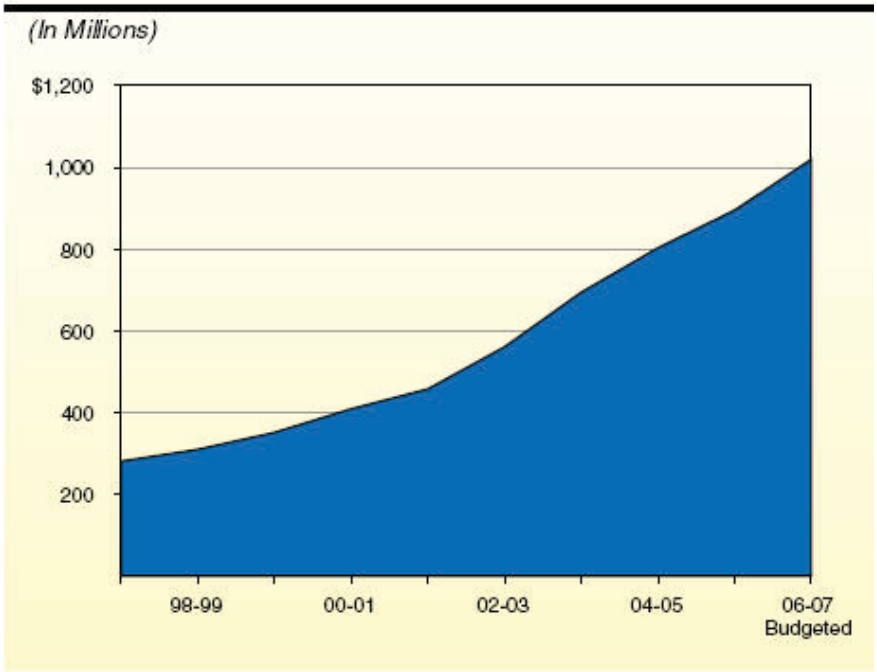
Some state retirees-including some who were first hired before 1986, when Medicare taxes became mandatory for most state and local government employees-are not automatically eligible for Medicare Part A coverage when they reach the age of 65. These retirees and some others can remain in CalPERS' basic health plans.

Soaring Costs

Figure 4 shows that state costs for retiree health and dental benefits have increased rapidly in recent years. They have more than tripled in the last nine years, reaching $895 million in 2005-06. *The 2006-07 Governor's Budget* projects that retiree health and dental costs will exceed $1 billion in 2006-07. Since 2000-01, retiree health expenditures have increased an average of 17 percent annually, or more than five times the rate of growth of state spending.

Figure 4

State Spending for Retiree Health and Dental Benefits



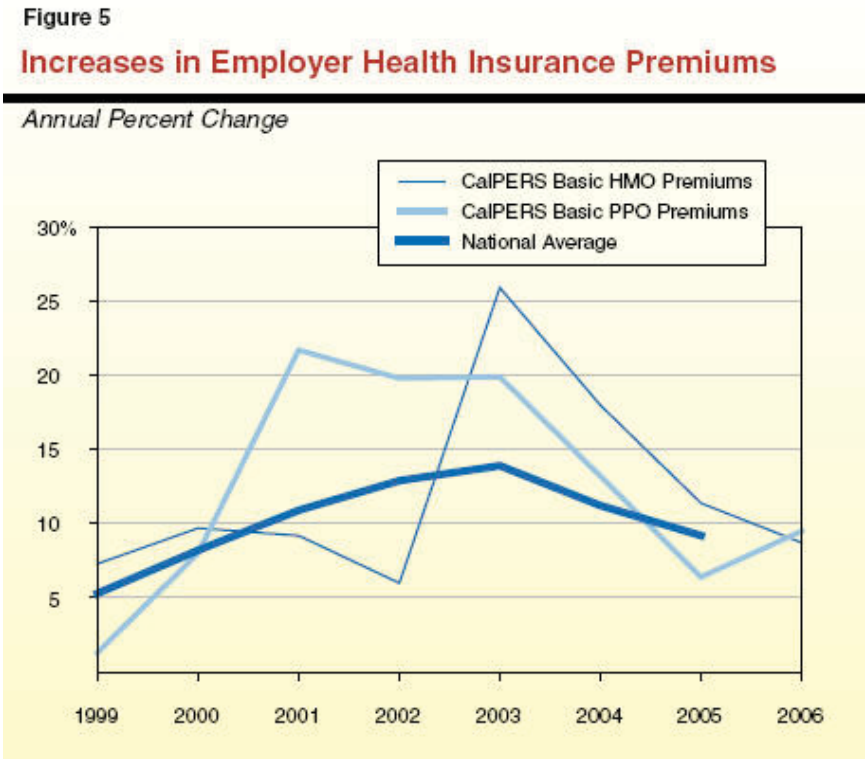
Why Are Costs Increasing?

Health Care Costs Have Risen Rapidly. For the last four decades, national health expenditures consistently have grown at a faster rate than the overall economy. Since 1999, health spending has increased by more than three times the rate of inflation. Federal data show that the cost drivers in California's health care system mirror those of the nation as a whole: principally, prescription drugs, physicians and other professional services, and hospital care. The bargaining power of hospitals has increased in recent years, and a limited supply of nurses has also contributed to cost increases.

Employer Health Premiums Rising Even Faster. In recent years, employer health premiums-such as those negotiated for the state by CalPERS-have risen even faster than the rate of overall medical expenditures. Employers' expenditures to purchase health coverage reflect the general costs of medical care, other costs associated with a private insurance market (insurer reserves, the pricing of pooled risk, and a return on capital), and the health care industry's shifting of costs not paid by the large, but typically unprofitable, Medicare and Medicaid programs. As shown in Figure 5, the state's premiums in most recent years have risen faster than the national average for public and private employers. The growth each year, which is determined by annual negotiations with health plans, can be quite volatile. Some recent years have seen double-digit increases.

Figure 5

Increases in Employer Health Insurance Premiums



Research shows that trends in the rate of growth of employer premiums follow a cyclical pattern, characterized by some experts as an insurer underwriting cycle. Many, if not most, researchers believe that U.S. health insurers are entering a lull in this underwriting cycle, when annual premium growth will be slower than in recent years. Recent cost containment actions of CalPERS (summarized in Figure 6) and other purchasers of health coverage seem to have contributed to a slowdown in premium growth since 2004. In our fiscal outlook for the state, we project that CalPERS premiums will continue to grow through 2010-11, but moderate and move closer to the overall rate of medical inflation over time.

Figure 6

Selected CalPERS Cost Saving Measures Since 2002

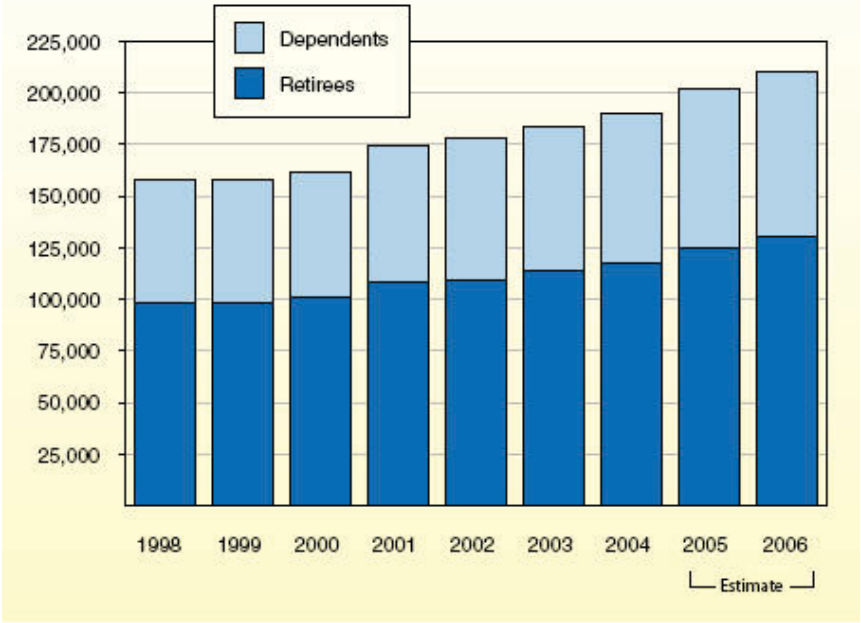
Action	Comment
Ended relationship with Health Net and PacifiCare Health Maintenance Organizations (HMOs) in 2003.	Avoided $77 million cost increase for state and local health programs.
Raised office visit copayments to $10 in 2002, as well as other copayment increases.	First changes in copayments for HMO members since 1993.
Eliminated high-cost hospitals from Blue Shield provider network beginning in 2005.	Saved an estimated $45 million.
Adopted regional pricing.	Prevented large-scale exodus of local participants in Southern California, which would have diminished health plan's bargaining power.
Provided incentives to purchase over-the-counter drugs and refill prescriptions by mail.	Saved an estimated $27 million.
Moved certain age 65 and older members from basic to Medicare plans.	Saved an estimated $19 million.
Building large purchaser coalition,	May produce uniform standards

Partnership for Change, to enhance bargaining power.	for hospital quality and pricing.
Encouraging health plan partners' disease management programs.	May produce savings and improved care for conditions like diabetes and asthma.

More Retirees: The Other Cost Driver. The number of retirees that the state covers in its health programs continues to rise. Californians are living longer, and the large "baby boom" generation has begun to retire. Consequently, state employees are entering retirement faster than prior retirees and family members are dying. Figure 7 shows that the number of retirees covered by state health plans has increased an average of 3.6 percent annually since 1998.

Figure 7

Retirees and Dependents With State Health Benefits



We estimate that 35 percent to 45 percent of the state's active workforce will retire within the next ten years. Assuming this level of retirements and retirees' increasing longevity, we forecast that the number of retirees and dependents covered by the state's health program will increase by almost 4 percent annually through 2010-11. This trend, combined with continued premium growth, results in our projection of continued double-digit growth in the cost of state retiree health and dental benefits. We project that these costs will increase from $1.0 billion in 2006-07 to $1.6 billion in 2010-11.

Other Public Retiree Health Benefits

In addition to state health benefit programs provided through CalPERS, other public agencies in California offer a wide variety of health benefit programs for current employees, retirees, and eligible family members. Some offer coverage until retirees (and, in some cases, family members) reach the age of eligibility for Medicare-usually age 65. Some provide benefits to supplement Medicare after age 65. Below, we summarize selected characteristics of some of these plans.

University of California

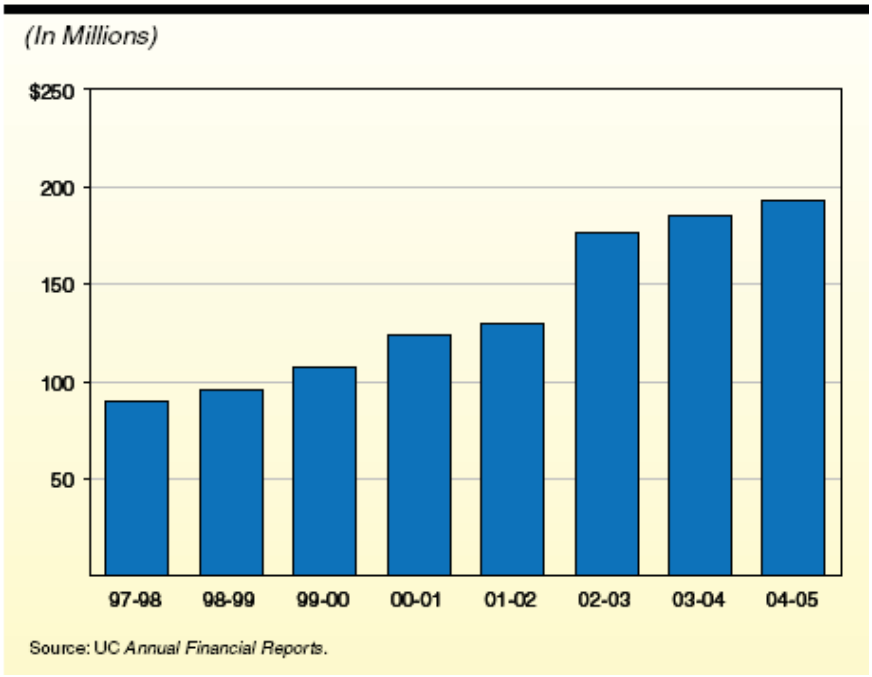
The UC administers its employee and retiree health program separately from CalPERS. As a result, there are some differences in plan options and premiums. One difference is that, unlike CalPERS, UC benefit plan documents explicitly state that retiree health benefits are not vested or accrued entitlements and that the Regents may change or stop benefits altogether.

2006 UC Contributions. The UC's maximum retiree health contribution-provided based on years of service-covers most premium costs. For single UC retirees in California under age 65, UC's maximum 2006 health plan contributions cover all but $18 to $27 of monthly HMO premiums and all but $70 to $75 of monthly PPO and point of service (POS) plan premiums. The UC also offers a high-deductible fee-for-service plan-for which the maximum UC contribution covers all premium costs-designed to provide some protection in the event of a catastrophic illness. For UC retirees over age 65 and on Medicare, UC's supplement plans generally have premiums that are entirely covered by the maximum UC contribution (which also typically pays all Medicare Part B premiums).

Costs Growing Rapidly. In 2004-05, UC retiree health and dental benefit costs totaled $193 million, or 1 percent of total university revenues. Between 1997-98 and 2004-05, as illustrated in Figure 8, these costs grew an average of 12 percent annually. The UC retiree population grew at a rate of 2.2 percent annually during this period.

Figure 8

UC Retiree Medical and Dental Benefit Costs Increasing



Source: UC *Annual Financial Reports.*

K-14 Education

A Wide Variety of Benefit Packages. Hundreds of California school districts and community college districts offer varying levels of health benefits to employees and retirees. Premiums, employer contributions, copayment levels, deductibles, covered services, and retiree benefits differ based primarily on collective bargaining agreements with certificated employees (that is, teachers and other licensed staff) and classified employees. In contrast to the standardized management of pension benefits offered to school employees-through the California State Teachers' Retirement System (CalSTRS) and CalPERS-administration of school district health plans varies widely.

As of 2004, 114 school and community college districts (out of a total of almost 1,100) contracted with CalPERS for employee and retiree health coverage. About 265 districts purchased coverage through 11 benefit trusts, which allow multiple districts to join together to achieve economies of scale. In addition, the Kern County Office of Education administers the Self-Insured Schools of California joint powers agency, which provided benefits to more than 250 school employers in 31 counties, as of 2004. The remaining districts either secure health benefits on their own or do not provide these benefits.

CalSTRS Survey of Benefits. A survey conducted by CalSTRS in 2003 revealed more information about the variety of health benefits offered to retired teachers. The CalSTRS estimated that districts covering 57 percent of retired teachers statewide pay all or a portion of retirees' health insurance premiums. The survey, however, showed that only about 7 percent of districts offer lifetime benefits, such as those offered by the state, UC, and by some of the largest school districts, including the Los Angeles Unified School District. In more than half of responding districts retired teachers were required to pay all of their own health insurance premiums beginning at age 65.

Legislative Actions to Enhance Retired Teachers' Benefits. Since 1985, the Legislature has taken several actions to enhance health benefits of retired teachers. Districts that provide health or dental benefits for current teachers must permit retired teachers and their spouses to enroll in the same plan, pursuant to a series of laws

that began with enactment of Chapter 991, Statutes of 1985 (AB 528, Elder). Chapter 991 does not include a requirement for districts to contribute to retirees' coverage, and the law also allows plans to set higher premiums for retired members (compared to current employees) based on retirees' typically higher utilization of medical services. Many districts offer only the minimum required benefits to retirees under Chapter 991 and subsequent legislation. A CalSTRS program authorized by Chapter 1032, Statutes of 2000 (SB 1435, Johnston), also pays Medicare Part A premiums for 6,000 retired teachers not automatically eligible for this federal program.

Counties, Cities, and Special Districts

Counties, cities, and special districts offer a wide variety of retiree health benefits. Most appear to offer some type of health benefit to retired employees through a publicly administered health program also offered to current employees. Many offer benefits through CalPERS.

In September 2005, the California State Association of Counties surveyed county officials on retiree health benefits. Of 49 counties responding (including eight of the ten largest counties), 48 reported that retired employees are eligible for some type of health benefits. (Modoc County was the only one reporting that retirees received no health benefits.) An estimated 117,000 retired employees of responding counties currently receive health benefits at a combined cost of around $600 million per year. In more than two-thirds of counties, retirees pay the same premium rates as active county employees. Of the 49 counties, 43 continue to offer health benefits to retirees after the age of 65, and 44 extend coverage to retirees' dependents. Of the total cost for county retiree health benefits, about half is paid directly from county operating budgets, and another one-fourth is paid from funds of retirement systems or county trusts. Almost all counties use a pay-as-you-go approach for part or all of their retiree health benefits. We did not locate similar surveys of cities or special districts during our research.

GASB 45: New Accounting Rules

The rules that govern how governments account for retiree health benefits are in the process of changing. The Governmental Accounting Standards Board (GASB) establishes accounting rules for state and local governments (and related entities, such as public universities and retirement plans). Audited financial statements of governments prepared according to GASB rules are most closely scrutinized by investors in state and local bonds and the rating agencies that make judgments on the likelihood those bonds will be paid off as required. The board was created in 1984 as a parallel to a similar board that governs corporate accounting. In that same year, the Legislature enacted a law requiring the state's financial statements to comply with GASB's rules.

To bring governmental accounting standards more into line with those of private companies, GASB has implemented a series of accounting rules, known as statements, concerning governmental liabilities related to retirement benefits. In 2004, GASB released Statement 45 (GASB 45) concerning health and other non-pension benefits for retired public employees. These benefits, collectively, are known as "other postemployment benefits," or OPEB. Retiree health programs are, by far, the most costly of these benefits.

The GASB has no power to change how governments fund retiree health, pension, and other benefits. Instead, the GASB governs the rules that auditors must follow in providing opinions on the reliability of government financial statements.

What Is Required to Comply With GASB 45?

The new accounting rule dramatically increases the amount and quality of information included in government financial reports with respect to retiree health and other retiree benefits. State and local governments-working with their accountants and actuaries-must take a series of steps that include quantifying the unfunded liabilities associated with retiree health benefits. Results of the actuarial valuations must be reported in government audits and updated regularly. The accounting standard sets deadlines requiring large governments (including the state, most counties, many cities, and some school districts) to comply beginning with release of their 2007-08 financial reports. (The state's financial reports usually are released in February or March following the end of the fiscal year.) Smaller governments will implement GASB 45 in the following two years.

Under GASB 45, government financial statements will list an actuarially determined amount known as an annual required contribution. This contribution, with regard to health and related benefits, is comprised of the following two costs:

- The "normal cost"-the amount that needs to be set aside in order to fund future retiree health benefits earned in the current year.

- Unfunded liability costs-the amount needed to pay off existing unfunded retiree health liabilities over a period of no longer than 30 years.

New Rules Similar to Existing Pension Requirements

Retiree health benefits, like pension benefits, are a form of deferred compensation-that is, compensation earned by employees during their working years, but paid to (or used by) individuals after they retire. Pension systems typically are funded by governments paying normal costs each year-as employees earn this type of deferred compensation-and the funds are invested so that they generate returns and grow until required to be paid to the employees after retirement. This is known as "prefunding," and pension accounting standards focus on how well retirement systems are prefunded. To the extent that funds set aside each year (with assumed, future investment earnings) are insufficient to cover projected benefit costs, the system has an "unfunded liability." Retiree health programs now will have accounting standards that are very similar. GASB 45 will result in calculation of an unfunded liability for retiree health programs similar to the comparable figure for pension systems.

For governments that fund retiree health benefits on a pay-as-you-go basis (such as the state), 100 percent of retiree health liabilities will be unfunded. (In contrast, the average state pension system currently has about a 20 percent unfunded liability. Although this unfunded liability totals tens of billions of dollars in the cases of CalPERS and CalSTRS, more than 80 percent of their liabilities have been funded in advance from investment returns and contributions by employees and employers.)

The liabilities for retiree health benefits-like those for pension systems-will be determined by actuaries and accountants based on certain assumptions of future health care cost inflation, retiree mortality, and investment returns. This unfunded liability can be characterized as an amount which, if invested today, would be sufficient (with future investment returns) to cover the future costs of all retiree health benefits *already earned* by current and past employees.

GASB 45 and Other States

All 50 states offer health benefits to their retirees in some or all age groups. As of 2003, 17 states, including California, covered up to 100 percent of health benefit costs for some retirees. Only 11 states reported any prefunding of retiree health benefits at all (most of these with only a tiny amount of funds set aside). The GASB 45 accounting requirements likely will lead to an increase in the number of states prefunding these benefits. Only a few states have completed the actuarial valuations needed to determine unfunded retiree health and other liabilities, as well as the annual contributions, required by GASB 45. We discuss the status of two states below and corporate responses to similar rules in the nearby box.

Corporate America's Retiree Health Liabilities

Sharp Decline in Retiree Health Coverage. Since corporations began to account for retiree health liabilities in 1990 (due to a change in business accounting standards), investors have pressured them either to fund the liabilities or drop the benefits altogether. The percentage of large private U.S. firms offering health benefits to retirees has dropped from about 66 percent in 1988 to about 33 percent in 2005. The trend among California companies has been similar, with 32 percent of large firms here continuing to offer retiree benefits.

Even companies continuing to offer benefits have cut costs in some cases by: imposing caps on the amount they will pay toward retiree health care; increasing copayments, deductibles, and drug costs paid by retirees; aggressively bargaining with health insurers and providers; and making many other changes. Companies also may seek bankruptcy protection to restructure retirement benefits. (Local governments and school districts also can do this under state law.)

General Motors Corporation (GM). The second largest purchaser of employer health benefits in the United States, GM ranks behind the U.S. government and ahead of CalPERS (the third largest purchaser). As of September 2004, GM reported in financial statements that its unfunded retiree health and related liabilities exceeded $61 billion. Retiree health expenses add significantly to the costs of GM cars and trucks and are believed to have contributed to a decline in the company's finances. Ratings of GM bonds have dropped to junk status, and some have speculated that a bankruptcy filing may be inevitable.

In October 2005, GM and the United Auto Workers (UAW) reached agreement to cut retiree health liabilities by $15 billion. The company agreed to start a new defined contribution health plan to offset other reductions in the health benefits provided to retired workers. While UAW's rank-and-file employees approved the agreement,

implementation awaits a U.S. District Court review of objections from a retiree claiming that UAW lacks the authority to negotiate concessions of retiree health benefits. The retiree claims the benefits are vested contractual rights.

Maryland: Considering How to Finance a Large Liability. The State of Maryland-which has a AAA bond rating (the highest possible)-assessed its situation relative to the GASB 45 requirements through a valuation completed in October 2005. The state's unfunded liability under GASB 45, principally for retiree health benefits, was valued at $20 billion, or about twice the size of the state's general fund budget. Maryland currently pays $311 million per year for retiree health benefits on a pay-as-you-go basis. Maryland's state workforce and retirees number about one-fourth of California's, and the state annually pays about one-third of the amount California pays for retiree health benefits. Maryland's annual retiree health contribution under GASB 45, according to the October 2005 valuation, is just under $2 billion. (This consists of $634 million in annual normal costs for retiree health benefits earned each year and more than $1.3 billion in annual costs to amortize Maryland's existing unfunded liabilities.)

Ohio: Already Prefunding Some Retiree Health Liabilities. The State of Ohio generally has been recognized as a leader in addressing retiree health liabilities. A portion of public employers' retirement system contributions is set aside for funding of retiree health care. The system's actuarial accrued liability for retiree health and similar benefits was pegged at $19 billion, as of December 31, 2002. The Ohio system already has set aside $10 billion to fund these benefits, significantly reducing the unfunded portion of the liability that eventually will be reported under GASB 45.

California's Liabilities: Large and Growing

As discussed above, the state and many other public entities (in California and elsewhere) have made retiree health benefits an important part of the overall compensation package offered to government workers. These benefits, however, have become significantly more costly than they used to be.

Policy Makers Need Much More Information

Up until recently, policy makers have had little information with which to evaluate key characteristics of retiree health benefit programs. These characteristics include the programs' long-term costs, how benefits compare with the vast array of retiree health plans offered by other governments, and how other public agencies are addressing these costs. The GASB's new accounting rules will result in important new tools for policy makers to use in evaluating retiree health programs.

