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## REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 25, 2011

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**Title**

Judges Retirement System II: Subordinate  
Judicial Officer Service Credit and Pre-  
Retirement Death Benefits

**Agenda Item Type**

Action Required

**Effective Date**

N/A

**Rules, Forms, Standards, or Statutes Affected**

Gov. Code, §§ 75506.5, 75591

**Date of Report**

January 26, 2011

**Recommended by**

Policy Coordination and Liaison Committee  
Hon. Marvin R. Baxter, Chair

**Contact**

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### Executive Summary

The Policy Coordination and Liaison Committee (PCLC) recommends that the Judicial Council cosponsor legislation with the California Judges Association (CJA) to amend the Judges Retirement System II (JRS II) statutes to (1) allow JRS II members who previously served as subordinate judicial officers (SJOs) to purchase JRS II service credit for a fraction of their SJO years; and (2) allow a spouse or other beneficiary of a JRS II member who is entitled to pre-retirement death benefits to opt for benefits that have a lower dollar value and/or to waive his or her share of the benefits, and allow the balance to pass to another designated beneficiary.

### Recommendation

The Policy Coordination and Liaison Committee recommends that the Judicial Council cosponsor legislation with the California Judges Association to amend Judges Retirement System II (JRS II) in the following manner:

1. Amend Government Code section 75506.5 to allow a judge who is a member of JRS II to purchase any part of his or her years of service as a subordinate judicial officer at the actuarially equivalent cost of that benefit increase;
2. Amend Government Code section 75591 to allow a surviving spouse or other beneficiary of a judge who is a member of JRS II and dies before becoming eligible to retire to receive either the balance of the judge's monetary credits or three times the judge's annual salary paid in monthly installments over three years; and
3. Amend Government Code section 75591 to allow a surviving spouse of a judge who is a member of JRS II and dies before becoming eligible to retire to waive his or her share of the death benefit.

The text of the proposed amendments is attached at page 5.

### **Previous Council Action**

On December 10, 2004, the Judicial Council approved council sponsorship of a legislative proposal to reform the defined benefit formula for JRS II to allow judges with at least 10 years' service as a judge to retire at age 63. The council confirmed that position several times over the following years. The council has worked continuously with CJA to obtain a reform of this nature to JRS II but has been unable to obtain legislative support for such a proposal because of fiscal concerns and a focus on the potential unfunded liabilities in other pension systems. On December 2, 2005, the Judicial Council approved cosponsorship with CJA of a legislative proposal that would have allowed judges in JRS II who retire before they are eligible for a normal retirement to receive an actuarially equivalent annuity in lieu of a lump sum payment of their monetary credits. That legislation was not enacted because of concerns raised by CalPERS with regard to administration of such annuities.

### **Rationale for Recommendation**

Making even these very small improvements to JRS II will promote recruitment of high-caliber justices and judges and provide them with the tools they need to plan for their families' financial security. Each of the proposed amendments would accomplish different objectives in enhancing the functioning of the current provisions of JRS II at no cost to the state or JRS II members.

These minor changes will provide additional flexibility in retirement and financial planning for members of JRS II and their survivors, thereby improving the ability of the branch to attract and retain the most qualified and diverse judiciary.

### **Allowing SJOs to purchase partial service credit**

Current law authorizes a judge who was an SJO to elect to purchase service credit for all of the time he or she served as a full-time SJO, provided that the judge is not receiving or entitled to receive a retirement benefit for that period of service. To receive this credit in JRS II, the judge must pay into JRS II a sum equal to the actuarial present value of the increase in benefits obtained from the additional service. Because of the JRS II formula (3.75 percent per year of

service), the cost of purchasing this time is very high. For a judge who was an SJO for many years, the cost may be prohibitive, and the purchase may result in accrual of service credit in excess of the maximum benefit (75 percent of salary). These financial disincentives may deter some well-qualified SJOs from seeking judicial appointment and thereby eliminate strong candidates from the pool of possible judicial candidates. The modification proposed by CJA for council cosponsorship would allow a judge to purchase any part of his or her years of service as an SJO so that each judge considering this option would have the flexibility to make the choice that is most financially sound for him or her.

### **Surviving spouse or other beneficiary benefit when a judge dies before being eligible to retire**

Under current law, the surviving spouse or other beneficiary of a JRS II member who dies prior to becoming eligible for normal retirement receives the larger of (1) three times the judge's annual salary or (2) the amount of monetary credits that the judge had accrued at the time of death. The former amount must be paid out as a lump sum over a 36-month period. In some cases this is financially detrimental for the surviving spouse or other beneficiary because the lump sum payment is subject to income tax as it is paid, while the monetary credits can be deposited in a tax-deferred retirement savings plan for the use of the spouse at a later date. This proposal would allow the spouse or other beneficiary to choose either benefit, without regard to which is larger, according to his or her financial interests.

