

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

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DATE: November 29, 2004

SUBJECT: 2005–2006 Legislative Agenda: Conceptual Proposals (Action Required)

Issue Statement

The Judicial Council has established critical and broad-ranging objectives in its current Operational and Strategic Plans. In many instances, these objectives require legislative action in order to be carried out. In addition to the several proposals for sponsored legislation that the council will consider at its December 10 meeting, additional critical legislative proposals are in development.

While it may not be feasible or advisable for the council to pursue legislation on all of these items in 2005-2006, as each proposal is fully developed, the PCLC, along with the Chairs of the Executive and Planning Committee and the Rules and Projects Committee, should consider each based on the current fiscal, legislative, and policy context.

Recommendation

Office of Governmental Affairs staff recommends that the council approve the following proposals in concept, and direct the Office of Governmental Affairs to coordinate council review and approval of individual proposals when they are fully developed. These proposals represent the key legislative priorities for the council in the near and medium-term. At upcoming council meetings, the Policy Coordination and Liaison Committee will provide status information about all proposals for sponsored legislation.

Rationale for Recommendation

1. Court Facilities: Seismic Issues

Concept: The Judicial Council should sponsor legislation to modify the standards that currently prohibit the transfer of any court facility that is rated level V. This proposal will need to address multiple and cross-cutting issues: a strong statewide facility program; an appropriate financial arrangement for the state as well as counties; fiscal accountability to the public; and public safety for all court users.

The Trial Court Facilities Act of 2002 (SB 1732 (Escutia), Stats. 2002, ch. 1082) requires the state to reject the transfer of responsibility for any court facility that is rated a level V, VI, or VII for seismic safety. The AOC's seismic assessment program finds that 147 court buildings are level V, approximately 60 percent of the total statewide court area. The conservative cost to improve these buildings, both court and non-court components, to an acceptable transfer level is \$1.4 billion.

In current fiscal conditions, few counties have any funds to correct deficiencies, with many local courthouse construction fund accounts already encumbered or depleted. In the same fiscal situation, the state has limited resources at this time to contribute to the correction. Some counties are simply refusing to attempt any correction and do not appear to plan to transfer these court facilities. The incentive to be relieved from Government Code 70311 to provide suitable and necessary facilities may not be sufficient to outweigh the costs of correcting the seismic deficiencies.

A bifurcated court facility system in which half or more of the facilities remain under county responsibility and the remainder fall under the Judicial Council will increase the disparity across the state in physical court conditions and limit a court's ability to operate more effectively and efficiently. The council's capital outlay program could only be directed towards those counties or portions of counties where responsibility does transfer, again endangering those gains made towards providing equal access to justice throughout the state.

2. Facilities Bond

Concept: The Judicial Council should sponsor legislation to place a courthouse bond on the ballot in 2006.

The Task Force on Court Facilities identified 90 percent of existing buildings in need of significant maintenance, repair, or renovation. Of the 451 facilities catalogued by the task force; 23 facilities were in trailers, over 80 percent were constructed prior to the 1988 seismic codes, 30 percent are 40 years or older, 25 percent do not provide a space for assembled jurors. If funded over twelve years, the average annual need in 2005 dollars is \$313 million.

The Trial Court Facilities Act of 2002 established new filing fees and penalty assessments for deposit in the State Courthouse Construction Fund. The annual revenue to the Fund is estimated to be \$82 million in 2005 and while this revenue will address some of the need for capital investment in court facilities, a substantial commitment of funds is necessary to fully address the needs identified by the task force. The use of bond financing allows the judicial branch to secure the necessary funds to construct and renovate court facilities and is consistent with the recommendations of the Task Force on Court Facilities and will further the goals of the Trial Court Facilities Act of 2002.

3. SJO conversion

Concept: The Judicial Council should sponsor legislation as follows:

The council would identify 150 SJO positions eligible for conversion based on criteria including the ratio of SJOs to judges in each court and the courts' overall need for judicial officers. These positions eligible for conversion would be listed in the legislative proposal.

SJO positions on the list of 150 would be converted to judge positions when (1) a commissioner or referee voluntarily vacates one of the positions on the list, or (2) the Governor appoints as a judge an SJO in a court that has a position eligible for conversion.

In 2000 the Judicial Council, in conjunction with the National Center for State Courts, studied the use of court commissioners and referees in California. That study noted that commissioner and referee positions were created and funded at the county level to address courts' need for judicial resources when new judgeships were not created through the legislative process. In the ten-year period from 1989-1999, the total number of judges in California increased by one percent (from 1460 to 1479), while the total number of commissioners and referees increased by 60 percent (from 250 to 401). Statewide, commissioners and referees make up 22 percent of the Superior Court bench.