State Government Liabilities: Likely $40 Billion to $70 Billion...Or More

Over the next year or two, actuaries and accountants will be the experts making complex calculations concerning the size of GASB 45 liabilities for the state and local governments. Our educated guess is that unfunded retiree health liabilities for state government will total in the range of $40 billion to $70 billion and perhaps more. (This is based on the results of other liability valuations.) The unfunded retiree health liability may exceed the combined unfunded liabilities of CalPERS' and CalSTRS' pension systems-which were $49 billion, as of June 30, 2004.

Using Maryland's valuation as a potentially comparable example, we can make a rough guess about the state's annual contribution for retiree health benefits, as defined by GASB 45. This amount might be in the range of $6 billion. This would consist of about $2 billion in normal costs (the value of retiree health benefits estimated to be earned by current employees each year) and around $4 billion more in yearly payments to retire the unfunded retiree health liability over 30 years. Compared to the state's current funding of $1 billion, the normal costs under this scenario would be about twice the amount the state now spends each year for benefits under a pay-as-you-go system.

Other Public Liabilities: Very Large

We expect that UC, most local governments, and school districts also will obtain actuarial valuations of their retiree health liabilities. Combined, their liabilities could exceed those of the state itself, but there will be significant variation among governments. Some local governments and school districts will have relatively small liabilities and others will have very large ones. (The significant liabilities of the school districts in Los Angeles and Fresno, as an example, are discussed in the nearby box.)

Retiree Health in Two School Districts

Los Angeles Unified School District (LAUSD). The LAUSD is one of the few districts offering comprehensive lifetime health benefits to its retirees. The LAUSD health program covers 32,000 retirees and 18,000 of their family members. The cost to the district is about $200 million annually.

Like the state, LAUSD pays retiree health benefits on a pay-as-you-go basis. Retiree health benefits have grown from 2.6 percent to 3.9 percent of general fund spending since 2001-02. A July 1, 2004 actuarial valuation pegged the unfunded retiree health liability of the district at $4.9 billion. Normal costs-the amount needed to keep the liability from growing-were estimated to be $326 million per year. The actuarial valuation estimated that annual spending of $529 million would be needed to pay off the unfunded liability within 30 years. Currently, this would raise retiree health expenditures by 8 percent of general fund spending.

Fresno Unified School District (FUSD). The FUSD had an unfunded retiree health and other benefits liability of approximately $1.1 billion before the district ratified a new agreement with the Fresno Teachers Association in August 2005. Previously, retirees with at least 16.5 years of service received premium-free benefits, which continued as supplemental coverage to Medicare after age 65. The new agreement includes various employee concessions, such as a new requirement for retirees under age 65 to pay the same portion of their benefit costs as active employees-reportedly $40 to $80 per month-and a cap on the amount FUSD will pay in the future for benefits.

A group of FUSD retirees has indicated that it may file suit regarding the health benefit changes. The group says it was not invited to participate in negotiations on the new agreement.

State and Other Public Entities Defer Costs to Future Years

Retiree health benefits, like salaries, are earned during an employee's working years. The benefits, however, are paid out after retirement. Unless enough funds (with assumed, future investment earnings) are set aside to cover normal costs of benefits while an employee is working, future taxpayers pay all or a part of the costs of the employee's health care after retirement.

An Example of Shifting Liabilities to Future Generations. For example, take a state employee earning a $25,000 salary in 1985. In addition to this salary compensation, the employee was promised in 1985 that the state would pay 100 percent of his or her health benefits during retirement (if the employee worked at least 20 years). The state, however, did not set aside any funds for those future health costs in 1985 or in any year thereafter. If that employee retires this year, taxpayers of today and the future must pay about $5,000 per year for the employee's retirement health costs. While these benefits were earned doing work for the prior generation of taxpayers, the current generation of taxpayers will bear the financial burden of paying for them. In the same way, today's state workforce is earning future retirement health benefits. While paying for current retirees' health costs, the state is not setting aside any money for future costs. The next generation of taxpayers will be left paying this bill. Because health care costs are rising and retirees are living longer than ever before, the future costs will be much higher than the current $5,000 per year. In this way, each generation shifts a growing liability to the next generation.

Current Taxpayers Should Pay for Current Expenses. The state (and nearly every other public entity nationwide) does not pay its current (or normal) costs for retiree health benefits each year. Consequently, the state fails to reflect in its budget the true costs of its current workforce. Since 1961, the state has been shifting costs to future taxpayers. The tens of billions of dollars in unfunded liabilities now owed by the state is the result of this approach. For this reason, the pay-as-you-go approach to retiree health care conflicts with a basic principle of public finance-*expenses should be paid for in the year they are incurred*. This principle requires decision makers to be accountable-through current budgetary spending-for the costs of whatever future benefits may be promised.

Addressing Retiree Health Costs: Recommendations and Options

In this section of the report, we:

- First discuss the need for the Legislature to take action to ensure that the vast amount of information about retiree health liabilities soon to be released under the new accounting rules is disclosed publicly. By doing so, the Legislature will improve the information available to it (and to local and school district leaders) as these issues are considered over the next few years.
- Next, we recommend prefunding retiree health benefits in order to begin addressing the state's massive unfunded liabilities.

- Finally, we discuss a range of options that the Legislature may consider if it wishes to reduce future cost increases in retiree health benefits.

More Disclosure and Planning Needed

Currently, the Legislature-and other elected officials throughout the state-lack much of the information needed to develop a concrete, long-term strategy for addressing retiree health care liabilities. We recommend the Legislature take several actions to make information on these liabilities easily accessible to policy makers, researchers, and the public. Legislative actions also should promote efforts by governments to plan for payment of future retiree health costs.

Actuarial Valuation. The State Controller has requested $252,000 in the *2006-07 Budget Bill* to obtain a retiree health actuarial valuation for the state, consistent with GASB 45's requirements. The valuation would provide important information for the Legislature on the magnitude of the state's unfunded liabilities and possible funding options. We recommend approving the State Controller's funding request.

Inventory of Retiree Health Liabilities Statewide. As state officials begin the process of evaluating state government's retiree health liabilities, local officials also are beginning the process of complying with GASB 45's requirements. As discussed earlier, GASB 45 will result in government financial statements having information on retiree health liabilities similar to the information already provided for pension systems.

The State Controller already compiles audited reports of state and local pension systems. We believe it would be valuable to have GASB 45 liabilities publicly disclosed in a similar fashion. For this reason, we recommend enactment of legislation requiring governmental entities in California to submit their actuarial valuations to the State Controller. We also recommend that the State Controller be required to post the valuations on the Internet (if governments choose to submit them electronically) and produce a report annually on retiree health liabilities similar to the one produced on the finances of public pension systems. (Any reimbursable state mandated costs under this proposal should be minimal because local governments voluntarily obtain valuations.)

School District Recommendations. For some school districts, the size of retiree health benefit liabilities will be so large that unless steps are taken soon to address the issue, it seems likely that districts will eventually seek financial assistance from the state. For this reason, we reiterate our recommendations in the *Analysis of the 2005-06 Budget Bill* (please see page E-50) that the Legislature require county offices of education (COEs) and school districts to take steps to address school districts' long-term retiree health liabilities. Specifically, we recommend that the Legislature enact legislation to require districts to provide COEs with a plan to address retiree health liabilities. We also recommend that the state's school district fiscal oversight process (the AB 1200 process) be modified to require COEs to review whether districts' funding of retiree health liabilities adequately covers likely costs. We will discuss this issue further in the Education chapter of the upcoming Analysis of the *2006-07 Budget Bill*.

UC Recommendations. The UC, independently of the state, negotiates with its employees concerning compensation and retirement benefits. Historically, the Legislature has opted to appropriate funds to UC to cover increased health benefits costs. Like the state, UC is expected to release its own retiree health valuation (under the terms of GASB 45) by 2008. We recommend that the Legislature request UC-upon completion of the valuation-to propose a long-term plan for addressing unfunded retiree health liabilities. Such a plan would provide the Legislature with information regarding the long-term costs of the existing benefits and any measures UC plans to take to lower these costs. Upon receipt of such a plan, the Legislature would be in a much better position to consider whether additional General Fund resources should be provided to address any portion of UC's future retiree health costs.

Recommend Creation of Working Group on State Retiree Health Funding. Just as we recommend increased planning and disclosure by school districts and UC, we also recommend the state plan for how it might fund retiree health benefits in the future. Consequently, we recommend that the Legislature establish a working group-consisting of representatives from key state agencies-to advance the state's planning. Tasks for this working group might include consideration of and recommendations concerning: the types of prefunding vehicles available under state law and federal tax law, possible choices for a state agency or other entity to manage these funds, investment guidelines, the viability of issuing bonds to reduce retiree health liabilities, strategies to increase the funding for retiree health benefits paid from federal funds, and options to reduce state costs.

We would suggest that the working group provide an interim report to the Legislature on these subjects by January 1, 2008 and a final report by January 1, 2010-following its consideration of the state's first actuarial valuation. In considering the valuation, the working group should review the actuarial assumptions used (for health care inflation and retiree mortality, for example). Rosy assumptions about future health care inflation or investment return could result in a valuation that understates the true magnitude of state liabilities by tens of billions of dollars. For this reason, in its final report, the working group should be required to provide its opinions to the Legislature on the

valuation's overall reliability, considering the actuarial assumptions that are used.

Funding Retiree Health Benefits

As discussed above, the state (and almost all other governmental entities in California) pays for the health benefits of retired employees on a pay-as-you-go basis. This means that retiree health services are funded when retirees use them. The alternative is to prefund benefits.

If the state and other governments were starting from scratch today and offering retiree health benefits for the first time, prefunding could be accomplished by paying the normal costs each year-the estimated amount that needs to be set aside and invested to pay for health services after employees enter retirement. However, since the state and other governments have offered these benefits for decades and have not set aside funds, they would have to pay considerably more to fully prefund all benefits. As noted previously, GASB 45 requires the calculation of a full prefunding annual contribution consisting of: (1) estimated normal costs and (2) an amount needed to retire the unfunded liability for unpaid past normal costs within 30 years.

Prefunding Is the Approach Used for Pension Systems. Prefunding is the approach the state uses for its current pension systems. The board of CalPERS, for example, requires the state to pay an amount each year that is set aside and invested to prefund future retiree benefits. This annual amount paid to CalPERS is similar to the full prefunding annual contribution that will be calculated under GASB 45.

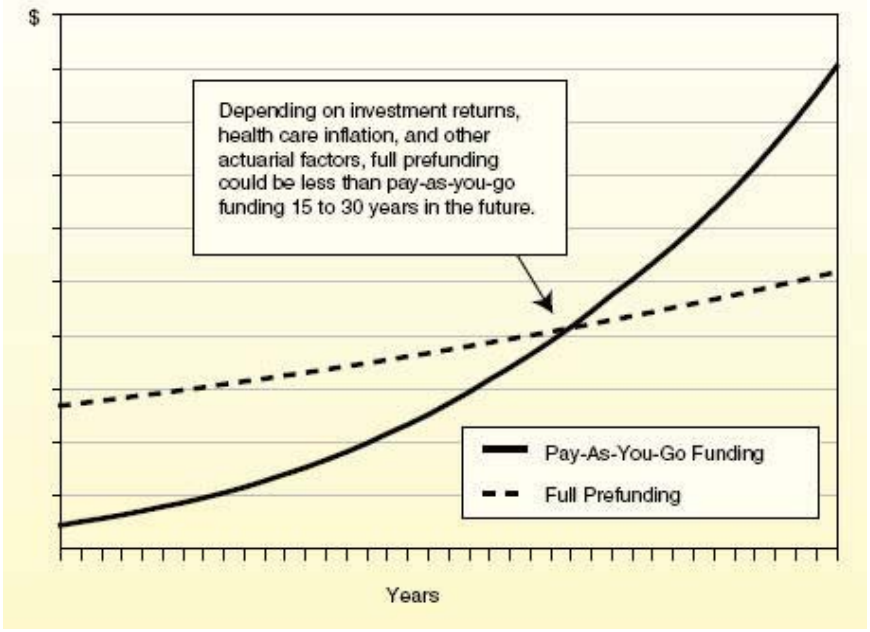
There is virtually no dispute that prefunding is the best way to fund a pension system. The Legislature-and California's voters-have mandated a prefunding policy for state employee pensions for decades. In 1947, the Legislature adopted a prefunding policy for state employee pensions. At that time, the Legislature enacted laws that began to require actuarially determined contributions to the Public Employees' Retirement Fund. In 1972, the Legislature passed a statute that began to prefund CalSTRS pension benefits under a long-range plan.

Reasons to Prefund Retiree Health Benefits. As noted earlier, a pay-as-you-go approach to funding retiree health benefits is problematic in that it shifts current costs to future taxpayers. The alternative-prefunding benefits-not only avoids this problem, but also results in the following:

- ***More Economical Over Time.*** Over the long term, investment earnings would supplement state and any employee or retiree contributions for retiree health costs. This would allow the state to pay for a given level of benefits with fewer budgetary resources and retire unfunded liabilities for retiree health care. Figure 9 illustrates the long-term benefits of fully prefunding retiree health benefits by contributing the full annual contributions (normal costs and costs to retire unfunded liabilities) specified by GASB 45. Paying more now can dramatically reduce costs over the long term.

Figure 9

Hypothetical Prefunding Scenario



- ***Helps Secure the Benefits Expected by Employees.*** Prefunding creates a pool of assets with which to support future benefits that public employees expect to receive. These assets would strengthen the state's ability to provide these benefits over the long term.

- ***Contributes to Higher Bond Ratings.*** Bond rating agencies, whose evaluations help determine the interest rates paid on state debt, monitor the funding status of the retiree health program. There is no indication that rating agencies will rush to downgrade ratings once GASB 45 reveals large retiree health liabilities. However, unfunded pension and retiree health obligations are viewed by bond analysts as similar to debt. For rating agencies and bond investors, more debt can be a negative consideration. As more states and local governments address retiree health liabilities, rating agencies may compare those governments that have acted with others that have not.

Partially Prefunding Retiree Health Benefits Is an Option. As noted earlier, our rough guess of the state's cost for full prefunding under GASB 45 is in the range of $6 billion annually. That amount would cover the future costs of today's employees, plus pay off the state's unfunded liability over 30 years. Clearly, given the state's budget situation, immediately moving to this level of funding is unrealistic. Another option is funding part of the GASB 45 annual contribution. Any amount of prefunding reduces the exposure of the state to future increases in health costs. Investment earnings from funds set aside today would help reduce future budget pressures.

LAO Recommendation. For the reasons discussed above, we recommend that the Legislature-after receiving the state's actuarial valuation-begin partially prefunding retiree health benefits. Recognizing the state's current fiscal condition, we recommend that the state ramp up to an increased level of contributions over a period of several years. The near-term target should be the state's normal cost level under GASB 45-the amount estimated to cover the cost of future retiree health benefits earned each year by current employees. This amount might be in the range of about $1 billion above what the state spends under the current pay-as-you-go approach. Funding a minimum of the normal cost each year would help reduce the burden of future taxpayers to pay for benefits earned today. Over the much longer term, the state could then begin to address the unfunded liability that has been accumulated over the past half century.

Options to Reduce Future Retiree Health Costs

The Legislature and other public policy makers-confronted with an accurate accounting of the long-term costs of retiree health benefits under GASB 45-may wish to consider options to reduce costs. In this section, we discuss such options. Some options would allow continuation of current benefit levels, but perhaps require that employees or retirees bear more of the costs of the benefits. Other options involve reduced benefits.

Whether the Legislature would want to pursue these options would depend on a variety of factors, such as: (1) the desired level of compensation provided to state employees, (2) the amount of the unfunded liability, and (3) other funding priorities. Consequently, at this point, we make no recommendations as to these options.

For Current and Past Employees, Options May Be Limited. The ability of companies and governments to cut retiree health benefits for current and past workers is an evolving area of law, according to sources we consulted during our research. To the extent that the state has promised employees-in statute, collective bargaining agreements, or elsewhere-that it will pay a portion of their health care during retirement as deferred compensation, these benefits may be a vested contractual right of the employee, just as pensions are. The Legislature may have little or no ability to unilaterally alter such vested benefits.

For Future Employees, Extensive Options. The Legislature has much more extensive options within the law to reduce or alter retiree health benefits for employees that begin state service in the future. There are many such options, including:

- Changing the current 100/90 formula for retiree health benefits for future hires and their dependents.

- Increasing the share of retiree health benefit costs paid by employees (during their working years) and retirees (through premiums, copayments, deductibles, and similar mechanisms).

- Raising the number of years required to vest in retiree health benefits.

- Establishing a defined contribution program, to which the state would agree to contribute a set amount of money. This would eliminate the risk of unfunded state liabilities, but shift financial risk to retirees.

These types of actions would reduce the state's normal costs for retiree health benefits. Reducing benefits for future hires, however, would not change the unfunded liability already incurred for current and past state employees. Moreover, if the state continued paying for retiree health benefits on a pay-as-you-go basis, changing benefits for future hires would only result in savings decades into the future.

Reducing state costs by taking the types of actions discussed above may create a “two tier” system of retiree benefits (where one group of state retirees receives a richer benefit package than the other). Such systems can be difficult to administer and can cause conflicts between groups of employees and retirees. In addition, since providing retiree health benefits has been an important component of the state’s compensation package for its employees, actions to significantly reduce these benefits could affect the state’s ability to recruit and retain employees in the future without offsetting compensation increases.

Conclusion

Unfunded retiree health care liabilities of the state and other public agencies in California are significant, and over the next several years, these liabilities will be quantified by actuaries and accountants pursuant to GASB 45. Because of the recent, rapid rise of health care costs, this category of state liabilities has been growing very rapidly in recent years. Figure 10 summarizes our recommendations for the Legislature to develop a strategy that will begin to address these unfunded liabilities and reduce costs imposed upon future taxpayers.

Figure 10

Summary of LAO Findings and Recommendations On Retiree Health Liabilities

» Unfunded Liabilities

State government retiree health liabilities are likely $40 billion to $70 billion and perhaps more.

Combined liabilities for the University of California (UC), local governments, and school districts could exceed those of state government.

» More Disclosure and Planning

Recommend approving State Controller's request for $252,000 in 2006-07 to obtain a retiree health actuarial valuation for the state, consistent with GASB 45.

Recommend requiring public entities choosing to obtain valuations to submit them to the State Controller.

Recommend requiring State Controller to report on retiree health benefits, costs, and liabilities statewide.

Recommend requiring school districts to develop plans to address retiree health liabilities.

Recommend requesting UC to propose a plan to address its retiree health liabilities.

Recommend establishing state working group to report to the Legislature on options for funding and reducing costs of retiree health benefits.

» Funding Retiree Health Benefits

Recommend beginning to partially prefund retiree health benefits after receipt of state's retiree health actuarial valuation, ramping up to an increased level of contributions over several years.

» Options to Reduce Future Retiree Health Costs

Extensive options exist to reduce costs for state employees hired in the future.

For costs related to current and past employees, options may be limited.

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This report was prepared by Jason Dickerson and reviewed by Michael Cohen. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.	To request publications call (916) 445-4656. This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.

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THE LONG JOURNEY

By
Claudia Ortega

"I firmly believe state funding is the best way to go. Stable adequate funding in every court in every county is a responsibility the state as a whole must and should bear."

—Chief Justice Malcolm M. Lucas
Address to California Judges Association, October 1, 1995

"Quite simply, state funding allows courts to cope in coordinated fashion with change and the public's needs.... It has given us room to think ahead and to plan .... Our courts can look at current circumstances, project future needs, and decide how best to meet them in orderly fashion. And we also are better positioned to deal with the inevitable crises that occasionally confront our court system."

—Chief Justice Ronald M. George
State of the Judiciary Address to the Legislature, March 20, 2001

"Our goal isn't to be comfortable; our goal is to see that the public has access to justice and that the court system can be held directly accountable by our other two branches of government for the fair and effective administration of justice in the state."

—William C. Vickrey
Administrative Director of the Courts

TO STATE FUNDING

For most of California's history, the quality of justice rendered by the trial courts was dependent on the discretion and financial health of the state's 58 county governments. Supplemented by extremely limited state funding, the counties had primary responsibility for major costs of the court system: salaries for municipal and justice court judges; retirement benefits for justice court judges; expenses related to all nonjudicial court personnel; and all operational and facilities costs of the superior, municipal, and justice courts. The state paid the salaries of superior court judges and retirement benefits of superior and municipal court judges, and it also funded the appellate courts, the Judicial Council, and the Administrative Office of the Courts.

As a result of this longstanding disparate funding structure, court services varied by county and the ability of courts to fulfill their mandated mission was at risk. In his 2001 State of the Judiciary address to the California Legislature, Chief Justice Ronald M. George painted this picture:

> The pre-existing system, with funding bifurcated between the counties and the state, bred uncertainty for the courts and discouraged a sense of commitment by either funding partner. Disparities in the quality of justice dispensed across the state were common and erratic. Local courts were on the verge of closing, with staff cutbacks and unfunded payrolls, facilities in a state of dangerous disrepair, services to the public drastically curtailed, and, ultimately, the entire administration of justice at risk.

Early Efforts to Achieve State Funding

In May 1969, Chief Justice Roger J. Traynor was faced with a delicate problem. Assembly Member James A. Hayes had introduced a proposed constitutional amendment that would require the state to provide for the "funding, operation and administration" of the trial courts. Hayes, chair of the Assembly Judiciary Committee, an ex officio member of the Judicial Council, and a Long Beach lawyer, had long pushed for the ambitious concept, and the measure, Assembly Constitutional Amendment 66 (ACA 66), was coming up before his committee.

Hayes made it clear that he wanted the council's "specific view" on the measure rather than blanket opposition. Traynor, who had been Chief Justice for five years and was preparing to retire, knew there would be tremendous outcry from California's judges if the state suddenly took over control of the trial courts. So a compromise was reached: the council opposed inclusion of the words "operation and administration" in the proposed measure. The council did support the concept of state *funding* of the trial courts.

The measure did not pass the Legislature that year, but Hayes would be back. By the time Donald R. Wright succeeded Traynor as Chief

We are indebted to Larry L. Sipes, whose book *Committed to Justice: The Rise of Judicial Administration in California* (Administrative Office of the California Courts, 2002) provided material for this article.

1950
Six types of lower courts reorganized into municipal and justice courts

1977
Jurisdictional and procedural differences between justice and municipal courts eliminated

1978
Proposition 13 approved

1984
Trial Court Funding Act of 1984 vetoed

1985
Trial Court Funding Act of 1985 adopted

1988
Brown-Presley Trial Court Funding Act enacted

Justice, the council had developed a plan. The council had already hired the consulting firm of Booz, Allen & Hamilton to engage in a broad study of the municipal and justice courts. The firm was directed to supplement its work by studying the feasibility of a completely unified trial court system.

The 1971 Booz Allen report recommended total state funding of the trial courts. Calling the current system of funding "a patchwork," Booz Allen concluded that state funding "provides an opportunity to use the state's broader revenue base to avoid underfunding of courts in counties with marginal financial resources for supporting judicial services or in counties which are unwilling to provide adequate financing."

"It reinforces the fact that judicial services, although provided locally, are of statewide importance," the report added.

Not surprisingly, the Booz Allen report stirred up a hornet's nest of opposition. Nearly 200 members of the Conference of California Judges (the precursor to the California Judges Association) turned out en masse at Los Angeles International Airport on a Saturday to debate the report's recommendations. A plebiscite found judges fairly evenly divided on a proposal to create a single-level trial court: 258 were in favor and 221 against. The judges made it clear that they preferred local control of their courts, voting against the concept of statewide administration of the trial courts by a margin of 387 to 89. But the judges voted overwhelmingly in favor of state financing of all trial court operating costs with a margin of 334 to 134.

At the Judicial Council meeting a month later, council members voted on whether to approve or disapprove the Booz Allen recommendations. Los Angeles Superior Court Judge Joseph A. Wapner, who later gained television fame as the *People's Court* judge, moved to disapprove state funding of the trial courts. His motion failed on a tie vote.

