

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

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**Report**

TO: Members of the Judicial Council

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SUBJECT: Report to the Legislature: Historical Analysis of Disparities in  
Judicial Benefits (Sen. Bill X2 11) (Action Required)

Issue Statement

Senate Bill X2 11 (Stats. 2009, ch. 9, § 6) requires the Judicial Council to submit a report on or before December 31, 2009, to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary, analyzing statewide inconsistencies in judicial benefits.

Recommendation

Staff recommend that the Judicial Council, effective December 15, 2009, approve the attached report for submission to the Legislature in compliance with Senate Bill X2 11.

Rationale for Recommendation

The disparities presented by benefits that are provided by some courts and counties to superior court judges (supplemental benefits) have existed for decades. But the issue was highlighted recently in litigation challenging the provision of supplemental benefits by the County of Los Angeles to judges of the Superior Court of Los Angeles County, when the Court of Appeal found that the record before it did not establish that the benefits provided by the County of Los Angeles had been sufficiently prescribed by the Legislature as required by article VI, section 19 of the California Constitution. (*Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630.)

In response to that decision, on February 15, 2009, the Legislature passed SBX2 11, and on February 20, 2009, Governor Schwarzenegger signed it into law. SBX2 11 preserves the status quo for existing supplemental benefits by authorizing counties and courts to provide such benefits to judges “on the same terms and conditions” as were in effect on July 1, 2008. SBX2 11 also allows counties to terminate benefits with 180 days’ notice to the affected judges and the Administrative Director of the Courts. Benefits cannot be terminated, however, before the end of a judge’s current term of office. Enactment of SBX2 11 allowed hundreds of superior court judges who had accepted their appointments to the bench with an expectation of a compensation package that includes both state and supplemental benefits to continue to receive the supplemental benefits, at least for the duration of their terms of office.

SBX2 11 did not authorize any new benefits and was not intended to be a global solution; it simply preserves the status quo for an undefined period. SBX2 11 also requires the Judicial Council to report to the Legislature on the statewide inconsistencies in judicial benefits. The report is intended to precipitate and inform a comprehensive, long-term solution.

The attached report begins with a history of judicial compensation, including salaries and benefits, because the inconsistencies in judicial benefits result from the historical development of judicial compensation and funding of trial courts generally. Moreover, the legislative reforms of judicial salaries over the past 50 years serve as a useful model for considering future legislative reform of judicial benefits.

In analyzing the data collected from the 58 superior courts, the report draws four broad conclusions:

1. About 90 percent of superior court judges serve in courts where some form of supplemental benefits is provided, which demonstrates the widespread acceptance of the need for and appropriateness of providing judges with a better benefits package than that currently provided by the state.
2. The variance among supplemental benefits provided to superior court judges in California is the result of the individual history of each court and county and is not based on any rational or consistent statewide plan or formula.
3. The disparity among judges can be significant. Some judges receive no supplemental benefits while others receive a supplemental benefits package worth approximately \$50,000 a year.
4. Supplemental benefits make the overall compensation structure for judges inconsistent and, in some cases, result in justices of an appellate court receiving lower compensation than judges of a trial court in the same geographic area.

These inconsistencies and disparities in the benefits packages offered to judges in the state of California likely have an impact on the state's ability to continue to attract and retain high-quality judges, who are necessary to maintain a fair and impartial judicial branch. Moreover, the ability of the state to diversify the bench to reflect the rich diversity of California's population is impaired by the more robust compensation packages provided to public sector attorneys by local governments and to attorneys in the private sector.

The report concludes by stating that the Judicial Council will further examine the impact of judicial compensation, particularly with respect to judicial benefits, on the recruitment and retention of the judiciary. The report commits the Judicial Council, upon completion of this work, to reporting its findings and, if appropriate, recommending options for reforming judicial benefits in order to move toward a more consistent approach that would better attract and retain a highly qualified and diverse judiciary.

Recognizing the fiscal challenges confronting the judicial branch and all of state government, California nonetheless must plan for the long-term strength and vitality of its judiciary so that the people of California continue to have broad and equal access to high-quality justice throughout the state.

#### Alternative Actions Considered

No alternatives were considered because the Judicial Council is required by statute to submit the report.

#### Comments From Interested Parties

Previous drafts of the report, substantially similar to the proposed draft, were submitted for review and comment to several groups within the judicial branch.

The first draft was submitted to two working groups for review and comment. The first working group was convened specifically for that purpose and included two justices from the Courts of Appeal, presiding judges from nine superior courts, and two judges from the superior courts. The judges came from a diverse selection of courts that included courts in which judges received supplemental benefits—funded either by the court or county or both—and courts in which judges received no supplemental benefits. The judges came from all three regions of the state and from both larger and smaller courts. A roster of working group members is attached at pages 5–7. The second working group was the previously established Working Group on Judicial Pay and Benefits. Both working groups commented on the organization and content of the initial draft report, the tables included in the report, and the summaries of data attached to the report; many of these suggestions were incorporated into the next draft.

In response to other comments, the report was further revised to (1) specifically state that the council is committed to and supportive of further review of the impact that the

disparities in benefits have on judicial recruitment and retention and is supportive of a resolution to the inconsistencies over time, and (2) clarify that the data regarding courts in which the judges do not receive supplemental benefits addressed only the superior courts and did not include justices of the appellate courts, none of whom receive supplemental benefits.

The revised report was submitted for review and comment to the Policy Coordination and Liaison Committee on November 12, 2009, and to the Executive and Planning Committee on November 23, 2009. Neither committee requested changes.

#### Implementation Requirements and Costs

The report includes a commitment that the Judicial Council will study the impact of the disparities in judicial benefits on the ability of the state to recruit a highly qualified and diverse judiciary and will make, if appropriate, recommendations to the Legislature regarding options for reforming judicial benefits in order to move toward a more consistent approach. As part of that effort, staff anticipate that the working group convened to advise on the drafting of this report will be expanded to include interested parties from outside the judicial branch (e.g., representatives of public sector attorney organizations and bar associations). The participation of these stakeholders is necessary to pursue any legislative solution to the current disparities, especially in this challenging fiscal environment.

Staff time will be the single largest resource required for this effort, although there will also be incidental costs associated with the working group and the possible expense of a consultant if outside assistance is needed to conduct the necessary study.

The report does not state a deadline for the council to make its recommendations to the Legislature, although it is anticipated that the council will do so within the next year or two.

Attachment