When courts do not have enough judges, they must assign commissioners and referees to act as temporary judges; in that capacity commissioners and referees exercise the full power of judges, rather than the more limited duties within their statutorily defined scope of authority. Commissioners and referees act as temporary judges so often that, as stated in the National Center for State Courts' report to the council, they are, "simply judges under a different title." In response to these findings, the council in 2000 adopted a policy emphasizing that the primary role of subordinate judicial officers (SJOs) is to perform subordinate judicial duties, as delegated by the courts and described by statute. At the same time, the council adopted a policy supporting the conversion of SJO positions to judgeships in courts that use SJOs as temporary judges because of a shortage of judges. The council's policy is based on the principle that full public accountability requires the courts to provide judges to hear the serious and complex matters that are reserved to them by law.

The concept described above appropriately balances multiple interests: The legislature retains the authority to create new judicial positions, and the Governor retains full appointment discretion. An SJO in a court with a position eligible for conversion is not an "automatic" conversion, and no commissioner or referee will lose his or her position solely as a result of this legislation.

4. State Appropriations Limit for Supreme Court, Appellate Courts, and Administrative Office of the Courts

Concept: The Judicial Council should pursue a change in the Budget Act to apply a year-to-year change based on the State Appropriations Limit to all appropriate parts of the judicial branch budget beginning in budget year 2006-07.

Government Code section 77202, enacted as part of the 2004 Budget Act, provides for the budget request to be adjusted for operating costs based upon a computation of the year-to-year percentage change in the annual State Appropriations Limit. This change seeks to protect the trial courts' operating budgets and provide for a reliable source of budget growth to cover the necessary increases that trial courts face each year.

The base budgets of the Supreme Court, Courts of Appeal, and the Administrative Office of the Courts have been adversely affected by the state's ongoing fiscal crisis. An increase based on SAL would significantly assist in achieving stable funding for the judicial branch, and would require the branch to appropriately manage and account for the funding it receives.

5. Judges' Retirement: key priorities

Concept: The Judicial Council should sponsor legislation to eliminate the judge's 8 percent contribution to retirement after 20 years of service, regardless of the judge's age. In addition, staff recommends that the Judicial Services Advisory Committee obtain an actuarial analysis of a change to the JRS retirement formula that would allow a JRS judge to retire with fewer than 20 years of service. Depending on the results of that analysis, the proposal for JRS II could be expanded to also allow a similar flexible retirement option for JRS judges.

The council should identify key judicial retirement-related proposals to pursue in the 2005-2006 legislative session. The Judicial Services Advisory Committee and the PCLC have already recommended a proposal that will allow JRS II judges to have the option to receive a defined benefit retirement after at least 10 years of service and age 63. (See item 14A.) The council should consider a similar proposal for JRS judges. Further actuarial analysis is needed to determine the costs that might be associated with changing the formula within JRS to allow judges to retire with fewer than 20 years of service at age 63 or 60.

Also, JRS members continue to express concern about the requirement that they continue to contribute 8 percent of salary per year to their retirement even after they have reached the maximum retirement benefit level. This unusual feature provides a strong incentive for judges to retire as soon as they have served for 20 years. A proposal to eliminate the 8 percent contribution is consistent with the goal of retaining experienced judges and

rewarding long service. Instead of providing an incentive to retire the moment a judge is eligible, the JRS should seek to keep experienced judges serving longer.

6. Compensation and benefits for judges: salary and local benefits

Concept: The Judicial Council should inform the Legislature and the Governor about the significant concerns the branch has regarding adequate judicial compensation and seek a salary increase when feasible. The council should also sponsor legislation to permit the state to offer enhanced benefits to judges. The goal would be to increase benefits in counties that do not currently offer supplemental judicial benefits.

As part of the Judicial Council's ongoing commitment to seeking an adequate compensation package for all judges, the council should determine the feasibility of securing a salary increase for judges in 2005. While this issue is generally highly dependent on the state's overall fiscal climate, at a minimum the council should inform the Legislature and the Governor about the significant concerns the branch has about adequate judicial compensation. Attracting highly qualified attorneys from all areas of legal practice and slowing the flight from the bench of experienced judges is integral to the strength of the branch. Depending on the extent of the state's fiscal recovery, a salary increase for judges should be considered for 2005 or 2006.

In addition, the council should seek to reduce the disparity among local benefit packages throughout the state. While judges' salaries are set in statute and are consistent statewide by court type, the wide range of supplemental benefits offered in individual counties results in a vast disparity in total compensation among judges. The Judicial Council should seek to ensure that current local benefit packages will be maintained, but that judges in counties that do not now offer supplemental benefits would be permitted to receive additional benefits.

7. Miscellaneous: Court Operations

Concept: The Judicial Council should consider other proposals for sponsored legislation for improvements to court operations.

Miscellaneous court operations-related proposals are expected to include revisions to the Tort Claims Act and amendments allowing employees of the Administrative Office of the Courts to establish, staff and maintain a nonprofit corporation or other tax-exempt entity, if those activities are exclusively directed at research and educational programs authorized by the Judicial Council for the support of the judicial branch.