The die was cast. The Judicial Council has supported state funding of the trial courts ever since, and every Chief Justice since then has called for the Legislature to adopt it. Under Chief Justice Wright, the council proceeded cautiously, recommending only that the state assume the costs for "salaries and fringe benefits of all judges and court-related personnel in the county court system."

However, persuading the Legislature to go along proved difficult, with various proposals for a major increase in state funding failing to obtain legislative approval.

Proposition 13—An Impetus

Had California voters not adopted Proposition 13 in 1978, state funding for trial courts probably would not have occurred for many more years. Proposition 13 reduced the primary source of funding for local governments by limiting their ability to raise property taxes. With new strains on their budgets, the counties could not afford the costs of running the courts. While they received revenue from the local courts—filing fees, fines, forfeitures, penalties, and other charges—the courts' operating expenses had always exceeded revenue. The counties started to look to the state for trial court funding.

The Momentum Shifts

In 1984, Senator Barry Keene introduced the Trial Court Funding Act of 1984 (Senate Bill 1850 and Assembly Bill 3108 [Robinson]). Under this proposed legislation, counties could elect whether or not to participate. If a county chose to participate, the state would provide a block grant (a set sum per year, adjusted for inflation) for every superior court and municipal court judgeship and for each subordinate judicial position. In return, the county would relinquish to the state the great bulk of the revenues it received from filing fees, fines, and forfeitures. The Legislature joined and passed the bills, but Governor George Deukmejian vetoed them. Although the act did not pass, the legislative findings in the proposed bill would lay the groundwork for future debates and policymaking:

1991
Trial Court Realignment and Efficiency Act adopted

1992
First branchwide strategic plan approved

Trial Court Budget Commission formed

1993
Publication of *Justice in the Balance: 2020, Report of the Commission on the Future of the California Courts*

1994
First consolidated budget proposal to the Legislature presented by the Trial Court Budget Commission

- The trial of civil and criminal actions is an integral and necessary function of the judicial branch of state government.
- All citizens of this state should enjoy equal and ready access to the trial courts.
- Local funding of trial courts may create disparities in the availability of the courts for resolution of disputes and dispensation of justice.
- Funding of trial courts should not create financial barriers to the fair and proper resolution of actions.
- This legislation promotes the general welfare and protects the public interest in a viable and accessible judicial system.

The dialogue about state funding for the trial courts continued into the next year, during which the Trial Court Funding Act of 1985 (Assem. Bill 19 [Robinson]) was enacted, albeit without implementing appropriations. In 1988, with the enactment of the Brown-Presley Trial Court Funding Act (Sen. Bill 612 [Presley]; Assem. Bill 1197 [W. Brown]), partial state funding for trial court operations was achieved. The act gave the counties the option of participating and guaranteed state block grants if they chose to do so. This legislation was funded with approximately $300 million. The act also established the Trial Court Improvement Fund (TCIF), which would allow the Judicial Council to distribute grants to the trial courts to improve their efficiency and management. However, the Legislature did not fund the TCIF when it passed the bill.

By 1989, all counties had opted to participate under the terms of the Brown-Presley Trial Court Funding Act. That year the state distributed $527 million to the counties in the form of block grants or other appropriations for trial court expenses. While the state was not assuming full responsibility for funding of trial court operations, the momentum had shifted significantly in that direction.

Making a Stronger Case

The $527 million in state funds provided to the counties in 1989 covered only 44 percent of total trial court costs. The recession that began in 1990 reduced the appropriation to 38 percent. In 1991, the Legislature established the goal of achieving 70 percent state funding of the trial courts by 1995–1996. But the recession of the early 1990s and the cumulative effects of Proposition 13 imposed continuing restraints on fulfilling that goal. In 1991, state funding provided 51.4 percent of trial court costs, fell to 50.6 percent in 1992, and returned to 44 percent in 1993.

Recognizing the clear pattern of inadequate state funding, in 1992 the Judicial Council created the Trial Court Budget Commission. The commission's membership consisted of 26 trial judges representing 10 geographic regions. Serving in the capacity of advisory members were 4 court administrators and 2 county administrators. The commission was delegated the new responsibility of preparing annual budget submittals for the trial courts. It was also given the authority to reallocate funds to the extent authorized by the annual budget and determine procedures for submission of budget information by the trial courts.

The commission created 11 functional categories of trial court budget purposes to replace block grant funding and established baseline budget requests for each trial court.

In 1994, for the first time, the judicial branch, through the work of the commission, presented a consolidated trial court budget proposal to the Governor and Legislature. Trial court needs were projected at $1.75 billion, an amount that far exceeded the approximately $526 million estimated in 1982. Although Governor Pete Wilson and the commission had different estimates of trial court costs, the Governor proposed a $400 million increase in state support for a total of $1.017 billion, an amount that represented 58 percent of trial court costs as estimated by the commission.

Also in 1994, with the leadership of Assembly Member Phillip Isenberg, the Legislature passed Assembly Bill

1994 continued

Judicial branch budgeting system and funding based on functions instituted by AB 2544

Justice courts converted to municipal courts by Proposition 191

1997

Lockyer-Isenberg Trial Court Funding Act adopted

Center for Children and the Courts established

1998

Proposition 220 approved

Governor Pete Wilson signs the Lockyer-Isenberg Trial Court Funding Act of 1997 as Senator Martha Escutia (left), Senator Bill Lockyer (behind Wilson), and others who worked for the measure look on.

2544, which declared its intent to create a budgeting system for the judicial branch that would protect its independence while preserving financial accountability. Based on the Trial Court Budget Commission's recommendations, the legislation also implemented the transition from block grants to funding based on specific court functions.

Over the next few years, the judicial branch faced additional reductions in state funding and, along with other state entities, continued to weather the financial storm. In the 1994–1995 fiscal year, the state provided only 34 percent of trial court funding and the Legislature was forced to enact emergency legislation to keep courts operating in several counties. The Judicial Council continued to make the argument for full state funding.

Full State Funding Achieved

Through collaboration with justice system stakeholders—the council, trial court presiding judges and executive officers, the California State Association of Counties, the Department of Finance, and key legislative members—the long-held and monumental goal of full state funding was finally reached. In October 1997, Governor Pete Wilson signed the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233). This legislation enacted major systemic changes by

- Consolidating all court funding at the state level, giving the Legislature authority to make appropriations and the Judicial Council responsibility to allocate funds to the state's courts
- Capping counties' financial responsibility at the 1994 level, to be paid quarterly into a statewide trust fund
- Requiring the state to fund all future growth in the cost of court operations
- Authorizing the creation of 40 new judgeships, contingent on an appropriation made in future legislation
- Requiring the state to provide 100 percent funding for court operations in the 20 smallest counties beginning July 1, 1998
- Raising a number of civil court fees to generate about $87 million annually for trial court funding.

Trial Court Unification

The effort to achieve full state funding was running parallel with the effort to unify the trial courts. Historically, California's trial courts were made up of numerous lower courts within every county. From 1950 to 1994, the trial courts were made up of superior courts, municipal courts, and justice courts, each with its own staff and operational systems.

The branch undertook an important step toward unification with the Trial Court Realignment and Efficiency Act of 1991 (Assem. Bill 1297 [Isenberg]). The legislation focused on three major areas of change in California's trial court system: administrative and judicial coordination within and across county court systems to share resources, improve public access, and reduce operating costs; realignment of funding; and state funding increases to approximately 50 percent. Judicial Council advisory committees set about developing standards for implementing coordination between superior, municipal, and justice courts in areas such as judicial resources and calen-

1999

One-day or one-trial jury service instituted

2000

Trial Court Employment Protection and Governance Act enacted

Strategic plan updated

2001

All courts vote to unify

Online Self-Help Center for self-represented litigants created

AOC Northern/Central and Southern Regional Offices established

daring, and the courts developed coordination plans. By 1996, the Judicial Council had approved the plans of all 58 counties.

Meanwhile, in 1992, proposed Senate Constitutional Amendment 3 (SCA 3) revisited the concept of trial court unification, and it was exhaustively studied by presiding judges, court administrators, and the National Center for State Courts. That measure ultimately failed in the Assembly. Then, in 1994, Proposition 191 (SCA 7), which would create a single level of limited jurisdiction court statewide, came before the voters. Proponents argued that the justice courts had become identical to municipal courts in every aspect except name. The voters agreed, and the result was a trial court system made up of two courts—superior and municipal.

Finally, in 1998, Californians voted to adopt Proposition 220 (SCA 4), which would provide for voluntary unification of the superior and municipal courts of a county. The approval of judges was critical to the implementation of this amendment; a majority vote of the municipal and superior court judges in each county was needed to approve unification. By 2001, all 58 counties had unified their trial courts into a single, countywide superior court.

Further Reforms

Of course, the transition from county-level funding to state funding was not without its challenges. Declining revenues and disputes as to what actually were court costs emerged, but over time greater fiscal stability was achieved.

Equally important, the passage of the Lockyer-Isenberg Trial Court Funding Act demonstrated the critical role of strategic planning. The council's 1992 Strategic and Reorganization Plan had lent further credibility to the branch's requests for state funding, and it had contributed significantly to the passage of the act. The judicial branch has continued to refine its vision and goals for the future. The current plan, *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2012,* echoes many of the priorities established in the early 1990s and sets forth new objectives to meet the public's changing needs.

While the Lockyer-Isenberg Trial Court Funding Act allowed for the major shift from disparate county funding to more stable state funding for the trial courts, it did not resolve two significant issues. Should county employees working for the trial courts remain county employees or become court employees? Should the counties continue to own their courthouses, or should ownership transfer to the judicial branch? Over the years, as the system of state funding evolved, these questions repeatedly resurfaced. They were soon answered. In 2000, the Trial Court Employment Protection and Governance Act (Sen. Bill 2140) changed the status of the courts' 17,000 workers from employees of the county to employees of the court. And in 2002, the Trial Court Facilities Act (SB 1732) transferred governance of local courthouses to the judicial branch, which meant that the Judicial Council, through the AOC, was given the responsibility of operating, maintaining, designing, and building courthouses. The task was formidable: 529 court facilities were spread throughout the state, and many buildings had suffered decades of neglect. In fall 2008, the Legislature passed Senate Bill 1407, a $5 billion court construction bond that will fund high-priority facilities projects throughout the state.

With these key structural changes in place—along with those that came before—the judiciary was prepared to meet its future responsibilities as a co-equal, independent branch of state government. CR

Claudia Ortega is a senior court services analyst in the AOC's Office of Communications.

2002

Trial Court Facilities Act enacted

Phoenix Financial System initiated

AOC Bay Area/Northern Coastal Regional Office established

2003

Spanish-language Online Self-Help Center created

***California Civil Jury Instructions (CACI)* adopted**

AOC Office of Court Construction and Management established

What Have All These Reforms Meant?

Priorities, Planning, and Better Service

By
Philip R. Carrizosa

What a difference a decade makes.

It has been a full 10 years since California adopted state funding of the trial courts. Starting on January 1, 1998, the Lockyer-Isenberg Trial Court Funding Act became effective and California's courts entered a new era, one in which state government assumed full responsibility for funding the operation and administration of California's trial courts in all 58 counties. It was a gigantic step for California's judicial branch, one that promised to pave the way for resolving the major problems plaguing the courts since the 1950s.

From the broadest perspective, the branch—through the Chief Justice, the Judicial Council, and the presiding judges and court executives—is now truly charting its own course rather than following one set by the Legislature or county governments. Slowly but surely, the state's legislative and executive branches are recognizing the judicial branch as a co-equal, independent, and accountable arm of government instead of simply another state agency like the Department of Motor Vehicles. The judicial branch's new course fulfills a vision held by a long line of Chief Justices and Administrative Directors. As Chief Justice Malcolm M. Lucas offered in his 1990 State of the Judiciary address, "We need to anticipate change and plan for action. We need to lead and not wait to be led into the next millennium."

State funding of the trial courts was foundational for the judiciary's progress, allowing the branch to set priorities, establish long-term planning, and embark on important reforms. Other measures were important as well: trial court unification, transfer of court staff from county to court employment, and the judicial branch's assumption of responsibility for the state's courthouses. But these measures would not have been possible without stabilized state funding.

California Courts Technology Center and Court Case Management System initiated

2004

Court-county working group on collections established; guidelines for comprehensive collections program developed

Model Juror Summons pamphlet issued

2005

Uniform Civil Fees and Standard Fee Schedule Act enacted

Resource Allocation Study (RAS) methodology instituted

More Stable Funding

Before 1998, the effects of resource allocation across courts were largely disconnected from one another. Once state funding became available, the Judicial Council directed the Administrative Office of the Courts (AOC), Office of Court Research to develop workload measures (the Resource Allocation Study) to assist branch leaders in prioritizing funding to assist chronically underfunded courts. State funding has also provided the courts with the opportunity to take advantage of the state appropriations limit (SAL), which has been a part of the State Budget since 1979. Under SAL, adopted by the Judicial Council in 2005, trial court budgets are automatically adjusted based on factors such as changes in the state's population and the cost of living to provide a fair, year-to-year funding adjustment.

In addition, passage of the trial court funding act gave trial courts the ability to carry over funds from one fiscal year to the next, which is unique in California government. Thus, trial courts may use remaining fund balances to meet their current needs rather than returning the funds to the state.

Direct Services to the Courts and Long-Term Planning

The changes in funding meant that the courts could no longer depend on the counties to provide essential business services. Legal services, for example, had been the responsibility of county counsel. Presiding judges asked the Judicial Council to assume this function, and, as a result, the AOC Office of the General Counsel now provides the courts with assistance in litigation management, litigation defense, and transactions and offers legal advice on labor, employment, and judicial administration issues.

As the policymaking body of a unified, unitary branch of government, the Judicial Council has increased the number and variety of other services it provides to local courts. Three regional offices were created in Burbank, Sacramento, and San Francisco to provide operational services directly to the local courts, particularly in the areas of technology, finance, legal matters, and human resources. Other services to the courts include research, communications, jury service improvements, grant administration, and innovative court programs.

The branch's greater fiscal stability paved the way for long-range, strategic planning so that local courts could work toward the judiciary's overall goal of improving access to justice. Two of the first reforms were the one-day or one-trial rule in jury selection and improvements to assist families and children involved in the court system. As part of its strategic plan, the Judicial Council and the Administrative Office of the Courts formed the Center for Children and the Courts in 1997. The center was eventually merged with the Statewide Office of Family Court Services to create within the AOC the Center for Families, Children & the Courts, which provides research, advice, general support, and other services for the superior courts.

Education and Training Standards

An education and training program for trial court employees was made possible by the Trial Court Employment Protection and Governance Act of 2000, which transferred court staff from

Exhibit H

ITEM 3
TEST CLAIM
PROPOSED DECISION

Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5

Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13)

California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007

Sheriff Court-Security Services

09-TC-02

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Overview

This test claim was filed by the County of Los Angeles (claimant) on behalf of counties, to seek reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts. The claimant alleges that, before 2009, these costs were funded by the state through the Trial Court Funding Program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution, reimbursement is required for these costs.

Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows:

> A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

The claimant estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011.[1]

As described in the proposed decision, staff finds that Government Code section 69926, as amended by the test claim statute, partially imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c). However, section 69926 remained in the law

[1] Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011. Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011.

only until June 27, 2012, when it was repealed to implement the statutory realignment of superior court security funding (Stats. 2011, ch. 40), in which the Trial Court Security Account was established to fund court security. Thus, the potential period of reimbursement for this claim is from July 28, 2009 to June 27, 2012.

A. Before the Lockyer-Isenberg Trial Court Funding Act of 1997, counties had primary responsibility for funding the operation of trial courts, including expenses relating to court security.

Trial court funding and the provision of sheriff court security services have long history. Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[2] Before the 1997 Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts.

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program, and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations. The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, counties gave up their fees, fines and penalty revenue. If a county did not opt into the program, "court operations" remained a county cost. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change. The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function." Function 8 of the rule further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant included the "salary, wages, and benefits" of sheriff employees and their supervisors.

B. The Lockyer-Isenberg Trial Court Funding Act of 1997 transferred responsibility for trial court operations, including expenses relating to court security, to the state beginning in fiscal year 1997-1998.

[2] See Government Code section 69922, derived from former Political Code, sections 4176 and 4157 (Stats. 1883, ch. 75).

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county contributions at fiscal year 1994-1995 levels. To implement the Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996." In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

Beginning in fiscal year 1999-2000, the state provided counties additional relief by reducing their MOE payments for court operations pursuant to Government Code section 77201.1.

The 1997 Trial Court Funding Act also shifted responsibilities formerly imposed on the counties to the Judicial Council and the State Controller's Office (SCO) to audit expenditures, file reports, and otherwise provide for the administration and operation of the courts.[3] The Act also gave counties the authority to charge the trial courts for all county services provided to the court, "including but not limited to: auditor/controller services, coordination of telephone services, data-processing and information technology services, procurement, human resources services, affirmative action services, treasurer/tax collector services, county counsel services, facilities management, and legal representation."[4] The Act required each county to establish in the county treasury a new Trial Court Operations Fund to operate as a special fund. All funds appropriated in the State Budget Act and allocated to each court in the county by the Judicial Council shall be deposited into the fund. Expenditures made from the Trial Court Operations Fund shall be authorized by the presiding judge, or a designee, for the cost of court operations (including the salaries and benefits of sheriff employees providing security services) and no longer require the approval of the county board of supervisors.[5]

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[3] Government Code sections 68113, 71383, and 77009, as amended by Statutes 1997, chapter 850, section 33.

[4] Government Code section 77212(a), as added by Statutes 1997, chapter 850, section 46.

[5] Government Code section 77009, as added by Statutes 1997, chapter 850, section 44.

The Act then required the Judicial Council, with the concurrence of the Department of Finance (DOF) and the SCO, to establish procedures to provide for the payment of expenses for trial court operations beginning July 1, 1997.[6] The Judicial Council and its administrative body, the Administrative Office of the Courts (AOC), were given responsibility for financial oversight of the trial courts pursuant to Government Code sections 77202-77208.[7] Under these provisions, the Legislature is required to make an annual appropriation to the Judicial Council for support of the trial courts. The Judicial Council, in its budget request for the trial courts, is required to meet the needs of the trial courts "in a manner that promotes equal access to courts statewide." The Judicial Council is then required to allocate the funding to trial courts in a manner that ensures their ability to carry out their functions, promotes implementation of statewide policies, and promotes efficiencies and cost saving measures in court operations, "in order to guarantee access to justice."[8] And the SCO is required to apportion trial court payments quarterly based on the Judicial Council's allocation schedule.[9]

C. Sheriff court security costs were treated as a component of court operations under the Trial Court Funding Program.

In 2002, the Legislature enacted the Superior Court Law Enforcement Act of 2002 (Stats. 2002, ch. 1010, SB 1396; adding Gov. Code §§ 69920, et seq.), which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the security cost component of court operations paid by the state under the Trial Court Funding Program through the concept of a "contract law enforcement template." The 2002 Act provides that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court for sheriff court security costs. Government Code section 69927(a)(5) then defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to*, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

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[6] *Ibid*.

[7] Statutes 1997, chapter 850, section 47.

[8] Government Code section 77202, as added by Statutes 1997, chapter 850, section 47.

[9] Government Code section 77207, as added by Statutes 1997, chapter 850, section 47.

In addition, the 2002 Act required the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the AOC pursuant to the 2002 Act.

The 2002 Act also enacted Government Code sections 69926 and 69927 to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal is required to provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. The AOC is required to use the actual salary and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the DOF. Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[10]

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003 and included a variety of common benefits, some required by state or federal law and some which are generally provided to public employees though the bargaining process. Allowable benefits payable by the state under the 2002 Act are listed in section III of the template as follows:

BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.

County Health & Welfare (Benefit Plans)"

County Incentive Payments (PIP)

Deferred Compensation Plan Costs

FICA/Medicare

General Liability Premium Costs

Leave Balance Payout

Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)

Retirement

State Disability Insurance (SDI)

Unemployment Insurance Cost

[10] Exhibit G, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

Workers Comp Paid to Employee in lieu of salary

Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs. Retiree health benefits are not specifically identified in Section II as a non-allowable cost.

D. The 2009 test claim statute excludes the cost of retiree health benefits for sheriff employees performing security services for the trial courts from the cost of "court operations" paid by the state beginning July 28, 2009.

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22), in amending Government Code sections 69926(b), specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel.

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

Procedural History

Claimant filed the test claim on June 30, 2010.[11] The Judicial Council filed comments on August 16, 2010, arguing that the claim should be denied on several grounds.[12] DOF filed comments on August 17, 2010, contending that the test claim should be denied because the state was not responsible for the retiree health benefits before the enactment of the 2009 test claim statute.[13] The claimant filed rebuttal comments on September 15, 2010.[14] The draft proposed decision was issued March 14, 2014. After a couple of extensions of time were requested and granted by Commission staff, DOF filed comments on the draft proposed decision on August 22, 2014. No other comments have been received.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions; all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim. The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes

[11] Exhibit A.

[12] Exhibit B.

[13] Exhibit C.

[14] Exhibit D.

over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[15]

Claims

The following chart provides a brief summary of the issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).	These statutes and Rule of Court contained old rules governing the allowable costs paid by the state for sheriff court security services under the 1997 Lockyer-Isenberg Trial Court Funding Act and the 2002 Superior Court Law Enforcement Act.	*Deny*. The test claim was filed beyond the statute of limitations for these code sections and Rule and, thus, the Commission does not have jurisdiction. In addition, a Rule of Court is not subject to article XIII B, section 6.
Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22.	As amended, section 69927 states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."	*Deny*. Government Code section 69927, as amended in 2009, does not result in a reimbursable state-mandated program. This section requires the AOC to act, but does not impose any required duties or costs on counties.
Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22.	This statute *excludes* the cost of retiree health benefits from the cost of the sheriff court security services component of "court operations" payable the state under the Trial Court Funding Program. The Legislature added the following language to the statute:	*Partial Approve*. Section 69926(b), as amended in 2009, imposes a new program or higher level of service within the meaning of article XIII B, section 6(c), and costs mandated by the state, and therefore constitutes a reimbursable state-mandated program for the following costs incurred from July 28, 2009, to June 27, 2012,

[15] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

	"In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. *For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)"	only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the Trial Court Funding Program before January 1, 2003, and only for employees that provide sheriff court security services in criminal and delinquency matters: • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and • Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922. In addition, revenue received by a county eligible to claim reimbursement in fiscal year 2011-2012 for this program from

		the 2011 Public Safety Realignment Act (Gov. Code, §§ 30025, 30027) shall be identified and deducted as offsetting revenue from any claim for reimbursement.

Analysis

A. The Commission does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

This test claim was timely filed with respect to the enactment of Statutes 2009-2010, 4th Ex. Session, chapter 22. However, the test claim was filed well beyond 12 months following the effective dates of the Statutes 1998, chapter 764, which amended Government Code section 77212.5 (eff. Jan. 1, 1999); Statutes 2002, chapter 1010, which added and amended Government Code sections 69920, 69921, 69921.5, 69922, 69925, and 69927 (eff. Jan. 1, 2003); and, the effective date of Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of the 1998 and 2002 statutes, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective. Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[16] Article XIII B, section 6, however, applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.

Accordingly, the Commission does not have jurisdiction over Government Code sections 69920, 69921, 69921.5, 69922, 69925, 69927 (Stats. 2002, ch. 1010, eff. Jan. 1, 2003), Government Code section 77212.5 (Stats. 1998, ch. 764, eff. Jan. 1, 1999), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Statutes 2009 (4th Ex. Sess.), Chapter 22, Imposes a Partial New Program or Higher Level of Service on Counties within the Meaning of Article XIII B, Section 6(c) of the California Constitution.

1. Government Code section 69927(a)(6)(A) as amended by Statutes 2009 (4th Ex. Sess.), chapter 22, does not impose any mandated activities on counties.

[16] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to the DOF. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

2. Government Code section 69926(b), as amended by Statutes 2009 (4th Ex. Sess.), chapter 22, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The primary dispute in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded the cost of retiree health benefits from the state funding for the sheriff court security services component of trial court operations, constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c).

a. The 2004 amendment to article XIII B, section 6.

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility." In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[17]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979. Reimbursement was denied where the state was only partially responsible for the cost of a jointly funded program.