### **Waiving surviving spouse benefit when a judge dies before becoming eligible to retire**

A judge's surviving spouse is statutorily entitled to the death benefit described above when the judge dies prior to becoming eligible for normal retirement, but there is no provision for designating an alternate beneficiary. This proposal would allow the spouse to waive his or her right to the benefit and designate an alternate beneficiary, which would in turn would allow more flexibility in making appropriate financial plans.

### **Comments, Alternatives Considered, and Policy Implications**

While the Judicial Council has not been successful to date in accomplishing significant benefit reforms in JRS II because of the state's fiscal situation and concerns about pension liabilities for other public employees, the modest nature of these proposals and their nominal fiscal impact to the state should allow them to receive more favorable consideration by the Legislature and the Governor.

### **Implementation Requirements, Costs, and Operational Impacts**

The operational impacts of these changes would largely affect the JRS II unit within CalPERS. The only impacts for the judicial branch would be training staff who assist judges with inquiries about retirement benefits to make them aware of these changes.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

Goal I of the Judicial Council's 2006–2012 strategic plan, Access, Fairness, and Diversity, identifies the following policy that would be advanced by this proposal:

6. Collaborate with other branches of government and justice system partners to identify, recruit, and retain highly qualified appellate court justices, trial court judges, commissioners, referees, and other members of the judicial branch workforce, who reflect the state's diversity.

Furthermore, the current operational plan identifies the operational objective of promoting “a state judiciary that reflects California’s diverse population.” One of the desired outcomes of this objective in the operational plan is 6b, “[i]mproved judicial compensation, retirement plan, and benefits to encourage a diverse applicant pool.” While this proposal makes only very modest improvements in this area, it would advance this objective by improving the flexibility of JRS II, particularly with regard to attracting SJOs to apply for judicial appointments and thereby move the branch in the direction of that specific outcome.

## **Attachments**

Government Code sections 75506.5 and 75591 at page 5

Section 75506.5 of the Government Code would be amended to read as follows:

1 § 75506.5.  
2

3 (a) Any judge may ~~elect, by written election~~ make a one-time written election, filed with the  
4 board at any time prior to retirement, to make contributions, and receive service credit for; any  
5 number of whole years or all of the time he or she served as a full-time subordinate judicial  
6 officer, as defined in Section 71601, prior to becoming a judge, excluding any period of time for  
7 which the judge is receiving, or is entitled to receive, a retirement allowance from any other  
8 public retirement system.

9 (b) A judge electing to receive credit for service pursuant to this section shall, at the time of  
10 filing his or her election, pay into the Judges' Retirement Fund II, a sum equal to the actuarial  
11 present value of the increase in benefits due to the additional service. The amount shall be  
12 determined by the board in accordance with this section.  
13  
14

15 Section 75591 of the Government Code would be amended to read as follows:

16  
17 § 75591  
18

19 (a) Except as provided in (c), A surviving spouse of a judge who dies before becoming eligible  
20 to retire pursuant to subdivision (a) of Section 75522 shall may elect to receive either of the  
21 following, and if the surviving spouse does not make such an election within 90 days, then he or  
22 she shall receive the greater of one of the following:

23 (1) The judge's monetary credits determined pursuant to Section 75520, including the  
24 credits added under subdivision (b) of that section computed to the last day of the month  
25 preceding the date of distribution.  
26

27 (2) Three times the judge's annual salary at the time of his or her death. The amount shall  
28 be paid in equal monthly installments for a period of 36 months.  
29

30 (b) If there is no surviving spouse, the greater of the amounts prescribed election authorized in  
31 subdivision (a) shall be paid to may be made by the surviving children of the judge; or if none, to  
32 by the judge's designated beneficiary, or if none, to by the judge's estate, and if the beneficiary  
33 or beneficiaries or estate provided by this subdivision do not make such an election within 90  
34 days, then he or she or they or the estate shall receive the greater amount of the benefits  
35 prescribed in subdivision (a).  
36

37 (c) A judge may, at any time, designate a beneficiary other than his or her spouse to receive the  
38 benefits provided in subdivision (a) by a writing filed with the board, so long as his or her spouse  
39 submits a notarized affidavit to the board waiving such benefits to which he or she otherwise

40 would have been entitled to under this section and does not revoke that waiver prior to the time  
41 the benefit payment(s) begin.