The plain language of section 6(c), however, expands the definition of a "new program or higher level of service" to include shifts in funding for *existing programs* that are funded jointly by the state and local agencies. A new program or higher level of service includes transfers by the

[17] Exhibit G, LAO summary of Proposition 1A, August 2004.

Legislature from the state to the local agencies "complete *or* partial financial responsibility for a required program for which the State *previously* had complete *or* partial financial responsibility."

In addition, to determine if the transfer of costs is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously" had any financial responsibility for the program. Recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing program.[18] Thus, a test claim statute shifting the financial responsibility of a program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift or transfer of financial responsibility constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c).

b. The Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)

State law, since 1883, has required the county sheriff to provide court security services to the trial courts. As last amended in 2002, Government Code section 69922 requires the sheriff to attend all criminal and delinquency actions in the superior court held within his or her county, and to attend noncriminal actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state.[19]

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[18] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

[19] Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

However, providing court security services for criminal and delinquency actions of the court is a service required by state statute and is a component of trial court operations.

> *i) Under prior law, the state paid the costs of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters, as long as the cost was included in the county's cost for court operations and properly billed to the state under the Trial Court Funding Program before January 1, 2003.*

The Judicial Council contends that under prior law (the 2002 Law Enforcement Act and the contract law enforcement template), retiree health benefits were not included in the list of state-allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute. Staff disagrees.

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost for county employees, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

Staff finds that under the law immediately preceding the 2009 test claim statute, the cost of retiree health care benefits for county employees providing sheriff court security services for criminal and delinquency matters was an allowable cost of "court operations" paid by the state, as long as the cost was properly billed to the state under the Trial Court Funding Program before January 1, 2003. Thus, the test claim statute does not simply clarify existing law, as suggested by the Judicial Council. This conclusion is based on the following findings:

- The allowable benefit in the contract law enforcement template for "County Health and Welfare (Benefit Plans)" is broad and has meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d) defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees. Sections 53202.1 and 53205.2 also provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate upon retirement of the employees affected . . . .*" It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined

allowable "salary and benefit" costs for security personnel services to include "county health and welfare" benefits.

- The record filed by the Judicial Council with its comments supports the finding that the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost paid by the state under prior law.[20] Exhibit 12 to the comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[21]

  Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with supporting documents showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's MOE payment for trial court funding) in its maintenance of effort payments to the state. The letter stated that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past. [22]

  Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a). [23]

  And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows: "Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court

[20] Exhibit B, Judicial Council of California, Comments filed August 16, 2010.

[21] Exhibit B, Judicial Council of California, Comments filed August 16, 2010, Exhibit 12, page 4.

[22] Exhibit B, Judicial Council of California, Comments filed August 16, 2010, Exhibit 15.

[23] Exhibit B, Judicial Council of California, Comments filed August 16, 2010, Exhibit 16.

funding. These five courts have been billed for these costs by the sheriff and have paid for them." [24]

Staff further finds that any current health benefit payments to retirees or their beneficiaries made during the period of reimbursement are not new and have not been transferred by the state. Section 69926(a)(5), as added by the 2002 Superior Court Law Enforcement Act, defined the allowable costs for security personnel services to mean only the salary and benefits of "an employee." No funding was provided by the state under prior law for premium costs provided to already retired employees and their beneficiaries.

Thus, the cost of retiree health care benefits for existing *employees* providing court security services in criminal and delinquency matters was an allowable cost paid by the state as a component of court operations under prior law, as long as the cost was included in the county's cost for court operations and properly billed to the state under the Trial Court Funding Program before January 1, 2003. For those counties, retiree health care costs for employees providing the required security services are now excluded from the cost of "court operations," thus imposing a new cost to those counties.

ii. Section 69926(b), as amended in 2009, transfers partial financial responsibility for providing sheriff court security services for the trial court operations program from the state to the counties and, thus, imposes a new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

DOF asserts that the test claim should be denied because even though counties may see increased costs as a result of the test claim statute, the state did not shift fiscal responsibility from the state to the counties for a required program. Rather, DOF asserts that the state voluntarily reimbursed counties for the cost of retiree health benefits for a period of time and then ended that reimbursement.

Staff finds, however, that the state's payment of retiree health benefits for sheriff employees providing security services to the courts under prior law was not simply a method of reimbursing counties for a local program, as suggested by DOF. While it is correct that counties have historically provided security services to the courts, sheriff court security services in criminal and delinquency matters is a required component of "court operations," which is a program that has been payable by the state under the 1997 Trial Court Funding Act pursuant to Government Code section 77003. The primary financial and administrative responsibility for court operations, both before and after the enactment of the 2009 test claim statute, has remained with the state. Yet a portion of the costs for the state's court operations program has now been transferred to the counties with the enactment of the 2009 test claim statute.

To hold, under the circumstances of this case, that a partial shift in funding of an existing program from the state to the county is not a new program or higher level of service, would violate the intent of article XIII B, section 6. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing services the state believed

[24] Exhibit B, Judicial Council of California, Comments filed August 16, 2010, Exhibit 17.

should be extended to the public in view of the constitutional restrictions on the taxing and spending power of the local entities.[25]

The facts in this case are similar to the facts in *County of San Diego*, where the court found a reimbursable state-mandated program when the state excluded medically indigent adults from the state's Medi-Cal program, thus transferring the cost of the program to counties under an existing statute that required counties to provide care to indigents as a last resort.[26] Although the state argued, like it does here, that reimbursement is not required because counties have always had the responsibility to provide indigent care, the court disagreed and stated the following:

> Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the entire Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further …." [Citations omitted.] As we have explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. [Citation omitted.] Thus, it was the voters who decreed that we must, as the state puts it, "focus on one phase in the shifting pattern of financial arrangements" between the state and the counties. Under section 6, the state simply cannot "compel [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B …." [Citation omitted.][27]

With the adoption of article XIII B, section 6(c), the state cannot shift from itself to counties financial responsibility, in whole or in part, for a program which was partially funded by the state before the enactment of the test claim statute. Accordingly, staff finds that section 69926(b), as amended in 2009, imposes a new program or higher level of service on counties within the meaning of article XIII B, section 6(c) for the partial shift of financial responsibility for providing sheriff court security services for the trial court operations program.

C. The Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

1. The required program here is **not** the payment of benefits, but the responsibility to provide security services for the trial court operations program, which is legally compelled by state law. The cost of retiree health benefits is simply a cost component of the mandated program.

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[25] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835-836.

[26] *County of San Diego v. State of California* (1997) 15 Cal.4th 68.

[27] *Id.*, at pages 98-99.

Even though the transfer of financial responsibility for the court operations program is new and increases the level of service provided by counties, DOF and the Judicial Council argue that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, they argue that any transfer of financial responsibility is triggered by a discretionary decision of the county and is not mandated by the state.

In order for the retiree health benefit costs to be eligible for reimbursement, the costs incurred must be mandated by the state. Whether a statute imposes a state-mandated program has been the subject of prior litigation. In the *City of Merced* and *Kern High School Dist*. cases, the court held that "the core point . . . is that activities undertaken at the option or discretion of a local government entity (that is, action undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate …."[28] Finance and Judicial Council would have the Commission apply *City of Merced* and *Kern High School Dist*. here to deny the test claim. Staff disagrees.

It is correct that the state does not require counties to provide retiree health care benefits to employees, since counties are authorized to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510). It is also correct that a prior decision to provide retiree health care benefits to sheriff employees providing court security services as part of the trial court operations program *may affect* the amount of reimbursement due in this case.

However, the required program here is *not* the payment of benefits, but the responsibility to provide security services for the trial court operations program, and that responsibility is legally compelled by state law. A local decision to provide retiree health care benefits to county employees is not a decision that triggers the duty to comply with the trial court operations program. Unlike *City of Merced* and *Kern High School Dist*., counties are required by law to provide sheriff court security services under the trial court operations program for criminal and delinquency matters *regardless* of their local decisions on salaries, pensions, and benefits, including retiree health care benefits. The cost of retiree health benefits is simply a cost component of the required program to provide security services for the trial court operations program. Article XIII B, section 6, requires that all costs mandated by the state, including all direct and indirect costs of a program, are eligible for reimbursement.[29]

Accordingly, staff finds that a county's decision to pay retiree health benefits does not defeat the finding that the test claim statute results in costs mandated by the state.

2. <u>The fact that the counties' duty to provide sheriff court security services stems from a pre-1975 statute does not defeat the finding that the test claim statute results in costs mandated by the state.</u>

[28] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Kern High School Dist. supra*, 30 Cal.4th 727.

[29] Government Code sections 17514, 17561.

Moreover, it is not relevant that the counties' duty to provide sheriff court security services stems from a pre-1975 statute.[30] In *County of San Diego*, the state argued that reimbursement was not required when the state excluded medically indigent adults from the state's Medi-Cal program, shifting the duty to care for medically indigent adults to counties under an existing, pre-1975 statute. The court held that the existing statute did not defeat the mandated program. The court found that the test claim statute mandated a "new program" on counties by compelling them to accept financial responsibility in whole or in part for a program for the care of medically indigent adults, "which was previously funded by the state.[31]

Accordingly, staff finds that the partial shift of financial responsibility for providing sheriff court security services for the trial court operations program imposes costs mandated by the state on counties.

3. The retiree health benefit costs eligible for reimbursement as "costs mandated by the state" are (1) the amounts actually paid by the county in the claimed fiscal year to prefund benefits earned by county employees providing sheriff court security services in criminal and delinquency matters in the claimed fiscal year, and (2) the amounts actually paid in the claimed fiscal year to reduce an existing unfunded liability for the health benefit costs previously earned by a county employee providing sheriff court security services in criminal and delinquency matters.

Under mandates law, a county must demonstrate actual costs incurred in a fiscal year to be reimbursed. Increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit are the costs that are eligible for reimbursement.[32] In this case, whether retiree health benefit "costs" have actually been incurred and can be demonstrated, will depend on how a county funds retiree health benefits.

Retiree health benefits, like salaries and pensions, are earned during an employee's working years. Several sources indicate, however, that most counties have historically funded these benefits on a "pay-as-you-go" basis *after* the employee retires. If a county has adopted the pay-as-you-go method, the county does not pre-fund retiree health benefit costs in the year services are provided like it does for pensions by making annual contributions to either the normal (or current) cost of the benefit or to unfunded liabilities associated with the benefit, but instead pays premium costs for retiree health benefits as the costs are incurred *after* employees have retired.[33]

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[30] Government Code 69922 (derived from former Political Code sections 4176 and 4157; Stats. 1941, ch. 1110, Stats. 1923, ch. 108, Stats. 1897, ch. 277, Stats. 1893, ch. 234, Stats. 1891, ch. 216 and Stats. 1883, ch. 75).

[31] *Id*. at page 98.

[32] Government Code section 17514; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284; see also, *County of Fresno v. State of California* (1990) 53 Cal.3d 482, 487, where the court noted that article XIII B, section 6 was "designed to protect the tax revenues of local government from state mandates that would require expenditure of such revenues."

[33] In *Retired Employees Association of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1188.

The pay-as-you-go method shifts current retiree health benefit costs earned by the employee in the current year to future taxpayers, and is not an actual costs incurred in the current year.[34]

Thus, staff finds that the retiree health benefit costs eligible for reimbursement as "costs mandated by the state" are those

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do not constitute costs mandated by the state.

4. Offsetting revenue intended to pay for sheriff court security costs, including those costs for retiree health benefits, has been provided by the state for fiscal year 2011-2012.

Statutes 2011, chapter 40, commonly cited as "the 2011 Realignment," created the account structure and allocations to fund realigned local costs in fiscal year 2011-2012. The 2011 Realignment added Government Code section 30025 to create the Local Revenue Fund 2011, which includes the Trial Court Security Account. Funding transferred into the Local Revenue Fund shall be allocated exclusively for the services defined in section 30025(h). Section 30025(h)(1) defines "public safety services" to include "employing ... court security staff." Section 30025(f)(3) states that "the moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs." The Act also added Government Code section 30027 to allocate funds to the Controller for the Trial Court Security Account. Section 30027(c)(1) states that "no more than four hundred ninety-six million four hundred twenty-nine thousand dollars ($496,429,000) in total shall be allocated to the Trial Court Security Account, and the total allocation shall be reduced by the Director of Finance, as appropriate, to reflect any reduction in trial court security costs."

Thus, funding allocated for trial court security costs provided by county sheriffs and used by the county to pre-fund the costs of retiree health benefits of existing employees performing the mandate, shall be identified in any reimbursement claim and deducted from any costs claimed under this mandated program.

Conclusion

Staff concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court

[34] Exhibit G, "Retiree Health Care: A Growing Cost for Government," LAO, February 17, 2006.

operations and billed those costs to the state under the Trial Court Funding Program before January 1, 2003, for employees that provide sheriff court security services in criminal and delinquency matters:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement from the 2011 Realignment (Gov. Code, §§ 30025, 30027, Stats. 2011, ch. 40) for this program in fiscal year 2011-2012 shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

Staff Recommendation

Staff recommends that the Commission partially approve the test claim. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the statement of decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 69920, 69921, 69921.5, 69922, 69925, 69926, 69927(a)(5)(6) and (b), and 77212.5 Statutes 1998, Chapter 764 (AB 92); Statutes 2002, Chapter 1010 (SB 1396); Statutes 2009-2010, 4th Ex. Sess., Chapter 22 (SB 13) California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security), Adopted as California Rule of Court, rule 810 effective July 1, 1988; amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Amended and renumbered to Rule 10.810 effective January 1, 2007. Filed on June 30, 2010, by County of Los Angeles, Claimant	Case No.: 09-TC-02 *Sheriff Court-Security Services* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted: September 26, 2014*)

PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on September 26, 2014. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the adopted decision].

Summary of the Findings

This test claim is filed by the County of Los Angeles (claimant) on behalf of counties seeking reimbursement for the cost of retiree health benefits for sheriff employees who provide court security services to the trial courts. Before 2009, the claimant alleges that these costs were funded by the state through the Trial Court Funding Program. The claimant contends that in 2009, the state shifted the cost of retiree health benefits for these employees to the counties and that, pursuant to article XIII B, section 6(c) of the California Constitution and the *Lucia Mar Unified School District* case, reimbursement is required.[35]

[35] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

Article XIII B, section 6(c), was added to the California Constitution in 2004 to expand the definition of a new program or higher level of service as follows:

> A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

The claimant has pled statutes enacted in 1998, 2002, and 2009, and California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8, as added in 1988 and last amended in 2007. Both the Department of Finance (DOF) and Judicial Council of California (Judicial Council) dispute this claim.

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously billed retiree health benefit costs to the state under the Trial Court Funding Program before January 1, 2003, and only for employees that provide sheriff court security services in criminal and delinquency matters:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement from the 2011 Realignment (Gov. Code, §§ 30025, 30027, Stats. 2011, ch. 40) for this program in fiscal year 2011-2012 shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

Government Code section 69926, as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, was repealed to implement the statutory realignment of superior court security funding by Statutes of 2011, chapter 40. Therefore the period of reimbursement for this mandate is from July 28, 2009 to June 27, 2012 only.

COMMISSION FINDINGS

I. Chronology

06/30/10 Claimant filed the test claim.[36]

08/16/10 Judicial Council filed comments on the test claim.[37]

[36] Exhibit A.

08/17/10 DOF filed comments on the test claim.[38]

09/15/10 Claimant filed rebuttal comments.[39]

03/14/14 Commission staff issued the draft staff analysis and proposed statement of decision.[40]

04/03/14 DOF requested an extension of time to file comments and postponement of the hearing.

04/04/14 Commission staff approved an extension of time to file comments to June 6, 2014 and postponed the hearing to July 25, 2014.

05/30/14 DOF requested a second extension of time to file comments and postponement of hearing.

06/04/14 Commission staff approved an extension of time to file comments to August 22, 2014, and postponed the hearing to September 26, 2014.

08/22/14 DOF filed comments on draft staff analysis and proposed statement of decision.[41]

II. Background

A. Before the Lockyer-Isenberg Trial Court Funding Act of 1997, counties had primary responsibility for funding the operation of trial courts, including expenses relating to court security.

Since at least 1883, counties have been responsible for providing law enforcement security to the trial courts.[42] In 1947, Government Code section 26603 was added by the Legislature to require the sheriff to "attend all superior courts held within his county and obey all lawful orders and directions of all courts held within his county."[43] As last amended in 1982, section 26603 stated the following:

> Except as otherwise provided by law, whenever required, the sheriff shall attend all superior courts held within his county provided, however, that a sheriff shall attend a civil action only if the presiding judge or his designee makes a determination that the attendance of the sheriff at such action is necessary for

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[37] Exhibit B.

[38] Exhibit C.

[39] Exhibit D.

[40] Exhibit E.

[41] Exhibit F.

[42] See former Political Code, sections 4176 and 4157 (Stats. 1941, ch. 1110, Stats. 1923, ch. 108, Stats. 1897, ch. 277, Stats. 1893, ch. 234, Stats. 1891, ch. 216 and Stats. 1883, ch. 75).

[43] Former Government Code section 26603 (Stats. 1947, ch. 424).

reasons of public safety. The sheriff shall obey all lawful orders and directions of all courts held within his county.[44]

Before the 1997 Trial Court Funding Act, counties had primary responsibility for funding the operation of trial courts, including expenses related to all non-judicial court personnel, and all operational and facilities costs of the superior, municipal, and justice courts. The state paid the salaries of superior court judges and retirement benefits of superior and municipal court judges, and funded the appellate courts, the Judicial Council, and the Administrative Office of the Courts (AOC). The arrangement was later found to result in disparate funding among California's 58 counties, leading to potential disparities in the quality of justice across the state.[45]

In 1988, the Brown-Presley Trial Court Funding Act (Stats. 1988, ch. 945) was enacted as a grant program that provided significant state funding for trial courts. Beginning in 1989, counties were authorized to opt into the trial court funding program,[46] and those that did, received state block grants and waived their claims for mandate reimbursement for existing mandates related to trial court operations.[47] The block grants were available to pay for "*court operations*," defined in Government Code section 77003 to include the "salary, benefits, and public agency retirement contributions" for "those marshals and sheriffs as the court deems necessary for court operations." In exchange for the block grant funding, counties gave up their fees, fines and penalty revenue. By 1989, all counties opted into the Brown-Presley Trial Court Funding Act.[48]

The Judicial Council adopted Rule 810 of the California Rules of Court in 1988 to implement the Brown-Presley Trial Court Funding Act, and to further define "court operations" as provided in Government Code section 77003. In 1995, Rule 810 was amended to its present-day form. Effective January 1, 2007, Rule 810 was renumbered to Rule 10.810 and amended without substantive change.[49] The rule defines "court operations" to include "the salaries and benefits for those sheriff, marshal, and constable employees as the court deems necessary for court operations in superior and municipal courts and the supervisors of those sheriff, marshal, and constable employees who directly supervise the court security function."[50] Function 8 of the rule

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[44] Statutes 2002, chapter 1010 (the Superior Court Law Enforcement Act of 2002, SB 1396) repealed section 26603 and reenacted the same requirements in Government Code section 69922.

[45] Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7. (Exhibit G.) See also the legislative findings in Government Code section 77100(c), Statutes 1985, chapter 1607, reenacted in Statutes 1988, chapter 945.

[46] Former Government Code section 77004 defined "option county" as, "a county which has adopted the provisions of this chapter for the current fiscal year."

[47] Former Government Code sections 77203.5 and 77005 (Stats. 1988, ch. 945).

[48] Exhibit G, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 9.

[49] The 2007 amendment changed one internal citation in function 11, pertaining to county general services ("indirect costs.")

[50] California Rules of Court, Rule 10.810(a)(3).

further states that court security services deemed necessary by the court "includes only the duties of (a) courtroom bailiff (b) perimeter security (i.e., outside the courtroom but inside the court facility), and (c) at least .25 FTE dedicated supervisors of these activities." The allowable costs included in the state block grant are described in Function 8 of the rule as follows:

- Salary, wages, and benefits (including overtime) of sheriff, marshal, and constable employees who perform the court's security, i.e., bailiffs, weapons-screening personnel;
- Salary, wages, and benefits of supervisors of sheriff, marshal, and constable employees whose duties are greater than .25 FTE dedicated to this function;
- Sheriff, marshal, and constable employee training.

Costs *not* included in the state funding include the following: other sheriff, marshal, or constable employees; court attendant training (Function 10)[51]; overhead costs attributable to the operation of the sheriff and marshal offices; costs associated with the transportation and housing of detainees from the jail to the courthouse; service of process in civil cases; services and supplies, including data processing, not specified above as allowable; and supervisors of bailiffs and perimeter security personnel of the sheriff, marshal, or constable office who supervise these duties *less than* .25 FTE time.

In 1991, the Trial Court Realignment and Efficiency Act (Stats. 1991, ch. 90) increased state funding for trial courts and streamlined court administration through trial court coordination and financial information reporting.[52] The state block grants, however, were not enough to cover all trial court costs.[53] By 1997, counties bore about 60 percent of trial court costs for court operations, as specified, and the state grants funded the remaining 40 percent.[54]

B. The Lockyer-Isenberg Trial Court Funding Act of 1997 transferred responsibility for trial court operations, including expenses relating to court security, to the state beginning in fiscal year 1997-1998.

In 1997, the Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850) removed the local "opt-in" provisions for trial court funding and transferred principal funding responsibility for trial court operations to the state beginning in fiscal year 1997-1998, freezing county

[51] A "court attendant" is a non-armed, non-law enforcement employee of the court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or public safety officer. (Gov. Code, § 69921.) The court may use a court attendant in courtrooms hearing noncriminal and non-delinquency actions. (Gov. Code, § 69922.)

[52] Exhibit G, Judicial Council of California, Administrative Office of the Courts, *Special Report: Trial Court Funding* (1997) page 11.

[53] Exhibit G, Claudia Ortega "The Long Journey to State Funding" California Courts Review, Winter 2009, page 7.

[54] Exhibit G, Assembly Committee on the Judiciary, Analysis of Assembly Bill 233 (1997-1998 Reg. Sess.), as amended March 10, 1997, page 1.

contributions at fiscal year 1994-1995 levels.[55] The Legislature declared its intent in section 3 of the 1997 Act to do the following:

- Provide state responsibility for funding trial court operations beginning in fiscal year 1997-1998.
- Provide that county contributions to trial court operations shall be permanently capped at the same dollar amount as that county provided to court operations in the 1994-1995 fiscal year, with adjustments to the cap, as specified.
- Provide that the state shall assume full responsibility for any growth in costs of trial court operations thereafter.
- Provide that the obligation of counties to contribute to trial court costs shall not be increased in any fashion by state budget action relating to the trial courts.
- Return to counties the revenue generated from fines and forfeitures pursuant to the Government, Vehicle, and Penal Codes to allow counties the opportunity to obtain sufficient revenue to meet their obligation to the state.

In section 2 of the Trial Court Funding Act, the Legislature described the purpose of the law, indicating that the "funding of trial court operations is most logically a function of the state." Section 2 states in relevant part the following:

> (a) The judiciary of California is a separate and independent branch of government, recognized by the Constitution and statutes of this state as such.
>
> (b) The Legislature has previously established the principle that the funding of trial court operations is most logically a function of the state. Such funding is necessary to provide uniform standards and procedures, economies of scale, and structural efficiency and simplification. This decision also reflects the fact that the overwhelming business of the trial courts is to interpret and enforce provisions of state law and to resolve disputes among the people of the State of California.
>
> [¶]
>
> (e) The fiscal health of the judicial system, and the willingness and ability of the judiciary to adopt measures of efficiency and coordination, has a considerable impact on the quality of justice dispensed to the citizens of California.
>
> (f) It is increasingly clear that the counties of California are no longer able to provide unlimited funding increases to the judiciary and, in some counties, financial difficulties and strain threaten the quality and timeliness of justice.
>
> (g) The stated intent of the Legislature to assume the largest share of the funding of trial courts has not been achieved, primarily due to the recent recession and the resulting limitation of state funds. However, there is a clear need to proceed as rapidly as possible toward the goal of full state funding of trial court operations and, accordingly, this measure is a logical and necessary step to achieve the result.

[55] Statutes 1997, chapter 850, section 3.

The Legislature further declared its intent to continue to define "court operations" as the phrase was then defined on July 1, 1996, by Government Code section 77003 and Rule 810 (defined to include the salaries, wages, and benefits for sheriff personnel providing courtroom bailiff and perimeter security services, and their dedicated supervisors, and employee training) recognizing, however, that issues remained regarding which items of expenditure are properly included in the definition of court operations. The Legislature stated its intent "to reexamine this issue during the 1997-98 fiscal year, in the hopes of reflecting any agreed upon changes in subsequent legislation."[56]

To implement the 1997 Trial Court Funding Act, Government Code section 68073(a) was amended to state that "Commencing July 1, 1997, and each year thereafter, no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996."[57] In addition, sections 77200 and 77201 were added to the Government Code to provide the following:

- Beginning July 1, 1997, the state shall assume sole responsibility for the funding of court operations as defined in section 77003 and Rule 810 as it read on July 1, 1996, and allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council.
- In the 1997-1998 fiscal year, each county shall remit to the state in four equal installments, amounts identified and expended by the court for court operations during the 1994-1995 fiscal year. This payment is known as the maintenance of effort (MOE) payment. In addition, each county shall remit a specified amount in fine and forfeiture revenues that the county remitted to the state in fiscal year 1994-1995.
- Except as specifically allowed for adjustments (i.e., if a county incorrectly or failed to report county costs as court operations in the 1994-1995 fiscal year), county remittances shall not be increased in subsequent years.

The Resource Manual on Trial Court Funding prepared by the Judicial Council, dated December 19, 1997, describes these provisions as a "shift of full responsibility to fund trial court operations to the state" as follows:

> ***State solely responsible for funding court operations***
>
> - As of the 1997-1998 fiscal year and every year thereafter, the state has the sole responsibility to fund trial "court operations." Prior to this act, the costs of court operations were shared between the state and the counties.
>
> [¶]

[56] Statutes 1997, chapter 850, section 3(d).

[57] In 2002, section 68073 was renumbered to section 70311. Section 70311(a) currently states the following: "Commencing July 1, 1997, and each year thereafter, no county or city and county is responsible to provide funding for "court operations," as defined in Section 77003 and Rule 10.810 of the California Rules of Court, as it read on January 1, 2007."

- *This shift of full responsibility to the state* was effective July 1, 1997, even though AB 233 is not effective until January 1, 1998 …. [Emphasis added.]

[¶]

State to fund trial courts

- This section relieves counties of any direct responsibility to fund trial court operation costs, as defined. (Gov. Code, § 77200 *shifts that responsibility to the state*). Instead, the county is obligated to pay to the state an amount based on (1) the amount of county general fund money provided for support of the courts in fiscal year 1994-95 (hereinafter identified as "County General Fund Base Amount") and (2) the amount of specified fine and penalty revenues the county remitted to the state in fiscal year 1994-95 (hereinafter identified as "County Fine Base Amount"). [Emphasis added.] [58]

In addition, the 1997 Act deleted requirements formerly imposed on the counties to report and provide for the administration and operation of the courts. The requirement for counties to submit a report to the Judicial Council regarding trial court revenues and expenditures was deleted and, instead, the courts are now required to provide that report.[59] The Act also repealed provisions requiring the county auditor to conduct a biennial audit of the trial court accounts, and shifted the authority to audit the accounts to the State Controller's Office (SCO).[60] Beginning July 1, 1997, the county was authorized to charge the trial courts for all county services provided to the court, "including but not limited to: auditor/controller services, coordination of telephone services, data-processing and information technology services, procurement, human resources services, affirmative action services, treasurer/tax collector services, county counsel services, facilities management, and legal representation."[61] Beginning in fiscal year 1998-1999, "the county may give notice to the court that the county will no longer provide a specific service," and the court may provide a similar notice that it no longer intends to use specified services formerly provided by the county.[62]

The Act further required each county to establish in the county treasury a new Trial Court Operations Fund to operate as a special fund. All funds appropriated in the State Budget Act and allocated to each court in the county by the Judicial Council shall be deposited into the fund. Expenditures made from the Trial Court Operations Fund shall be authorized by the presiding judge, or a designee, and no longer require the approval of the county board of supervisors. The funds may only be used for "court operations," as defined Government Code sections 77003, which as stated above, includes the salary, wages, and benefits of sheriff employees providing

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[58] Exhibit G, Judicial Council of California, Resource Manual on Trial Court Funding, dated December 19, 1997, at pages 48-49.

[59] Government Code section 68113, as amended by Statutes 1997, chapter 850, section 33.

[60] Government Code sections 71383 and 77009, as added and amended by Statutes 1997, chapter 850, sections 34 and 44.

[61] Government Code section 77212(a), as added by Statutes 1997, chapter 850, section 46.

[62] Government Code section 77212(b), as added by Statutes 1997, chapter 850, section 46,

security services to the courts. Counties may bill the trial courts for the direct and indirect costs attributable to court operations.[63]

The Act then requires the Judicial Council, with the concurrence of the DOF and the SCO, to establish procedures to provide for the payment of expenses for trial court operations beginning July 1, 1997.[64] The Judicial Council and its administrative body, the AOC, were given responsibility for financial oversight of the trial courts pursuant to Government Code sections 77202-77208.[65] Under these provisions, the Legislature is required to make an annual appropriation to the Judicial Council for support of the trial courts that meets the needs of the trial courts "in a manner that promotes equal access to courts statewide." The Judicial Council is then required to allocate the funding to the trial courts in a manner that ensures their ability to carry out their functions, promotes implementation of statewide policies, and promotes efficiencies and cost saving measures in court operations, "in order to guarantee access to justice."[66] The SCO apportions trial court payments quarterly based on the Judicial Council's allocation schedule.[67]

Beginning in fiscal year1998-1999, the state's funding of trial court operations was governed by Government Code section 77201.1. That section provides counties additional relief by reducing their MOE payments for court operations.[68] As a result, the MOE payments for counties with a population of less than 70,000 were reduced to $0; the state paid the costs of all court operations in those counties. Only 20 of the largest counties were required to make MOE payments for court operations at a reduced rate. By fiscal year 1999-2000, the MOE payment for the claimant, County of Los Angeles, was reduced from $291,872,379 to $175,330,647.[69] County payments from fine and forfeiture revenues were also reduced in fiscal year 1998-1999.[70]

C. Sheriff court security costs were treated as a component of court operations under the Trial Court Funding Program.

One year after the Lockyer-Isenberg Trial Court Funding Act, Government Code section 77212.5 (Stats. 1998, ch. 764) was enacted to address the scope and type of security services the sheriff's department would provide. Specifically, section 77212.5 provides as follows:

> Commencing on July 1, 1999, and thereafter, the trial courts of each county in which court security services are otherwise required by law to be provided by the sheriff's department shall enter into an agreement with the sheriff's department

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[63] Government Code section 77009, as added by Statutes 1997, chapter 850, section 44.

[64] *Ibid*.

[65] Statutes 1997, chapter 850, section 47.

[66] Government Code section 77202, as added by Statutes 1997, chapter 850, section 47.

[67] Government Code section 77207, as added by Statutes 1997, chapter 850, section 47.

[68] Government Code section 77201.1, as added by Statutes 1997, chapter 850, section 46.

[69] Statutes 1998, chapter 406.

[70] Government Code section 77201.1, as added by Statutes 1997, chapter 850, section 46.

> that was providing court security services as of July 1, 1998, regarding the provision of court security services.

The statute was enacted to clarify that county sheriffs would continue to provide deputies for the trial court security program under contract. The Assembly Floor Analysis for the 1998 statute states the following:

> This bill clarifies that the status quo shall be maintained where the sheriff's department currently provides security services (e.g., bailiffs) to the trial courts as of July 1, 1998. The supporters of this bill are concerned that under current trial court funding law it is unclear how security services shall be provided. This bill requires county sheriffs to continue to provide deputies for trial court security under contract.
>
> Currently county sheriffs provide security services for trial courts in 53 counties. Marshals provide security as court employees in the remaining five counties. The trial courts that employ Marshals are not required to hire sheriffs under this bill.
>
> Currently state appellate courts are funded by the state and security is provided by the California Highway Patrol.
>
> Supporters assert that the bill would ensure a continuity of public safety services in California trial courts.[71]

In 1999, Government Code section 77212.5 was amended to address those five counties (San Bernardino, Orange, San Diego, Shasta, and Merced) in which court security services were provided by the marshal's office rather than sheriff deputies. Historically, court security for superior courts was provided by the sheriff's department and security for municipal courts was provided by the marshal's office. With trial court unification combining superior and municipal court functions, most trial courts consolidated court security services with the sheriff's department. The 1999 statute allows those counties to abolish the marshal's office and transfer the court security duties from the marshal's office to the sheriff's department. Subdivision (b) was added to section 77212.5 to state the following: "Commencing on July 1, 1999, and thereafter, the trial courts of a county in which court security was provided by the marshal's office as of July 1, 1998, shall, if the marshal's office is abolished, enter into agreement regarding the provision of court security services with the successor sheriff's department."[72]

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[71] Exhibit G, Assembly Floor Analysis, Concurrence in Senate Amendments, Analysis of AB 92 as amended August 27, 2008, page 1. See also, Senate Rules Committee, Office of Senate Floor Analyses, Analysis of AB 92, as amended August 27, 1998 (1997-1998 Reg. Sess.) page 1, which states that the bill reflected an agreement that security services would not transfer from the counties to the California Highway Patrol (which would provide security if the state supplied the personnel). The bill was deemed a codification of existing practice.

[72] Statutes 1999, chapter 641 (SB 1196). Today, the sheriff departments in all counties, except Shasta and Trinity Counties, provide security services to the courts. (Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.)

Statutes 2002, chapter 1010, enacted the Superior Court Law Enforcement Act of 2002, which was sponsored by the Judicial Council and the California State Sheriffs Association to clarify the court operations and security costs paid by the state. A letter from the Judicial Council urging the Governor to sign the bill stated the following:

> California Rules of Court, Rule 810, function 8 defines allowable and unallowable state costs for court security, but the details are ambiguous. For example, the rule says that equipment is an allowable cost, but it does not specify what type of equipment. Because Rule 810 does not provide specificity in the areas of equipment and personnel costs, it has been subject to different interpretations across the state.[73]

The 2002 Act addressed the lack of clarity in Function 8 of former Rule 810 through the concept of a "contract law enforcement template," defining the template in Government Code section 69921(a) as "a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927." Government Code section 69927(a) states the Legislature's intent for the Act to develop a definition of the court security component of court operations and identify allowable law enforcement security costs under the Trial Court Funding Program. The statute further states that it not the legislative intent that a sheriff's law enforcement budget be reduced. Government Code section 69927(a) states the following:

> It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget not be reduced as a result of this article. Any new court security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

Section 69927(a)(1) (Stats. 2002, ch. 1010) requires the Judicial Council to adopt a rule establishing a working group on court security. The working group is required to recommend modifications to the template used to determine which security costs may be submitted by the courts to the AOC for payment. Section 69927(a)(1) further states that the template *replaces* the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court as follows: "[t]he template shall be a part of the trial court's financial policies and procedures manual and used *in place of* the definition of law enforcement costs in Function 8 of Rule 810 of

[73] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 9. A similar letter to the Governor from the California State Sheriffs Association is provided as Exhibit 10 to the Judicial Council comments.

the California Rules of Court." (Emphasis added.) Section 69927(a)(5) defines the allowable costs for security personnel services to be included in the template and, for the first time, identifies examples of allowable benefits as follows:

> "Allowable costs for security personnel services," as defined in the contract law enforcement template, means the salary and benefits of an employee, *including, but not limited to,* county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

Statutes 2002, chapter 1010, also repealed Government Code section 77212.5, which required the court and the sheriff or marshal to enter into an agreement for the provision of court security services. In its place, Government Code section 69926 was enacted to require the superior court and the sheriff or marshal's department to enter into an annual or multi-year memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment. By April 30 of each year, the sheriff or marshal shall provide information as identified in the contract law enforcement template to the superior court in that county specifying the nature, extent, and basis of costs, including negotiated and projected salary increases for the following budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature.[74] AOC shall use the actual salary and benefit costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to DOF.[75] Any new security cost categories identified by the sheriff or marshal that are not identified in the template "shall not be operative unless the funding is provided by the Legislature."[76]

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[74] Government Code section 69926(c).

[75] Government Code section 69927(a)(1)(5)(A).

[76] Government Code section 69927(a). Exhibit G, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010, states the procedure as follows: "The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose."

The Judicial Council adopted the contract law enforcement template, effective May 1, 2003.[77] Section I of template identifies the following allowable court security costs: court security personnel approved in the budget or provided at special request of the court; salary, wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security supervisors who spend more than 25 percent of their time on court security functions; and negotiated and projected salary increases. Allowable benefits are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting);

[77] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 13.

extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security equipment; video arraignment equipment; costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

On July 10, 2003, the AOC and the California State Sheriff's Association prepared a memorandum of responses to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[78]

In 2006, requests for security funding from the trial courts for fiscal year 2006-2007 increased by $44 million, eleven percent over the previous fiscal year. According to a report from the AOC to the Judicial Council, dated October 18, 2006, the amount requested was "well in excess of the amount of funding available to address mandatory security cost changes in FY 2006-2007." Thus, the AOC sent surveys to the trial courts that required more detailed information on salary, retirement, and benefit costs of court security personnel, and it became apparent that some counties included retiree health benefit costs in the amounts reported. The AOC took the position that "all items that are not SB 1396 [Superior Court Law Enforcement Act of 2002] allowable were eliminated," and that retiree health care benefits were non-allowable costs and, thus, the AOC deducted those costs from the requests for funding.[79] The Judicial Council adopted the staff recommendation on October 20, 2006.[80]

A number of trial courts took issue with the disallowance of sheriff retiree health benefits from the cost of court operations paid by the state. In January 2007, the Superior Court of Los Angeles County sent a letter to the Administrative Director of the Courts, addressing the shortfall in funding as follows:

> According to AOC management, the inclusion of Retiree Health is "Not appropriate as part of the mid-step salary calculation." Our analysis (Attachment 1) shows the exclusion of the Retiree Health percentage from the reimbursement rates results in a $3.9 million reduction in our total security request.

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[78] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 12.

[79] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 14.

[80] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 15 (Letter from the Los Angeles Superior Court to the Administrative Director of the Courts, dated January 10, 2007).

> Accordingly, the Court intends to adjust the Sheriff's monthly billing to exclude the Retiree Health costs included in its billings. Because the Court has already reimbursed through November 30, 2006, the December billing will include a lump-sum adjustment retroactive to July 1, 2006.
>
> At the last Trial Court Budget Working Group meeting, concerns were expressed by this Court and a number of other trial courts that Retiree Health may have been included in the MOE [maintenance of effort payment of the county]. AOC staff indicated that if Courts could substantiate this claim, funding of this item might have to continue. Our review of this matter identified the attached document (Attachment II), which clearly shows Retiree Health costs were included in the deputy and sergeant rates in FY 1994-95. It is likely that the County will contest this adjustment based on this fact. It is our contention that the cost of Retiree Health should be restored as part of the security budget.
>
> [¶¶]
>
> Further reductions in LASC's security operation would seriously impact the Court's security structure. We have discussed this matter with the Sheriff's Department but do not foresee an easy solution. In meetings with the Sheriff's staff, we have been advised that these reductions may violate not only our preexisting contractual obligations, but also the provisions of the Superior Court Law Enforcement Act of 2002 that require funding to be sought on the basis of actual costs, and which prohibit changes in standards and guidelines that increase a County's obligations for Court operations costs or reduce a Sheriff's law enforcement budget. We fully expect that the Sheriff may initiate litigation concerning these matters and want to take this opportunity to apprise you of this possibility.[81]

The Administrative Director of the Courts responded on January 30, 2007, stating the following:

> First, I believe that the sheriff's post-retirement health costs should be considered for approval as a specific cost pursuant to the procedures established in the Government Code (i.e., Working Group on Court Security should review and recommend that the Judicial Council amend the template, the Council approve the amendment and the legislative and executive branches approve the funding). If these are new costs which have been incurred after 2002, these costs would not be allowable until the executive and legislative branches have adjusted the base budgets of the courts to reflect the new costs. If the legislative and executive branches agree to assume responsibility for these costs, the manner by which they are calculated may be determined by how the legislative and executive branches address the implication of new accounting standards.
>
> Notwithstanding the above process, the payment of retirement health insurance cost for the sheriff's security personnel are authorized if expenditures were included in the Counties Maintenance of Effort Payment (MOE) (which was

[81] *Ibid.*

> established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability. As would be true with any financial obligation, the means of calculating the retirement health insurance cost should be periodically reviewed to ensure that the methodology and calculation is representative of actual costs incurred. Again, the method of calculating such retirement health care costs may be affected by how the legislative and executive branches address the implications of new accounting standards. You have provided documentation dated May 10, 1995 (the base year for calculating the county MOE for state funding) explaining how the county determined the costs of security personnel. Please provide the documentation on the amount in the county MOE dedicated to this cost, documentation that these costs have been paid for all past years, and a schedule of the base funding in your budget for this cost for the years from FY 1999-2000 to FY 2005-06.[82]

Five superior courts (Los Angeles, Contra Costa, Kern, Sacramento, and Santa Clara counties) submitted documentation that they paid the sheriff for the costs of retiree health benefits in the base year 1994-1995. Based on the documentation, the Judicial Council reimbursed these five courts for the costs of sheriff retiree health benefits in fiscal year 2008-2009. The report prepared for the Judicial Council by the AOC on October 8, 2008, notes the one-time funding to these counties and also states that the funding issue for retiree health benefits continues to be pursued as follows:

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since before the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them. The courts have not been funded for these costs the past two years, but the proposal is to use one-time funding from the TCTF and one-time security carryover funding to address these costs in FY 2008-2009, while full state funding to address this issue continues to be pursued.[83]

D. The 2009 test claim statute excludes the cost of retiree health benefits for sheriff employees performing security services for the trial courts from the cost of "court operations" paid by the state beginning July 28, 2009.

The 2009 test claim statute (Stats. 2009-2010, 4th Ex. Sess, ch. 22) was a court omnibus budget trailer bill enacted as an urgency statute effective July 28, 2009, in light of the Governor's declaration of a fiscal emergency.[84] In amending Government Code sections 69926(b), it

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[82] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 16.

[83] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010, Exhibit 17.

[84] Exhibit G, Senate Floor Analysis, Senate Bill 13, 2009-2010 Fourth Extraordinary Session, July 8, 2009.

specified allowable benefit costs for court security personnel and expressly *excluded* retiree health benefits from costs of services payable by the state for court operations. It also defined retiree health benefits that are now excluded to include, but not be limited to, the current costs of future retiree health benefits for either currently employed or already retired personnel. The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)

The 2009 statute also amended Government Code section 69927(a)(6)(A) as follows: "(A) The Administrative Office of the Courts shall use the ~~actual~~ average salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

III. Positions of the Parties and Interested Parties

A. Claimant's Position

The claimant alleges that the test claim statutes and Rule of Court 10.810 impose a reimbursable state-mandated program under article XIII B, section 6 for the costs of retiree health benefits for sheriff personnel who provide security services to superior courts. According to claimant, on July 28, 2009, the state stopped paying for retiree health benefits for these personnel thereby shifting the costs from the state to the counties in violation of the *Lucia Mar Unified School Dist*. case and article XIII B, section 6(c).[85] Claimant includes a declaration with the test claim that estimates the costs of its retiree health benefits at $4,813,476 for 2009-2010, and $4,890,183 for 2010-2011. Claimant also includes cost estimates from the counties of Sacramento, Santa Clara, and Kern. Sacramento County estimated costs of $192,517 for 2009-2010, and $160,892 for 2010-2011. Kern County estimated costs of $69,463 for both 2009-2010, and 2010-2011. Santa Clara County estimated costs of $455,915 for 2009-2010, and $582,768 for 2010-2011. This accounts for four of the five counties affected by the 2009 test claim statute that were reimbursed for retiree health benefits for personnel who provided court security services in fiscal year 2008-2009, as described above in section II. Background.[86]

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[85] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830.

[86] Exhibit A, Test Claim filed June 30, 2010.

Claimant rebuts the Judicial Council's observation that no state law requires the county to pay for retiree health benefits. "All that is required, according to the State Controller's Office "Local Agencies Mandated Cost Manual," is that the '. . . compensation paid and the benefits received are appropriately authorized by the governing board.' And this has been done." Claimant also disagrees with DOF's position that the test claim statutes do not result in a reimbursable state-mandated program.[87]

The claimant did not file comments on the draft proposed decision.

B. Department of Finance Position

DOF argues that this test claim should be denied. DOF states that it "believes the state did not transfer the costs of the retiree health benefits to the counties, and the test claim is not a reimbursable mandate." DOF points out that unlike the case of *Lucia Mar Unified School Dist. v. State of California*, the state was not previously responsible for the retiree health benefits. DOF also states that "costs of the retiree health benefits were not explicitly included in the definition of 'costs of service' in any of the statutory requirements plead by the claimant." Accordingly, DOF argues that the obligation to pay for retiree health benefits is "permissive and not required by law."[88]

DOF filed comments on the draft proposed decision, disagreeing with the staff analysis and arguing that the test claim should be denied for the following reasons:

- The test claim statute does not impose a state-mandated program. Providing retiree health care benefits for sheriff court security employees, is not a program required by the state.
- The test claim statute did not shift fiscal responsibility for funding retiree health benefits from the state to local government. While the state paid the costs of retiree health benefits for a period of time, "it did so voluntarily and absent any legal obligation to do so." Thus, DOF asserts, "the claim should be denied because there is no transfer of fiscal responsibility for a required program."
- Counties imposed the contractual obligation to pay vested retiree benefits on themselves, citing *State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc*. (2007) 152 Cal.App.4th 1386, 1406, which found the "the fact that the state has a contractual obligation to maintain pension benefits does not mean the obligation is one imposed on the state by law. Rather, … it is an obligation the Legislature imposed on itself."
- The counties' discretion to prefund retiree health benefits, or not, determines whether the costs are reimbursable. This local policy decision inappropriately places the ability to receive mandate reimbursement within local control if the benefit costs are otherwise eligible for mandate reimbursement.

[87] Exhibit D, Claimant, Rebuttal Comments filed September 15, 2010.

[88] Exhibit C, Department of Finance, Comments on the Test Claim filed August 17, 2010.

- If the test claim is approved, the SCO may be required to assess the vested nature of the benefits for which reimbursement is sought. The vested nature of the benefits is complicated, fact intensive, and cannot be assumed.[89]

C. Judicial Council Position

The Judicial Council argues that this test claim should be denied for the following reasons:

- The 2009 amendment to Government Code section 69926(b) excluding retiree health benefits from allowable costs merely clarifies existing law for what costs are allowable when a sheriff provides court security services.
- There is no state law requiring the sheriff to pay retiree health benefits to its deputies. Thus, any transfer of costs is triggered by a discretionary decision of the county.
- Even if the costs were not voluntary, increases in costs, as opposed to increases in the level of service, do not result in a reimbursable state-mandated program.
- The claimant has requested legislative mandates that the sheriff be required to provide security to the superior courts and, thus, no reimbursement is required.
- The claimant cannot claim reimbursement for expenses associated with retiree health benefits for sheriff deputies who are already retired and not currently providing services to the courts. The Superior Court Law Enforcement Act of 2002, in Government Code section 69927(a)(6) only authorizes trial courts to pay for benefits of current employees ("Allowable costs for security personnel services, … means the salary and benefits of an employee …..").[90]

The Judicial Council did not submit comments on the draft proposed decision.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> 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 such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[91] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[92]

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[89] Exhibit F, Department of Finance's comments on the Draft Staff Analysis, filed August 22, 2014.

[90] Exhibit B, Judicial Council, Comments on the Test Claim filed August 16, 2010.

[91] *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81.

[92] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[93]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[94]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[95]
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[96]

In 2004, article XIII B, section 6 was amended by the voter's approval of Proposition 1A, which added subdivision (c) to define a mandated new program or higher level of service to include "a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."[97]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[98] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[99] In making its decisions, the Commission must strictly construe article XIII B,

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[93] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

[94] *San Diego Unified School Dist., supra,* 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[95] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835.

[96] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[97] Proposition 1A, November 2004.

[98] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[99] *County of San Diego, supra,* 15 Cal.4th 68, 109.

section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[100]

A. The Commission does not have jurisdiction over the 1998 and 2002 statutes or the California Rules of Court, Rule 10.810(a), (b), (c), (d) and Function 8 (Court Security).

There is no issue regarding the Commission's jurisdiction over Government Code section 69926 and 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22. The test claim was filed June 30, 2010, within one year of July 28, 2009, the effective date of this test claim statute.

The test claim, however, was filed beyond the statute of limitations for the remaining statutes and Rules of Court pled.

Government Code section 17551(c) requires that: "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later."[101] Section 1183 of the Commission's regulations defines the phrase "within 12 months" of incurring costs to mean "by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."

The test claim in this case was filed on June 30, 2010, well beyond 12 months following the effective dates of Statutes 1998, chapter 764 (adding or amending Gov. Code § 77212.5, eff. Jan. 1, 1999), Statutes 2002, chapter 1010 (adding or amending Gov. Code, §§ 69920, 69921, 69921.5, 69922, 69925, and 69927, eff. Jan. 1, 2003), and Rule 10.810, as added in 1988 and last amended in 1997. In addition, there is no evidence in the record to support a finding that the claimant first incurred increased costs as a result of Statutes 1998, chapter 764, Statutes 2002, chapter 1010, or the Rules of Court as last amended in 1997, later than the 12-month period after these laws became effective.

The test claim primarily alleges increased state-mandated costs stemming from Government Code section 69926, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, which excluded retiree health benefits from the costs paid by the state for the sheriff court security services component of "court operations." According to claimant: "This test claim was timely filed within a year of enactment of SB 13 (Chapter 22, Statutes of 2009) which shifted the costs of retiree health benefits from the State to the County on July 28, 2009." [102]

Moreover, Rules of Court are not subject to the reimbursement requirement of article XIII B, section 6. Rules of Court are adopted by the Judicial Council, an agency within the judicial branch, and establish procedures and rules for the courts.[103] Article XIII B, section 6, however,

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[100] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[101] Government Code, section 17551(c) (Stats. 2004, ch. 890) effective Jan. 1, 2005.

[102] Exhibit A, Test Claim filed June 30, 2010, page 17.

[103] California Constitution, article VI, section 6. See also Government Code section 68500 *et seq.*

applies to mandates imposed by "the Legislature or any state agency" and does not extend to requirements imposed by the judicial branch of government.[104]

Accordingly, the Commission does not have jurisdiction over Statutes 1998, chapter 764 (adding or amending Government Code section 77212.5, eff. Jan. 1, 1999), Statutes 2002, chapter 1010 (adding or amending Gov. Code, §§ 69920, 69921, 69921.5, 69922, 69925, and 69927, eff. Jan. 1, 2003), and the California Rules of Court, Rule 10.810(a), (b), (c), (d), and Function 8 (Court Security).

B. Statutes 2009 (4th Ex. Sess.), Chapter 22, Mandates a Partial New Program or Higher Level of Service on Counties Within the Meaning of Article XIII B, Section 6(c) of the California Constitution.

1. Government Code section 69927(a)(6)(A) as amended by Statutes 2009, 4th Ex. Sess., chapter 22, does not impose any mandated activities on counties.

The 2009 test claim statute amended Government Code section 69927(a)(6)(A) to provide that the AOC shall use average costs, rather than actual costs, when determining the funding request for the trial courts to be presented to DOF. That section states the following: "The Administrative Office of the Courts shall use the ~~actual~~ *average* salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance."

This section requires the AOC to act, but does not impose any required duties or costs on counties. Thus, the Commission finds that Government Code section 69927, as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, does not impose a reimbursable state-mandated program on counties.

2. Government Code section 69926(b), as amended by Statutes 2009 (4th Ex. Sess.) chapter 22, imposes a partial new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

The remaining issue in this case is whether the 2009 amendment to Government Code section 69926(b), which excluded the cost of retiree health benefits for sheriff employees providing security services to the courts from the state funding for court operations mandates a new program or higher level of service within the meaning of article XIII B, section 6(c). The Commission finds that section 69926(b), as amended by the 2009 test claim statute, results in a reimbursable state-mandated program pursuant to article XIII B, section 6(c), under the circumstances specified below.

a. Article XIII B, section 6(c) was Added to the California Constitution in 2004 to Expand the Definition of "New Program or Higher Level of Service" to Include a Transfer of Partial Financial Responsibility for a Required Program From the State to Local Agencies.

In 2004, Proposition 1A added subdivision (c) to article XIII B, section 6. Article XIII B, section 6(c) defines a new program or higher level of service to include:

[104] A "local agency" eligible to claim reimbursement is defined to include a "city, county, special district, authority, or political subdivision of the state," and does not include the courts.

> [A] transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.

In its summary of the proposition, the Legislative Analyst's Office (LAO) stated the following:

> The measure also appears to expand the circumstances under which the state would be responsible for reimbursing cities, counties, and special districts for carrying out new state requirements. Specifically, the measure defines as a mandate state actions that transfer to local government financial responsibility for a required program for which the state previously had complete or partial financial responsibility. Under current law, some such transfers of financial responsibilities may not be considered a state mandate.[105]

As indicated by LAO, some transfers of financial responsibility from the state to local government before the adoption of Proposition 1A were determined by the courts to require reimbursement, but only when the state had borne the entire cost of the program at the time article XIII B, section 6 was adopted in 1979 and had retained administrative control over the program until the enactment of the test claim statute. A summary of those cases is below.

i) The shift of funding cases before the adoption of Proposition 1A only found reimbursable new programs or higher levels of service for shifts of financial responsibility for programs funded and administered entirely by the state before the shift.

The line of cases starts with the California Supreme Court's 1988 decision in *Lucia Mar Unified School Dist. v. Honig,* where the court first determined that reimbursement under article XIII B, section 6 is required, not only when the state mandates local government to perform new activities, but also when the state compels local government to accept financial responsibility in whole or in part for a governmental program which was funded and administered *entirely* by the state before the advent of article XIII B, section 6.[106] The statute involved in *Lucia Mar* required the state to operate schools for severely handicapped students. Before 1979, school districts were required by statute to contribute local funding for the education of pupils residing in the district and attending the state schools. These provisions, however, were repealed effective July 12, 1979, when the state assumed full responsibility to fund the state-operated schools. Thus, the state's responsibility to fully fund these state schools existed when article XIII B, section 6 became effective on July 1, 1980, and continued until Education Code section 59300 became effective on June 28, 1991, to require the school district of residence to pay the state operated school an amount equal to ten percent of the excess annual cost of education for each pupil attending a state-operated school.[107]

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[105] Exhibit G, LAO summary of Proposition 1A, August 2004.

[106] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836.

[107] *Id.* at pages 832-833.

The court held that "unquestionably, the contributions called for in section 59300 are used to fund a 'program' within this definition [article XIII B, section 6], for the education of handicapped children is clearly a governmental function of providing a service to the public, and the section imposes requirements on school districts not imposed on all the state's residents."[108] In addition, the program was "new" to local school districts since at the time section 59300 became effective, school districts were not required to contribute to the education of students from their districts at state-administered schools.[109] The court stated the following:

> The fact that the impact of the section is to require plaintiffs to contribute funds to operate the state schools for the handicapped rather than to themselves administer the program does not detract from our conclusion that it calls for the establishment of a new program within the meaning of the constitutional provision. To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B. That article imposes spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing power of local governments. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.[110]

Although the court found a new program, it remanded the claim back to the Commission to determine if school districts are mandated by the state to make the contributions to fund the state-operated schools, or whether school districts had other options for educating these pupils.[111]

In 1997, the California Supreme Court in *County of San Diego v. State* also approved reimbursement based on a statute that shifted administrative and financial responsibility from the state to the counties for the care of medically indigent adults.[112] Medically indigent adults were not linked to a federal category of disability for purposes of receiving federal disability benefits, and lacked the income and resources to afford health care.[113] In 1971, the state extended Medi-Cal coverage to these individuals and, at the time the voters adopted article XIII B, section 6 in 1979, the state administered and bore full financial responsibility for the medical care of medically indigent adults under the Medi-Cal program. In 1982, the state enacted the test claim statute to exclude medically indigent adults from the Medi-Cal program, "knowing and intending that the 1982 legislation would trigger the counties' [existing] responsibility to provide medical care as providers of last resort under [Welfare and Institutions Code] section 17000."[114]

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[108] *Id.* at page 835.

[109] *Ibid.*

[110] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

[111] *Id.* at pages 836-837. The matter was later resolved with the special education test claims.

[112] *County of San Diego v. State* (1997) 15 Cal.4th 68, 91.

[113] *Id*. at page. 77.

The state argued, however, that reimbursement was not required and that the holding in *Lucia Mar* was not applicable as follows:

> The school program at issue in Lucia Mar "had been wholly operated, administered and financed by the state" and "was unquestionably a state program." "In contrast," the state argues, "the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for" it under [Welfare and Institutions Code] section 17000 and its predecessors. [Footnote omitted.] … Thus, the state argues, the source of San Diego's obligation to provide medical care to adult MIPs is section 17000, not the 1982 [test claim] legislation. Moreover, because the Legislature enacted section 17000 in 1965, and section 6 does not apply to "mandates enacted prior to January 1, 1975," there is no reimbursable mandate. Finally, the state argues, that because section 17001 give counties "complete discretion" in setting eligibility and service standards under section 17000, there is no mandate.[115]

The court rejected the state's arguments. The court disagreed with the state's assertion that counties both operated and administered the program that provided medical care to indigents before the enactment of the test claim statute.[116] The court held that under prior law, the Medi-Cal statutes allowed eligible persons a choice of medical facilities for treatment, placing county health care providers in competition with private hospitals.[117] The court further found that the administration of the Medi-Cal program had been the responsibility of various state departments and agencies, citing several cases holding that "the Legislature shifted indigent medical care from being a county responsibility to a State responsibility under the Medi-Cal program."[118] Thus, between 1971 and 1983 when the test claim statute became effective, the court determined that the state administered and bore financial responsibility for the medical care of medically indigent adults under the Medi-Cal program, and that the Medi-Cal program was not simply a method of reimbursing counties.[119] The test claim statute then shifted both the administrative and financial responsibility for the care of adult medically indigent adults to the counties.

The court further rejected the state's argument that because the law gave counties discretion in setting eligibility and service standards under Welfare and Institutions Code section 17000, there was no mandated program. The court agreed there was some discretion in providing benefits to indigents, but that the discretion had "clear-cut limits" that could only be exercised within fixed boundaries.[120] The court determined that counties did not have discretion to refuse to provide

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[114] *Id.* at page 98.

[115] *Id.* at page 91.

[116] *Id.* at page 97.

[117] *Id*. at page 96.

[118] *Id*. at pages 96-97.

[119] *Id.* at pages 97-98.

[120] *Id*. at page 100.

medical care to medically indigent adults following the enactment of the test claim statute;[121] that case law and existing statutes required the care to be the same as that available to non-indigent people receiving health care services in private facilities in the county;[122] and that the state failed to identify any specific services that were not required or could have been eliminated under the governing statutes.[123]

And, despite the argument that the counties' duty to provide care to indigents stemmed from Welfare and Institutions Code section 17000 as added by a pre-1975 statute, the court held that the 1982 test claim statute mandated a "new program" on counties by compelling them to accept financial responsibility in whole or in part for a program for the care of medically indigent adults, "which was funded entirely by the state before the advent of article XIII B."[124]

> Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the entire Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further …." [Citations omitted.] As we have explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. [Citation omitted.] Thus, it was the voters who decreed that we must, as the state puts it, "focus on one phase in the shifting pattern of financial arrangements" between the state and the counties. Under section 6, the state simply cannot "compel [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B …." [Citation omitted.][125]

The *Lucia Mar* and *County of San Diego* holdings, however, were not applied in cases where the state did not administer the program, but instead provided reimbursement assistance to local government for a program fully operated and administered at the local level, which that later ended, resulting in increased local costs. For example, the claim in *County of Los Angeles II* addressed a Penal Code provision that allowed an indigent defendant charged with capital murder to request funds for the payment of investigators, experts, and others expenses necessary for the preparation of his or her defense at trial.[126] For several years after its enactment, the Legislature appropriated funds to reimburse counties for their costs under the Penal Code

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[121] *Id.* at page 104.

[122] *Id.* at pages 104-105.

[123] *Id.* at page 106.

[124] *Id*. at page 98.

[125] *Id*. at pages 98-99.

[126] *County of Los Angeles v. State of California* (1995) 32 Cal.App.4th 805.

provision. In fiscal year 1990-1991, however, no appropriation was made, forcing the counties to pay for the expenses out of their general funds. The counties then filed a test claim for the reimbursement of costs to provide investigators and experts for the defense of indigent criminal defendants in capital murder cases, which was denied by the Commission. The court determined that reimbursement was not required under article XIII B, section 6 on the ground that providing experts, investigators, and other ancillary services to indigent defendants was always required by federal law under the constitutional guarantees of due process under the Fourteenth Amendment and the Sixth Amendment right to counsel.[127] The court also found that there was no shift in costs from the state to the counties because, unlike the case in *Lucia Mar*, the program had never been operated or administered by the state. The court determined that "counties have always borne legal and financial responsibility for implementing the [program]." Thus the program was not a "new program" to counties. The state merely reimbursed counties in their operation of a local program.

> In contrast, the program here has never been operated or administered by the State of California. The counties have always borne legal and financial responsibility for implementing the procedures under section 987.9. The state merely reimbursed counties for specific expenses incurred by the counties in their operation of a program for which they had a primary legal and financial responsibility. There has been no shift of costs from the state to the counties and Lucia Mar is, thus, inapposite.[128]

Finally, *Lucia Mar* and *County of San Diego* were not applied in *County of Sonoma v. Commission on State Mandates*, where the court analyzed whether reimbursement was required for a 1992 statute that reduced the share of property tax revenues previously allocated to counties and simultaneously placed the reduced amount of property tax revenues into the Educational Revenue Augmentation Fund (ERAF) for distribution to K-14 school districts.[129] The counties asserted the ERAF statute shifted a state-mandated new program to counties, citing *Lucia Mar* and *County of San Diego*. The court disagreed, finding that reimbursement was not required on two grounds. First, the court found that the county's tax revenues were not expended, since no invoices were sent, no costs were collected, and no charges were made against the counties. Instead, county revenues were simply reduced under the ERAF statutes. The court held that "[c]ontrary to the conclusion of the trial court, it is the expenditure of tax revenues of local governments that is the appropriate focus of section 6."[130] Second, the court held that *Lucia Mar* and *County of San Diego* did not apply since there was "no shift in this case from a totally state-supported status to a forced sharing on the part of local government. The state has not imposed responsibility for any program that local governments have not always had a substantial share in supporting."[131] The court traced the history of education funding, finding that there has always

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[127] *Id.* at page 815.

[128] *Id*. at page 817.

[129] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264.

[130] *Id*. at page 1283.

[131] *Id.* at page 1287.

been a historical fluidity in the fiscal relationship between local governments and schools. "The state has shifted property tax revenue both from schools to local governments [after Proposition 13, as part of the state's bailout of local government], and, as in this case, from local governments to schools."[132] In its analysis, the court relied on a key holding of the California Supreme Court in the *County of San Diego* case, which stated the following:

> We do not hold that 'whenever there is a change in a state program that has the effect of increasing a county's financial burden … there must be reimbursement by the state.' … Rather, we hold that section 6 prohibits the state from shifting to counties the cost of *state programs for which the state assumed complete financial responsibility* before adoption of section 6. [Emphasis added.][133]

The court concluded by stating that a shift of a percentage of a jointly funded program is not subject to article XIII B, section 6 as follows:

> We do not find a single case, statute, or administrative ruling that indicates the shifting of percentage allocations of financial responsibility for joint state and locally funded programs requires reimbursement to the local government whenever it receives less money than it did in the previous budget year. The critical point in the analysis is that school funding in California was, at the time section 6 became effective, a jointly funded partnership between the state and local governments. These joint budget allocations are not subject to section 6. To hold otherwise would impermissibly cripple the ability of the Legislature to function in the critical area of budget planning.[134]

ii) The voters adopted Proposition 1A in 2004 to add subdivision (c) to article XIII B, section 6 to expand the prohibition against shifts of financial responsibility for required governmental programs to instances where the state had only partial financial responsibility of the program before the shift.

Proposition 1A was a constitutional amendment placed on the ballot by the Legislature (SCA 4) as part of the 2004-2005 budget agreement to protect property tax revenues of local agencies. It was proposed, in part, to address the court's ruling in the *County of Sonoma* case, which as discussed above, denied reimbursement under article XIII B, section 6 for the reduction of county property tax revenue and allocation of that revenue into the ERAF to fund K-14 schools, on the ground that the state had not assumed complete financial responsibility for K-14 education before adoption of section 6.[135] The court in *County of Sonoma* held that article XIII B, section 6 only "prohibits the state from shifting to counties the cost of *state programs for which the state*

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[132] *Ibid*.

[133] *County of Sonoma, supra*, 84 Cal.App.4th at page 1286, citing *County of San Diego, supra*, 15 Cal.4th 68, 99, fn. 20., which also noted that "*[w]hether the state may discontinue assistance that it initiated after section 6's adoption is a question that is not before us*."

[134] *Id*. at page 1289.

[135] Senate Third Reading, Analysis of SCA 4 (Torlakson), as amended July 27, 2004 (2003-2004 Reg. Sess.) page 2.

assumed complete financial responsibility before adoption of section 6."[136] In this respect, Proposition 1A added section 6(c) to article XIII B, to expand the definition of a new program or higher level of service to include situations when the Legislature transfers from the state to a local agency "*complete or partial* financial responsibility for a required program for which the State previously had *complete or partial* financial responsibility."[137]

The interpretation of article XIII B, section 6(c) is an issue of first impression for the Commission. The principles of constitutional interpretation are similar to those governing statutory construction. The aim of constitutional interpretation is to determine and effectuate the intent of the voters who enacted the constitutional provision. To determine that intent, the Commission, like a court, must begin by examining the constitutional text, giving the words their ordinary meaning.[138] In addition, the words must be interpreted in harmony with other relevant portions of the Constitution.[139] In this respect, it is appropriate to apply the same meaning to terms used in a constitutional amendment that are also stated in existing provisions of the Constitution when those terms have been judicially interpreted and put into practice, unless it is apparent from the language used that a more general or restricted sense was intended.[140]

Proposition 1A did not change the overarching principles of article XIII B, section 6, which continues to require a finding that the state has mandated a "new program or higher level of service" on local agencies, resulting in increased costs mandated by the state. In this respect, the courts have been clear that the reimbursement requirement in article XIII B, section 6 is triggered when the statute compels local agencies to incur increased costs mandated by the state for a program that carries out the governmental function of providing a service to the public or, to implement a state policy, imposes unique requirements on local agencies that do not apply to all residents and entities in the state.[141]

> The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the

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[136] *County of Sonoma, supra*, 84 Cal.App.4th at page 1286, citing *County of San Diego, supra*, 15 Cal.4th 68, 99, fn. 20.

[137] Among several other changes, Proposition 1A also prohibited future ERAF shifts to local agencies by amending article XIII, section 25.5 of the California Constitution to prohibit the Legislature from reducing the share of property tax revenues allocated to local agencies below the level required on November 3, 2004.

[138] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409, 418.

[139] *State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 822.

[140] *Sacramento County v. Hickman* (1967) 66 Cal.2d 841, 849.

[141] *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.)

> proponents of article XIII B explained section 6 to the voters: "Additionally, this measure (1) Will not allow the state government to force programs on local governments without the state paying for them." (Ballot Pamp., Amend. To Cal. Const. with arguments to voters, Spec. Statewide Elec. (Nov. 6, 1979) p. 18 …). In this context the phrase "to force programs on local governments" confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities.[142]

Reimbursement is not required whenever a statute or executive order simply results in increased costs for local government.

> Indeed, as the court in City of Richmond [v. Commission on State Mandates (1998)] 64 Cal.App.4th 1190, … observed: "Increasing the cost of providing services cannot be equated with requiring an increased level of service under article XIII B, section 6 … a higher cost to the local government for compensating its employees is not the same as a higher cost of providing an increased level of services to the public."[143]

However, the plain language of section 6(c) expands the definition of a "new program or higher level of service" to whenever the state transfers from itself to local agencies increased financial responsibility for existing programs that provide a service to the public and that have been partially funded, at least until the shift, by state. Thus, the court's specific holding in *County of Sonoma* that denied reimbursement for the ERAF shift because the state never had complete financial responsibility to fund schools, no longer applies.[144]

In addition, to determine if the state's transfer of financial responsibility to local agencies is new or increases the level of service of an existing program, section 6(c) directs the Commission to look at whether the state "previously," had any financial responsibility for the program. The word "previously" is not specifically defined in section 6(c). Before the adoption of Proposition 1A, a shift of financial responsibility for a governmental program from the state to local government was considered "new" and, thus, a "new program," when it followed the fact that the state initially had complete financial responsibility for the program *at the time* article XIII B, section 6 was adopted in 1979, which continued until the enactment of the test claim statute. As indicated by the Supreme Court in the *County of San Diego* case, "[w]hether the state may discontinue assistance that it initiated *after* section 6's adoption is a question that is not before

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[142] *Id*. at page 875.

[143] *Id*. at page 877, fn.12.

[144] This interpretation is consistent with the analysis of Proposition 1A by LAO, which recognized that section 6(c) "may increase future state costs or alter future state actions regarding local jointly funded state-local programs. While it is not possible to determine the cost to reimburse local agencies for potential future state actions, our review of state measures enacted in the past suggests that, over time, increased state reimbursement costs may exceed a hundred million dollars annually." (Exhibit G.)

us.[145] For purposes of interpreting section 6(c), however, it does not make sense to determine the financial responsibilities of a program in 1979 when section 6(c) was added by the voters 25 years later in 2004, which now expands the definition of a mandated new program or higher level of service to include shifts of costs in *existing* programs with shared financial responsibilities.[146] Such an interpretation may ignore many years of legislation enacted after 1979 that impacts an existing program, and adds a limitation to section 6(c), which is not included in the plain language adopted by the voters.[147]

Rather, the dictionary defines the word "previously" as "existing or happening prior to something else in time or order."[148] In addition, recent decisions by the courts have compared the test claim statute with the law in effect *immediately before* the enactment of the test claim statute to determine if a mandated cost is new or increases the level of service in an existing program.[149] Thus, the Commission finds that a test claim statute shifting the financial responsibility of an existing program from the state to the local agencies must be compared to the law in effect immediately before the enactment of the test claim statute to determine if the shift constitutes a new program or higher level of service within the meaning of article XIII B, section 6(c).

b. The Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b) imposes a new program or higher level of service within the meaning of article XIII B, section 6(c).

The 2009 statute added the following underlined language to section 69926(b):

> The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, costs of services, and terms of payment. The cost of

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[145] *County of San Diego, supra*, 15 Cal.4th at page 99, fn. 20 (Emphasis added).

[146] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56, providing that the rules of interpretation of a constitutional provision require a court to look at what the voters intended when they enacted the provision.

[147] *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 301, where the court stated that "To determine this intent [of a constitutional provision], we look first to the plain language of the law, read in context, and will not add to the law or rewrite it to conform to an assumed intent not apparent from the language."

[148] Webster's II New College Dictionary (1986), page 876.

[149] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878, where the court held that "the statutory requirements here at issue – immediate suspension and mandatory recommendation of expulsion for students who possess a firearm, and the limitation upon the ensuing options of the school board (expulsion or referral) – reasonably are viewed as providing a "higher level of service" to the public under the commonly understood sense of that term: (i) the requirements are new in comparison with the preexisting scheme in view of the circumstances that they did not exist prior to the enactment of the [test claim statute]." See also, *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835.

> services specified in the memorandum of understanding shall be based on the estimated average cost of salary and benefits for equivalent personnel classifications in that county, not including overtime pay. *In calculating the average cost of benefits, only those benefits listed in paragraph (6) of subdivision (a) of Section 69927 shall be included. For purposes of this article, "benefits" excludes any item not expressly listed in this subdivision, including, but not limited to, any costs associated with retiree health benefits. As used in this subdivision, retiree health benefits includes, but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel*. (Emphasis added.)[150]

As described in Section II. Background, state law, since 1883, has required the county sheriff to provide court security services to the trial courts. As last amended in 2002, Government Code section 69922 requires the sheriff to attend all criminal and delinquency actions in the superior court held within his or her county, and to attend noncriminal actions *if* the presiding judge makes the determination that the attendance of the sheriff at that action is necessary for reasons of public safety. Providing security services for noncriminal actions at the request of the presiding judge is not a requirement imposed by the state and, thus, not subject to the reimbursement requirements of article XIII B, section 6.[151]

It is undisputed that providing court security services for criminal and delinquency actions of the court is a service required to be provided by the counties. The parties dispute, however, whether Government Code section 69926(b), as amended by Statutes 2009 (4th Ex. Sess.), chapter 22, which excluded retiree health benefits for sheriff employees providing court security services from the state funding provided for court operations under the Trial Court Funding Program, mandates a new program or higher level of service within the meaning of article XIII B, section 6(c).

> *i) Under prior law, the state paid the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters, as long as the cost was included in the county's cost for court operations and properly billed to the state under the Trial Court Funding Program before January 1, 2003.*

The Judicial Council contends that under prior law (the 2002 Law Enforcement Act and the contract law enforcement template), retiree health benefits were not included in the list of state-allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute. The Commission disagrees.

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[150] This provision was repealed by Statutes 2011, chapter 40, as a part of realignment, effective June 27, 2012, so the period of reimbursement for this claim is July 28, 2009 to June 27, 2012 only.

[151] Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)

Immediately before the Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b), sheriff court security was included in the list of services that define trial "court operations" pursuant to Government Code section 77003 and was an allowable cost paid by the state to counties under the 2002 Superior Court Law Enforcement Act (Gov. Code, §§ 69920 et seq.) and the contract law enforcement template. Government Code section 69921.5, as added by Statutes 2002, chapter 1010, required the presiding judge of each superior court to contract with the sheriff or marshal, subject to available funding, for the necessary level of law enforcement services in the courts. Section 69926(b) required that the annual or multiyear memorandum of understanding shall specify the agreed upon level of court security services, cost of services, and terms of payment. Section 69926(c) required the sheriff or marshal to provide information each year to the court specifying the proposed projected costs for the court security budget, including negotiated salary increases for the deputies that provide security services. The court security budget was then subject to the Judicial Council's approval and appropriation of funding by the Legislature.

To standardize billing and accounting practices, the Legislature enacted Government Code section 66227 to identify allowable law enforcement costs after January 1, 2003, the operative date of the 2002 Superior Court Law Enforcement Act. Section 66227(a) states the intent of the Act is to not increase or decrease the responsibility of a county for the cost of court operations for the court security services provided before January 1, 2003. Section 66227(a) further states that any new court security costs permitted by law are not operative unless the funding is approved and provided by the Legislature. The Judicial Council interprets this provision as requiring the court to pay for only those allowable costs that were properly billed under the trial court funding program before the Superior Court Law Enforcement Act of 2002 as follows:

> The court is responsible only for allowable cost categories that were properly billed before the enactment of the Superior Court Law Enforcement Act of 2002. The sheriff may not bill the court for any new allowable cost categories listed herein until the court has agreed to the new cost and new funding has been allocated to the court for this purpose.[152]

Section 69927 then required the Judicial Council to establish a working group on court security to develop a contract law enforcement template that identifies allowable law enforcement security costs. Section 69927(a)(5), as added in 2002,[153] defined "allowable costs for security personnel services" for the template to mean "the salary and benefits of an employee, including, but not limited to," a long list of commonly provided benefits, some required by state or federal law and some which are generally provided to public employees though the bargaining process including "county health and welfare" … and related benefits of law enforcement supervisory and line personnel." The contract law enforcement template became effective May 1, 2003, and identifies the following allowable court security costs for county employees in Section 1: court security personnel approved in the budget or provided at special request of the court; salary,

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[152] Exhibit G, Trial Court Financial Policies and Procedures (FIN 14.01, 6.2 Allowable Costs) adopted by the Judicial Council effective September 1, 2010.

[153] Government Code section 69927(a)(5) was renumbered to section 69927(a)(6) by the 2009 test claim statute.

wages and benefits (including overtime as specified) of sheriff, marshal, constable employees including, but not limited to, bailiffs, holding cell deputies, and weapons screening personnel; salary, wages and benefits of court security supervisors who spend more than 25 percent of their time on court security functions; and negotiated and projected salary increases.

Allowable benefits for employees are listed in section III, the addendum of the template as follows:

> BENEFIT: This is the list of the allowable employer-paid labor-related employee benefits.
>
> County Health & Welfare (Benefit Plans)
>
> County Incentive Payments (PIP)
>
> Deferred Compensation Plan Costs
>
> FICA/Medicare
>
> General Liability Premium Costs
>
> Leave Balance Payout
>
> Premium Pay (such as POST pay, location pay, Bi-lingual pay, training officer pay)
>
> Retirement
>
> State Disability Insurance (SDI)
>
> Unemployment Insurance Cost
>
> Workers Comp Paid to Employee in lieu of salary
>
> Workers Comp Premiums

Section II of the template contains the list of 23 non-allowable costs as follows: other sheriff or marshal employees (not working in the court); county overhead cost attributable to the operation of the sheriff/marshal offices; departmental overhead of sheriffs and marshals that is not in the list of Section I allowable costs; service and supplies, including data processing, not specified in Section I; furniture; basic training for new personnel to be assigned to court; transportation and housing of detainees from the jail to the courthouse; vehicle costs used by court security personnel in the transport of prisoners to court; the purchase of new vehicles to be utilized by court security personnel; vehicle maintenance exceeding the allowable mileage reimbursement; transportation of prisoners between the jails and courts or between courts; supervisory time and costs where service for the court is less than 25 percent of the time on duty; costs of supervision higher than the level of Captain; service of process in civil cases; security outside of the courtroom in multi-use facilities which results in disproportionate allocation of cost; any external security costs (i.e., security outside court facility, such as perimeter patrol and lighting); extraordinary security costs (e.g., general law enforcement activities within court facilities and protection of judges away from the court); overtime used to staff another function within the sheriff's office if an employee in that function is transferred to court security to maintain necessary coverage; construction or remodeling of holding cells; maintenance of holding facility equipment; facilities alteration or other than normal installation in support of perimeter security

equipment; video arraignment equipment; costs of workers compensation/disability payments to disabled sheriff or marshal employees who formerly provided security, while the full costs of those positions continue to be funded by the courts.

Government Code section 69927(b) concludes by stating that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …." As indicated in Section II. Background, Function 8 of Rule 810 previously defined allowable costs for sheriff court security services to include the "salary, wages, and benefits" of sheriff supervisory and line personnel.

The Judicial Council contends that retiree health benefits were not included in the list of allowable employer paid labor-related employee benefits and, therefore, those costs were not funded by the state before the enactment of the 2009 test claim statute. The Judicial Council states the following:

> Although sheriff retiree health benefits are not specifically identified in the list of allowable costs identified in Government Code section 69927(a)(6), the working group could have determined they were allowable because the use of the words [in the statute] "including, but not limited to" preceding the list of allowable items indicates that the Legislature intended the list to be illustrative and not exclusive. [Footnote omitted.] The first version of the Template, [footnote omitted] however, did not allow payment of sheriff retiree health benefits. Section I of the Template, titled "Allowable Cost Narratives," allows for the payment of "Salary, wages, and benefits" for sheriff employees. Section III of the Security Template, entitled "Addendum Narratives," includes a table that states "this is a list of *the* allowable employer-paid labor-related employee benefits." (Italics added.) This wording, in contrast to the use of the phrase "including, but not limited to" in Government Code section 69927(a)(6), makes the list exclusive. [Footnote omitted.] *Retiree health benefits are not included in the list.* Given that the Legislature made the Template the final word on what was an allowable cost, with its adoption, retiree health benefits were not allowable costs.[154]

Although the contract law enforcement template does not expressly list retiree health benefit costs as an allowable cost, it does identify "County Health & Welfare (Benefit Plans)," a broadly worded phrase, as an allowable cost. In addition, retiree health benefit costs are *not* identified in the template's list of *non*-allowable costs. Thus, the plain language of the template is not as clear as the Judicial Council suggests.

"County Health and Welfare (Benefit Plans)" is broad and does have meaning under existing law. When the Legislature directed the Judicial Council to establish the working group to develop the template in light of its definition of allowable costs for security personnel services, there existed in law a comprehensive statutory scheme enacted in 1963 (Gov. Code, §§ 53200, et seq.) authorizing local agencies, including counties, to provide health and welfare benefits to their employees, including benefits for retiree health care. Government Code section 53200(d)

[154] Exhibit B, Judicial Council of California, comments on test claim 09-TC-02, August 16, 2010.

defines "health and welfare benefit" to mean any one of the following: "hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or service basis, and includes group life insurance as defined in subdivision (b) of this section." Section 53201 then authorizes the legislative body of the local agency to provide for any health and welfare benefits, as defined in section 53200, for the benefit of its retired employees.[155] The courts have determined that section 53201 gives local agencies the power to provide their employees "*any* health and welfare benefits" for its officers, employees, and retired employees, with no limitation on the amount or kinds of benefits a local agency may provide.[156] Section 53202 states that the local agency may contract with one or more insurers, health service organizations, or legal service organizations when providing health and welfare benefits. Sections 53202.1 and 53205.2 then provide that the local agency may approve several insurance policies, including one for health, and that when granting the approval of a health benefit plan, the governing board "*shall give preference to such health benefit plans as do not terminate upon retirement of the employees affected*, and which provide the same benefits for retired personnel as for active personnel at no increase in costs to the retired person, provided that the local agency or governing board makes a contribution of at least five dollars ($5) per month toward the cost of providing a health benefits plan for the employee or the employee and the dependent members of his family."[157]

It is presumed that the Legislature was aware of the counties' broad authority to provide health and welfare benefits to employees when it enacted the 2002 Superior Court Law Enforcement Act and defined allowable "salary and benefit" costs for security personnel services to include "county health and welfare" benefits.[158] In fact, the plain language of Government Code section

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[155] The legislative history of Government Code section 53201 was described in an opinion issued by the Attorney General's Office. It states the following:

> Section 53201 was enacted in 1949 (Stats. 1949, ch. 81, §1), initially allowing current officers and employees that opportunity to purchase their own group insurance. In 1957 (Stats. 1957, ch. 944, §2), the Legislature authorized local agencies to pay for the insurance if they so chose, and expanded the coverage to health and welfare benefits generally. In 1963, 'retired employees' (Stats. 1963, ch. 1773, §1) were added to the coverage ….

(85 Ops. Cal.Atty.Gen. 63 (2002).

[156] *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, 654.

[157] Emphasis added. In *Ventura County Retired Employees' Assn. v. County of Ventura* (1991) 228 Cal.App.3d 1594, 1598-1599, the court held that a county's initial decision to furnish health care benefits to retirees is discretionary and that section 53205.2 does not require a county to provide health care benefits to retirees which are equal to those provided to active employees. Rather, section 53205.2 requires only that the county give preference to health benefit plans that furnish retirees and active employees the same benefits at no cost increase to retirees. "Such a 'preference' should only be made if health plans are commercially available and actuarially sound."

[158] *Estate of McDill* (1975) 14 Cal.3d 831, 837.

69927(b), as added by the 2002 Act, shows that the Legislature was aware of the prior definition of allowable costs for sheriff court security services in Function 8 of Rule 810 and that it included *all* costs for salary, wages, and benefits provided by the county for sheriff supervisory and line personnel performing court security services. Section 69927(b) states that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost . . . [in] Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …."

In addition, there is nothing in the phrase "County Health and Welfare (Benefit Plans)," or other language adopted in the template, to suggest that the phrase means something different than the health and welfare benefits authorized by sections 53200 and 53201 for county employees, or that the phrase itself excludes retiree health benefits as suggested in the comments filed by the Judicial Council.

This interpretation is also supported by documents in the record filed by the Judicial Council. Exhibit 12 to the Judicial Council's comments, is a memorandum of responses prepared by the AOC and the California State Sheriffs Association (dated July 10, 2003, *after* the template became effective in May 2003), to court security questions submitted at the "SB 1396" (2002 Superior Court Law Enforcement Act) training sessions. On page 4 of the document is the following question presented by attendees: "Is the payment of premiums for lifetime health benefits in retirement an allowable cost?" The answer provided states the following: "Yes. Payment of retirement benefits, such as health insurance should be locally negotiated."[159]

Exhibit 15 is a letter from the Executive Clerk for the Superior Court for the County of Los Angeles to the Director of the AOC, dated January 10, 2007, with documents attached to the letter showing that the county included retiree health costs for deputies and sergeants, at a rate of 2.780 percent, in fiscal year 1994-1995 (the base year for determining the county's maintenance of effort payment for trial court funding) in its maintenance of effort payments to the state. The letter took the position that each court should be allocated funding for retiree health benefits if the costs were paid by the court in the past. [160]

Exhibit 16 is the response from the Director of the AOC, agreeing that payment of retirement health insurance costs for sheriff security personnel is "authorized to extent the expenditures were included in the Counties Maintenance of Effort (MOE) payment (which was established after the state assumed responsibility for state funding on January 1, 1998), if the court has paid these costs since that time, and if no new method of cost calculation has been adopted which would have the effect of expanding financial liability." Thus, the Director of the AOC agreed that the County of Los Angeles properly billed the court for retiree health benefits for sheriff deputies providing security services before the enactment of the Superior Court Law Enforcement Act of 2002 pursuant to Government Code section 69927(a). [161]

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[159] Exhibit B, Judicial Council, comments on the test claim filed August 16, 2010, Exhibit 12, page 4.

[160] Exhibit B, Judicial Council, comments on the test claim, filed August 16, 2010, Exhibit 15.

[161] Exhibit B, Judicial Council, comments on the test claim, filed August 16, 2010, Exhibit 16.

And finally, Exhibit 17 is a staff analysis from the AOC to the Judicial Council, dated October 8, 2008, recognizing five counties that historically included retiree health costs for sheriff court security in the maintenance of effort contracts as follows:

> Court security retiree health costs of $4.98 million have historically been included in maintenance of effort (MOE) contracts for five courts since the passage of state trial court funding. These five courts have been billed for these costs by the sheriff and have paid for them. [162]

Thus, the Commission finds that under the law immediately preceding the Statutes 2009 (4th Ex. Sess.), chapter 22, the cost of retiree health care benefits for sheriff employees providing court security services in criminal and delinquency matters was an allowable cost of "court operations" paid by the state, as long as the cost was included in the county's cost for court operations and properly billed to the state under the Trial Court Funding Program before January 1, 2003.

Statutes 2009 (4th Ex. Sess.), chapter 22 amended Government Code section 69926(b), effective July 28, 2009, to *exclude* the costs of retiree health benefits from the sheriff court security services component of court operations paid by the state under the Trial Court Funding Program. The section 69926(b) definition of excluded "retiree health benefits" includes, "but is not limited to, the current cost of health benefits for already retired personnel and any amount to cover the costs of future retiree health benefits for either currently employed or already retired personnel."

The Judicial Council asserts that the retiree health benefit costs associated with former sheriff deputies who are already retired were not paid by the state under prior law, since the state did not pay for the health benefits of retired employees under the trial court funding program. Thus, with respect to already retired employees, the test claim statute is clarifying of existing law. The Judicial Council therefore asserts that the retiree health care costs of already retired employees have not been shifted to the counties.

The Judicial Council is correct that under prior law, section 69926(a)(5), as added by the 2002 Superior Court Law Enforcement Act, defined the allowable costs for security personnel services to mean only the salary and benefits of "an employee." No funding was provided by the state under prior law for premium costs provided to already retired employees and their beneficiaries. Thus, the Commission agrees that any current health benefit payments to retirees or their beneficiaries made during the period of reimbursement are not new and have not been transferred by the state.

However, as indicated above, the cost of retiree health care benefits for existing *employees* providing court security services in criminal and delinquency matters was an allowable cost paid by the state as a component of court operations under prior law, as long as the cost was included in the county's cost for court operations and properly billed to the state under the Trial Court Funding Program before January 1, 2003. For those counties, retiree health care costs for employees providing the required security services are now excluded from the cost of "court operations," thus imposing a new cost to counties. Section 69926(b), as amended by Statutes 2009 (4th Ex. Sess.), chapter 22, is not simply clarifying of existing law, as suggested by the Judicial Council. The 2009 test claim statute is a material change in the law.

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[162] Exhibit B, Judicial Council, comments on the test claim, filed August 16, 2010, Exhibit 17.

ii) Section 69926(b), as amended in 2009, transfers partial financial responsibility for providing sheriff court security services for the trial court operations program from the state to the counties and, thus, imposes a new program or higher level of service on counties within the meaning of article XIII B, section 6(c).

DOF asserts that the test claim should be denied because even though counties may see increased costs as a result of the test claim statute, the state did not shift fiscal responsibility from the state to the counties for a required program. Specifically, DOF asserts the following:

> First, the state did not have financial responsibility for the retiree health benefit program and providing retiree health benefits was not a state requirement. … Second, the test claim statute did not place any financial responsibility on local government for payment of the retiree health benefits. The test claim statute only ended the state's agreement to pay those costs. While the state paid those costs for a period of time, it did so voluntarily and absent any legal obligation to do so. This does not equate to the state's having "financial responsibility" within the meaning of section 6(c).[163]

However, the state's payment of retiree health benefits for sheriff employees providing security services to the courts was not simply a method of reimbursing counties for a local program, as suggested by DOF. While it is correct that counties have historically provided security services to the courts with county employees, sheriff court security services in criminal and delinquency matters is a required component of "court operations," which as described below, is a state program that has been payable by the state under the 1997 Trial Court Funding Program pursuant to Government Code section 77003. The primary responsibility for court operations, both before and after the enactment of the 2009 test claim statute, has remained with the state. Yet a portion of the costs for court operations has now been transferred to the counties with the enactment of the 2009 test claim statute.

As described in Section II Background, the 1997 Trial Court Funding Act shifted "full responsibility to fund trial court operations to the state," beginning July 1, 1997. The Legislature determined in the Trial Court Funding Act that "funding of trial court operations is most logically a function of the state;" that state "funding is necessary to provide uniform standards and procedures, economies of scale, and structural efficiency and simplification" to the trial courts; and that "the overwhelming business of the trial courts is to interpret and enforce provisions of state law and to resolve disputes among the people of the State of California."[164] Statutes were enacted to provide that "no county or city and county shall be responsible to provide funding for 'court operations' as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996."[165] Counties provided partial funding for the program based on their costs for court operations in fiscal year 1994-1995, but any increased

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[163] Exhibit F, DOF comments on the Draft Proposed Decision, filed August 22, 2014.

[164] Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850, § 2).

[165] Government Code section 68073 (Stats. 1997, ch. 850); renumbered to section 70311 (Stats. 2002, ch. 1010).

costs for court operations were paid by the state.[166] By 1998-1999, the state provided counties additional relief by reducing their payments for court operations. As a result, the payments for counties with a population of less than 70,000 were reduced to $0; the state paid the costs of all court operations in those counties. Only 20 of the largest counties were required to make payments for court operations at a reduced rate.[167]

When the Legislature enacted the Superior Court Law Enforcement Act of 2002 (SB 1396; adding Gov. Code §§ 69920, et seq.) to clarify the allowable costs paid by the state for the sheriff court security services component of court operations, it continued to pay *all* costs for salary, wages, and benefits provided by the county for sheriff supervisory and line personnel performing court security services, as long as those costs were properly billed by the county before January 1, 2003.[168] The Legislature further clarified in the 2002 Act that "[n]othing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost . . . [in] Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996 …."[169] Under the Trial Court Funding Program, any increases in expenditures for court operations were intended to stay with the state.[170] Thus, the state had the primary responsibility of funding court operations under prior law.

In addition, although the counties continued to provide security services in criminal and delinquency actions of the court after the 1997 Trial Court Funding Act, the level of service provided to the trial courts was no longer within the sole discretion of the county. The level of service was subject to an annual or multi-year memorandum of understanding between the county sheriff's department and the superior court in the county, with funding allocations subject to the approval of the Judicial Council.[171] The county board of supervisors no longer approved expenditures for court operations; the approval was now made by the presiding judge.[172] Counties were also relieved of other administrative responsibilities for court operations, including the duty to submit a report to the Judicial Council regarding trial court revenues and expenditures, which was shifted from the county to the court,[173] and the responsibility to conduct a biennial audit of the trial court accounts, which was shifted to the SCO.[174] Thus, the

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[166] Lockyer-Isenberg Trial Court Funding Act (Stats. 1997, ch. 850, §§ 2 and 3); Government Code sections 77200 and 77201; Exhibit G, Judicial Council of California, Resource Manual on Trial Court Funding, dated December 19, 1997, at pages 48-49.

[167] Government Code section 77201.1, as added by Statutes 1997, chapter 850, section 46.

[168] See analysis in section 2(b), above.

[169] Government Code section 69927 (Stats. 2002, ch. 1010).

[170] Statutes 1997, chapter 850, section 3.

[171] Government Code section 69926(c) (Stats. 2002, ch. 1010).

[172] Government Code section 77009 (Stats. 1997, ch. 850).

[173] Government Code section 68113, as amended by Statutes 1997, chapter 850, section 33.

[174] Government Code sections 71383 and 77009, as added and amended by Statutes 1997, chapter 850, sections 34 and 44.

administrative and financial responsibilities for the operation of the court were no longer with the counties at the time the 2009 test claim statute was enacted.

Although the state was required to assume the financial responsibility for any increases in expenditures for court operations under the Trial Court Funding Program, the 2009 test claim statute excluded the cost of retiree health benefits from the cost of court operations, effective July 28, 2009, shifting partial financial responsibility for the court operations program from the state to the counties. To hold, under the circumstances of this case, that a partial shift in funding of an existing program from the state to the county is not a new program or higher level of service, would violate the intent of article XIII B, section 6. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing services the state believed should be extended to the public in view of the constitutional restrictions on the taxing and spending power of the local entities.[175] The facts in this case are no different than those in *County of San Diego,* where the court found a reimbursable state-mandated program when the state excluded medically indigent adults from the state's Medi-Cal program, transferring the cost of the program to counties under their existing statutory requirement to provide care to indigents as a last resort. Although the state argued, like it does here, that reimbursement is not required because counties have always had the responsibility to provide indigent care, the court disagreed and stated the following:

> Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the entire Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further …." [Citations omitted.] As we have explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. [Citation omitted.] Thus, it was the voters who decreed that we must, as the state puts it, "focus on one phase in the shifting pattern of financial arrangements" between the state and the counties. Under section 6, the state simply cannot "compel [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B …." [Citation omitted.][176]

With the adoption of article XIII B, section 6(c), the state cannot shift from itself to counties financial responsibility, in whole or in part, for a program which was partially funded by the state before the enactment of the test claim statute. Accordingly, the Commission finds that section 69926(b), as amended in 2009, imposes a new program or higher level of service on counties within the meaning of article XIII B, section 6(c) for the partial shift of financial responsibility for providing sheriff court security services for the trial court operations program.

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[175] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

[176] *County of San Diego, supra*, 15 Cal.4th at pages 98-99.

C. The Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

1. The required program here is **not** the payment of benefits, but the responsibility to provide security services for the trial court operations program, which is legally compelled by state law. The cost of retiree health benefits is simply a cost component of the mandated program.

Even though the transfer of financial responsibility for the court operations program is new and increases the level of service provided by counties, DOF and the Judicial Council argue that there is no state law requiring the county to pay retiree health benefits to sheriff deputies since the benefit is subject to local collective bargaining agreements. Thus, they argue that any transfer of financial responsibility is triggered by a discretionary decision of the county and is not mandated by the state.[177]

In order for the retiree health benefit costs to be eligible for reimbursement, the costs incurred must be mandated by the state. Whether a statute imposes a state-mandated program has been the subject of prior litigation. In *City of Merced*, the court held that a statute amending the eminent domain law to require compensation for business goodwill is not a reimbursable cost since the city was not required by state law to obtain property by eminent domain.[178] The program permitting the use of the eminent domain power was voluntary. The court stated the following:

> [W]hether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost.[179]

In *Kern High School Dist.*, the California Supreme Court held that statutes requiring school site councils and advisory committees for certain grant-funded educational programs to provide a notice and agenda of their meetings was not mandated by the state.[180] The Supreme Court determined that school districts had the option of participating in the funded programs and, thus, they were not legally compelled to incur the notice and agenda costs. The court affirmed the holding in *City of Merced*, finding that "the core point . . . is that activities undertaken at the

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[177] In this respect, Finance argues that counties imposed the contractual obligation to pay vested retiree benefits on themselves, citing *State ex rel. Pension Obligation Bond Com. v. All Persons Interested etc.* (2007) 152 Cal.App.4th 1386, 1406, which found the "the fact that the state has a contractual obligation to maintain pension benefits does not mean the obligation is one imposed on the state by law. Rather, … it is an obligation the Legislature imposed on itself." (Exhibit F.)

[178] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[179] *Id.* at page 783.

[180] *Kern High School Dist., supra,* 30 Cal.4th 727, 745.

option or discretion of a local government entity (that is, action undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate …."[181]

Finance and Judicial Council would have the Commission apply *City of Merced* and *Kern High School Dist*. here to deny the test claim. The Commission disagrees.

It is correct that the state does not require counties to provide retiree health care benefits to employees, since counties are authorized to negotiate those benefits with employee groups through the collective bargaining process. (Gov. Code, §§ 3500-3510). It is also correct that a prior decision to provide retiree health care benefits to sheriff employees providing court security services as part of the trial court operations program *may affect* the amount of reimbursement due in this case.

However, the required program here is *not* the payment of benefits, but the responsibility to provide security services for the trial court operations program, and that responsibility is legally compelled by state law. As stated earlier in this analysis, the court in *Lucia Mar Unified School Dist*., held that the fact that the code section in that case required local school districts to contribute funds to operate the state schools for the handicapped, rather than themselves administering the program, does not detract from the conclusion that the statute calls for the establishment of a new program within the meaning of article XIII B, section 6.[182] The court held that "unquestionably, the contributions called for in section 59300 are used to fund a 'program' within this definition [article XIII B, section 6], for the education of handicapped children is clearly a governmental function of providing a service to the public, and the section imposes requirements on school districts not imposed on all the state's residents."[183] In addition, the program was "new" to local school districts since at the time section 59300 became effective, school districts were not required to contribute to the education of students from their districts at state-administered schools.[184] The court further stated that:

> To hold, under the circumstances of this case, that a shift in funding of an existing program from the state to a local entity is not a new program as to the local agency would, we think, violate the intent underlying section 6 of article XIII B. That article imposes spending limits on state and local governments, and it followed by one year the adoption by initiative of article XIII A, which severely limited the taxing power of local governments. Section 6 was intended to preclude the state from shifting to local agencies the financial responsibility for providing public services in view of these restrictions on the taxing and spending power of the local entities.[185]

The Supreme Court did not find that the "required program" was the financial contribution, but the provision of educational services to students. Similarly, the program here requires counties

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[181] *Id*. at page 742.

[182] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

[183] *Id.* at page 835.

[184] *Ibid.*

[185] *Lucia Mar, supra*, 44 Cal.3d at pages 835-836.

to provide sheriff court security services for the court operations program, which undeniably provides a service to the public. A local decision to provide retiree health care benefits to county employees is not a decision that triggers the duty to comply with the trial court operations program. Unlike *City of Merced* and *Kern High School Dist*., counties are required by law to provide sheriff court security services under the trial court operations program for criminal and delinquency matters *regardless* of their local decisions on salaries, pensions, and benefits, including retiree health care benefits.

Moreover, in *San Diego Unified School Dist.*, the California Supreme Court discussed the reach of the *City of Merced* case and rejected extending its holding whenever some element of discretion is involved with respect to employment decisions that affect the costs incurred for a mandated program. The court determined, for example, that the voters who adopted article XIII B, section 6 did not intend that costs related to how many employees a local agency hires could control or avoid reimbursement for state-mandated programs. The court stated the following:

> Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.[186]

Thus, the *City of Merced* and *Kern High School Dist*. cases do not apply here. The cost of retiree health benefits is simply a cost component of the required program to provide security services for the trial court operations program. Article XIII B, section 6, requires that all costs mandated by the state, including all direct and indirect costs of a program, are eligible for reimbursement.[187] As stated in more detail in the section below, the Office of Management and Budget (OMB) Circular A-87 (2 CFR Part 225, Appendix B), a provision contained in all

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[186] *Id.* at pages 887-888.

[187] Government Code sections 17514, 17561.

parameters and guidelines adopted by the Commission, allows reimbursement for salaries and benefits of local government employees, including specified retiree health benefit costs.

Accordingly, the Commission finds that a county's decision to pay retiree health benefits does not defeat the finding that the test claim statute results in costs mandated by the state.

2. The fact that the counties' duty to provide sheriff court security services stems from a pre-1975 statute does not defeat the finding that the test claim statute results in costs mandated by the state.

Moreover, it is not relevant that the counties' duty to provide sheriff court security services stems from a pre-1975 statute.[188] In *County of San Diego*, the state argued that reimbursement was not required when the state excluded medically indigent adults from the state's Medi-Cal program, shifting the duty to care for medically indigent adults to counties pursuant to Welfare and Institutions Code section 17000, a pre-1975 statute. The court held that the test claim statute still mandated a "new program" on counties by compelling them to accept financial responsibility in whole or in part for a program for the care of medically indigent adults, "which was previously funded by the state.[189] The court stated the following:

> Under the state's interpretation of that section, because section 17000 was enacted before 1975, the Legislature could eliminate the entire Medi-Cal program and shift to the counties under section 17000 complete financial responsibility for medical care that the state has been providing since 1966. However, the taxing and spending limitations imposed by articles XIII A and XIII B would greatly limit the ability of counties to meet their expanded section 17000 obligation. "County taxpayers would be forced to accept new taxes or see the county forced to cut existing programs further …." [Citations omitted.] As we have explained, the voters, recognizing that articles XIII A and XIII B left counties "ill equipped" to assume such increased financial responsibilities, adopted section 6 precisely to avoid this result. [Citation omitted.] Thus, it was the voters who decreed that we must, as the state puts it, "focus on one phase in the shifting pattern of financial arrangements" between the state and the counties. Under section 6, the state simply cannot "compel [counties] to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B …." [Citation omitted.][190]

Accordingly, the Commission finds that the Statutes 2009 (4th Ex. Sess.), chapter 22 amendment to Government Code section 69926(b) imposes costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514, for the partial shift of financial responsibility for providing sheriff court security services for the trial court operations program.

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[188] Government Code 69922 (derived from former Political Code sections 4176 and 4157; Stats. 1941, ch. 1110, Stats. 1923, ch. 108, Stats. 1897, ch. 277, Stats. 1893, ch. 234, Stats. 1891, ch. 216 and Stats. 1883, ch. 75).

[189] *Id*. at page 98.

[190] *Id*. at pages 98-99.

3. The retiree health benefit costs eligible for reimbursement as "costs mandated by the state" are (1) the amounts actually paid by the county in the claimed fiscal year to prefund benefits earned by county employees providing sheriff court security services in criminal and delinquency matters in the claimed fiscal year, and (2) the amounts actually paid in the claimed fiscal year to reduce an existing unfunded liability for the health benefit costs previously earned by a county employee providing sheriff court security services in criminal and delinquency matters.

Under mandates law, a county must demonstrate actual costs incurred in a fiscal year to be reimbursed. Increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit are the costs that are eligible for reimbursement.[191] "We can only conclude that when the Constitution uses 'costs' in the context of subvention of funds to reimburse for 'the costs of such program,' that some actual cost must be demonstrated . . . ."[192] In this case, whether retiree health benefit "costs" have actually been incurred and can be demonstrated, will depend on how a county funds retiree health benefits.

Retiree health benefits, like salaries and pensions, are earned during an employee's working years. Several sources indicate, however, that most counties have historically funded these benefits on a "pay-as-you-go" basis *after* the employee retires. If a county has adopted the pay-as-you-go method, the county does not pre-fund retiree health benefit costs in the year services are provided like it does for pensions by making annual contributions to either the normal (or current) cost of the benefit or to unfunded liabilities associated with the benefit, but instead pays premium costs for retiree health benefits as the costs are incurred *after* employees have retired.[193] Thus, the pay-as-you-go method shifts current retiree health benefit costs earned by

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[191] Government Code section 17514; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284; see also, *County of Fresno v. State of California* (1990) 53 Cal.3d 482, 487, where the court noted that article XIII B, section 6 was "designed to protect the tax revenues of local government from state mandates that would require expenditure of such revenues."

[192] *County of Sonoma, supra*, 84 Cal.App.4th at page 1285.

[193] In *Retired Employees Association of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1188, the League of Cities and California State Association of Counties filed amicus briefs stating that "retiree health insurance benefits, unlike pensions, are not funded during the retiree's working years; that most of these benefits have been funded on a pay-as-you-go basis [*after* employees retire]…." This information is consistent with findings of the Public Post-Employment Benefits Commission, established under former Governor Schwarzenegger's Executive Order (S-25-06) dated December 28, 2006. The January 1, 2008 report issued by the Public Post-Employment Benefits Commission states, on pages 24 and 219, that the pay-as-you-go method for funding retiree health costs continues to be the predominate funding strategy used by those agencies and that 78 percent of the agencies do not prefund these benefits. And, finally, the LAO, in its December 19, 2013 review of an initiative for the 2014 ballot that proposes to amend the Constitution related to pensions for state and local governmental employees states the following:

the employee in the current year to future taxpayers.[194] In past years, these costs were reported by the county only after retirement, and were not reflected as a cost or obligation incurred as counties receive employee services each year.

In 2004, however, the Government Accounting Standards Board (GASB) issued statement 45 (GASB 45), which was intended to address the financial reporting of governmental entities using the pay-as-you-go approach for these types of post-employment benefits. GASB 45 requires all government entities, including counties, to start documenting in their accounting and financial reporting statements the unfunded liabilities for post-employment benefits, including retiree health benefits, by December 15, 2008. The liabilities for retiree health benefits, like those for pension systems, will be determined by actuaries and accountants based on assumptions of future health care cost inflation, retiree mortality, and investment returns. "This unfunded liability can be characterized as an amount, which, *if invested today*, would be sufficient (with future investment returns) to cover the future costs of all retiree health benefits *already earned* by current and past employees."[195]

Under GASB 45, government financial statements will list an actuarially determined amount known as an annual required contribution (ARC) for post-employment benefits like retiree health benefits. This contribution includes the following two costs:

> Unlike pension plans, few government employers prefund retiree health benefits. That is, most government employers and employees do not make annual contributions to either the normal cost or unfunded liabilities associated with the benefit. Instead, employers pay premium costs for retiree health benefits as they incur after employees have retired – a method or payment referred to as "pay-as-you-go." Some government employers recently started prefunding these benefits. In 2010-2011, the state paid about $1.4 billion towards these benefits for retired state and CSU employees. We estimate that local employers paid an equal or greater sum for these benefits for their employees and retirees.

[194] Exhibit G, "Retiree Health Care: A Growing Cost for Government," LAO, February 17, 2006. The LAO report states the following:

> The state (and nearly every other public entity nationwide) does not pay its current (or normal) costs for retiree health benefits each year. Consequently, the state fails to reflect in its budget the true costs of its current workforce. Since 1961, the state has been shifting costs to future taxpayers. The tens of billions of dollars in unfunded liabilities now owed by the state is the result of this approach. For this reason, the pay-as-you-go approach to retiree health care conflicts with a basic principle of public finance – expenses should be paid for in the year they are incurred. This principle requires decision makers to be accountable – through current budgetary spending – for the cost of whatever future benefits may be promised.

[195] *Ibid*; see also, Exhibit G, "GASB Statement 45 on OPEB Accounting by Governments, A Few Basic Questions and Answers."

- The normal cost – which represents that amount that needs to be set aside to fund future retiree health benefits *earned in the current year*.
- Unfunded liability costs – the amount needed to pay off *existing unfunded retiree health liabilities* over a period of no longer than 30 years.[196]

GASB 45, however, does not address how a governmental entity actually finances retiree health benefits, since that is a local policy decision. Thus, even though a county is required to report the amount needed to be set aside to fund future retiree health benefits earned in the current year and the existing unfunded retiree health liabilities, a county may continue to actually fund all retiree health benefit costs *after* employee retirements on a pay-as-you-go basis. When that occurs, 100 percent of the retiree health benefit costs will be an unfunded liability payable in future years.[197]

If a county defers payment for retiree health benefit costs until after their employees retire, the amounts reported in the annual financial statements as the county's annual required contribution pursuant to GASB 45 are not considered costs actually incurred by the entity in the fiscal year of reporting. Rather, as described in the case of *County of Orange v. Association of Orange County Deputy Sheriffs*, the unfunded liability simply represents an estimate projecting future contributions necessary to fund the benefit.[198] In *County of Orange*, the court addressed the issue whether the county's estimated unfunded actuarial accrued liability (UAAL) for pension benefits represented a debt subject to the municipal debt limitation imposed by the California Constitution, which prohibits a county from encumbering its general funds beyond the year's income without first obtaining the consent of two-thirds of the electorate.[199] Under the facts of the case, the county approved a pension increase for sheriff deputies to 3 percent at 50 in 2001, and renewed that agreement in subsequent contracts with the employee union for several years. Before adopting the resolution, the county secured an actuarial report that analyzed the financial impact of adopting the 3 percent at 50 formula for all years of service, both past and future, estimating the increase in the county's actuarial accrued liability between $99 and $100 million. A 2007 actuarial analysis concluded that the past service portion of the increased retirement benefit totaled $187 million. In 2008, the county adopted a resolution finding that, despite its prior resolutions increasing benefits, the enhanced benefits were unconstitutional.[200] The court held, however, that the unfunded actuarial accrued liability for the pension benefits did not constitute a debt or liability of the county, but an estimate projecting future contributions necessary to fund the benefit.[201] The court found persuasive a 1982 Attorney General's Opinion, finding that the state's unfunded liability for retirement did not violate the state debt limitation

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[196] *Ibid.*

[197] *Ibid.*

[198] *County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 28, 36-37.

[199] *Id.* at page 33, referring to article XVI, section 18 of the California Constitution.

[200] *Id.* at pages 29-30.

[201] *Id.* at pages 36-37.

provision because the liability was based on estimates with no legally enforceable obligation yet existing, and applied that reasoning to the county's unfunded pension liability.

> In 1982, the Attorney General concluded that the state retirement system's "unfunded liability" did not violate the state debt limitation provision. The Attorney General explained that "[d]etermining how much income to the [state] Fund is necessary to pay all benefits as they become due is the business of actuaries. Actuaries predict future financial operations of an insurance or retirement system by making certain assumptions regarding the variables in the system." (65 Ops.Cal.Atty.Gen. 571, 572 (1982).)
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> The state Public Employees' Retirement System (PERS) actuarial balance sheet showed an "unfunded actuarial liability" above the state debt limitation amount. The Attorney General concluded: "The actuarial term 'unfunded liability' fails to quantify as a legally enforceable obligation of any kind. As previously noted the very existence of such an 'unfunded liability' depends upon the making of an actuarial evaluation and the use of an evaluation method which utilizes the concept of an 'unfunded liability.' Further the amount of such an 'unfunded liability' in the actuarial evaluation of a pension system will depend upon how that term is defined for the particular valuation method employed. Finally the amount of such an 'unfunded liability,' however defined for the method used, depends upon many assumptions made regarding future events such as size of work force, benefits, inflation, earnings on investments, etc. In other words *an 'unfunded liability' is simply a projection made by actuaries based upon assumptions regarding future events. No basis for any legally enforceable obligation arises until the events occur and when they do the amount of liability will be based on actual experience rather than projections."* (65 Ops.Cal.Atty.Gen., *supra*, at p. 574, italics added.) Such calculations did not result in a legally binding debt or liability, but instead provided "useful guidance in determining the contributions necessary to fund a pension system." (*Ibid*.)
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> . . . We find the analysis in the 1982 opinion persuasive, and that analysis supports the conclusion that a UAAL such as the $100 million cited by the County in this case is an actuarial estimate projecting the impact of a change in a benefit plan, rather than a legally enforceable obligation measured at the time of the County's 2001 resolution approving the 3% at 50 formula.[202]

The same reasoning applies to the unfunded projected costs of retiree health benefits that are reported by counties, which have adopted a pay-as-you-go approach, in their annual financial statements prepared in accordance with GASB 45. Those unfunded amounts, like pension projections, are simply estimates prepared by actuaries. With a pay-as-you-go approach, those amounts do not become actual debt or enforceable obligations until after the employee retires. And, as indicated above, amounts paid by a county in a current fiscal year after the employee retires are *not* costs that have been transferred by the test claim statute. Nor are those projected costs considered "actual costs incurred" within the meaning of article XIII B, section 6 because

[202] *Ibid*.

the projected estimates do not require the county to expend its limited tax revenues in the reporting year.[203]

However, some local government employers have recently started to prefund their retiree health benefits, making annual contributions as current year costs.[204] In its comprehensive annual financial report for the fiscal year ending June 30, 2012, the County of Los Angeles reported that the county's contribution during fiscal year 2011-2012 for health care benefits for retirees and their dependents was on a pay-as-you-go basis only. However, in May 2012, the County established a trust account for the purpose of holding and investing assets to prefund the retiree health program. The report states the following:

> The OPEB Trust is the County's first step to reduce its OPEB unfunded liability. It will provide a framework where the Board of Supervisors can begin making contributions to the trust and transition, over time, from "pay-as-you-go" to "pre-funding." The OPEB Trust does not modify the County's benefit programs.[205]

In the County's annual financial report for fiscal year ending June 30, 2013, it reports that the "During FY 2012-2013, the County made contributions to prefund the growing liability for retiree healthcare benefits in the amount of $448.8 million."[206] The report shows a 2012-2013 contribution made by the county in the amount of $889,871 for retiree health benefits for county employees, a portion of which would be applicable to county sheriff employees providing sheriff court security services in criminal and delinquency matters.[207]

Thus, the Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to prefund the future retiree health benefit costs earned in the current fiscal year of an employee providing court security services in criminal and delinquency matters are the costs that are mandated by the state and require the county to expend tax revenues in that fiscal year for court operations. This finding is consistent with the Office of Management and Budget (OMB) Circular A-87 (2 CFR Part 225, Appendix B(f)), a provision contained in all parameters and guidelines adopted by the Commission, which allows reimbursement for only those retiree health benefit costs that are funded for that fiscal year and have been paid to either (a) an insurer or other benefit provider as current year costs or premiums, or (b) an insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.[208]

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[203] *County of Fresno, supra*, 53 Cal.3d at page 487.

[204] Exhibit G, LAO Review of proposed 2014 initiative on the Pension Reform Act, December 19, 2013.

[205] Exhibit G, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2012, pages 79-82.

[206] Exhibit G, County of Los Angeles, Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2013, page 86.

[207] *Ibid*.

[208] Finance argues that the counties' discretion to prefund retiree health benefits determine whether the costs are reimbursable, which inappropriately places the ability to receive mandate

OMB Circular A-87 also allows as a reimbursable cost for retiree health benefits, actual amounts paid by a county in a current fiscal year to an insurer, benefit provider, or trustee to cover any existing unfunded liability attributable to the retiree health benefit costs earned in prior years by county employees providing sheriff court security services in criminal and delinquency matters, if that liability is amortized over a period of years. In this respect, 2 CFR Part 225, Appendix B(f)(4) states that "when a governmental unit converts to an acceptable actuarial cost method and funds PRHB [post-retirement health benefit] costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency." The Commission finds that the amounts actually contributed by a county each fiscal year after the enactment of the 2009 test claim statute to reduce an existing unfunded liability of health benefit costs earned by county employees providing court security services in criminal and delinquency matters are also costs that represent the new program or higher level of service and require the county to expend tax revenues for court operations in that fiscal year.

Accordingly, the Commission finds that Government Code section 69927(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, mandates a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the Trial Court Funding Program before January 1, 2003:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

Current health benefit premiums paid to retirees or their beneficiaries after retirement on a pay-as-you-go basis have not been transferred by the state and do not constitute costs mandated by the state.

4. Offsetting revenue intended to pay for sheriff court security costs, including those costs for retiree health benefits, has been provided by the state for fiscal year 2011-2012.

Statutes 2011, chapter 40, commonly cited as "the 2011 Realignment," created the account structure and allocations to fund realigned local costs in fiscal year 2011-2012. The 2011 Realignment added Government Code section 30025 to create the Local Revenue Fund 2011,

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reimbursement within local control. (Exhibit F.) As described in Section c, this is *not* a decision that triggers the shift of partial responsibility from the state to counties to pay for the court operations program and, thus, has no bearing on whether reimbursement is required. The analysis in this section simply identifies the actual cost that has been shifted in a fiscal year and limits reimbursement to only those costs actually incurred during the period of reimbursement.

which includes the Trial Court Security Account. Funding transferred into the Local Revenue Fund shall be allocated exclusively for the services defined in section 30025(h). Section 30025(h)(1) defines "public safety services" to include "employing ... court security staff." Section 30025(f)(3) states that "the moneys in the Trial Court Security Account shall be used exclusively to fund trial court security provided by county sheriffs." The Act also added Government Code section 30027 to allocate funds to the Controller for the Trial Court Security Account. Section 30027(c)(1) states that "no more than four hundred ninety-six million four hundred twenty-nine thousand dollars ($496,429,000) in total shall be allocated to the Trial Court Security Account, and the total allocation shall be reduced by the Director of Finance, as appropriate, to reflect any reduction in trial court security costs."

Thus, funding allocated for trial court security costs provided by county sheriffs and used by the county to pre-fund the costs of retiree health benefits of existing employees performing the mandate, shall be identified in any reimbursement claim and deducted from any costs claimed under this mandated program.

V. CONCLUSION

The Commission concludes that Government Code section 69926(b), as amended by Statutes 2009-2010 (4th Ex. Sess.), chapter 22, constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6(c) for the following costs incurred from July 28, 2009, to June 27, 2012, only for those counties that previously included retiree health benefit costs in its cost for court operations and billed those costs to the state under the Trial Court Funding Program before January 1, 2003, and only for employees that provide sheriff court security services in criminal and delinquency matters:

- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to prefund the future retiree health benefit costs earned by county employees in the claimed fiscal year who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922; and
- Amounts actually paid in the claimed fiscal year to an insurer, other benefit provider, or trustee to reduce an existing unfunded liability of the county for the health benefit costs previously earned by county employees who provided court security services in criminal and delinquency matters pursuant to Government Code section 69922.

In addition, revenue received by a county eligible to claim reimbursement from the 2011 Realignment (Gov. Code, §§ 30025, 30027, Stats. 2011, ch. 40) for this program in fiscal year 2011-2012 shall be identified and deducted as offsetting revenue from any claim for reimbursement.

All other statutes, rules, code sections, and allegations pled in this claim are denied.

Exhibit I

JUDICIAL COUNCIL OF CALIFORNIA

2255 North Ontario Street, Suite 220 • Burbank, California 91504-3187
Telephone 818-558-3060 • Fax 818-558-3114 • TDD 415-865-4272

October 16, 2014

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Comments on Draft Staff Analysis and Proposed Statement of Decision
Sheriff Court-Security Services, 09-TC-02

Dear Ms. Halsey:

Thank you for the opportunity to comment on the proposed decision on the above-referenced test claim. Based on the authorities and analysis the Judicial Council filed with the commission on August 13, 2010, the council continues to take the position that the commission should deny the test claim in its entirety. The council also joins in the comments submitted by the Department of Finance on August 22, 2014, in response to the commission's draft staff analysis.

Respectfully submitted,

Michael I. Giden
Supervising Attorney

MIG/jfs

cc: Mr. Martin Hoshino, Administrative Director, Judicial Council
Ms. Jody Patel, Chief of Staff, Judicial Council
Mr. Curtis L. Child, Chief Operating Officer, Judicial Council
Ms. Deborah C. Brown, Chief Counsel, Judicial Council

DECLARATION OF SERVICE BY EMAIL

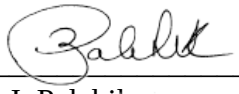
I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 17, 2014, I served the:

Judicial Council of California Comments
Sheriff Court-Security Services, 09-TC-02
Government Code Sections 69920 et al.
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 17, 2014 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/17/14

Claim Number: 09-TC-02

Matter: Sheriff Court-Security Services

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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