



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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May 1, 2014

Hon. Mike Gatto, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2332 (Wieckowski), as amended April 10, 2014—Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – May 7, 2014

Dear Assembly Member Gatto:

AB 2332 creates the Trial Court Employment Protection and Governance Act. It requires trial courts to comply with a series of requirements and restrictions when entering into personal services contracts. Judicial Council has significant concerns about the cost of the bill, but at the request of the author, we are working with staff and the bill sponsors on possible amendments, and have no official position at this time.

Fiscal Impacts

Renewals and Extensions as of January 1, 2015: The effective date of the bill, if signed into law, would be January 1, 2015. The bill prohibits the renewal or extension of existing contracts entered into by the courts beyond the effective date of the law unless those renewals or extensions satisfy the criteria for contracting contained in AB 2332. This provision has the effect of impacting courts that previously entered into contracts and made budget decisions in good faith reliance on laws in effect at the time those decisions were made. Based on contract information we gathered from nine courts, the fiscal impact of this provision would cost nearly \$2 million over their current costs.

Impact on Court Reporting Services: The application of the bill to new, renewed, or extended contracts for court reporter services will negatively impact those courts that contract for court reporter services even if they have not historically had court reporters on staff. This provision, based on its placement at the introduction of the bill, would require all contracts for court reporter services to be put through a competitive public bidding process. Based on calculations provided by 20 courts, the costs associated with replacing pro tem court reporters with equivalent staff would be \$4.42 million per year.

The combined direct fiscal impacts of AB 2332 on the trial courts are conservatively estimated at \$6.4 million each year.

Burden on Limited Court Resources

Beyond the mathematic calculations of fiscal impacts, AB 2332 imposes burdens on the use of technology for data management and reporting. Courts have been attempting to automate services such as filing, document retrieval, payments, court reporting, and others to improve customer services, become more efficient, and save money. Savings from automation have allowed courts to allocate funds to those services and programs that cannot be automated. AB 2332 could discourage future technology innovation by eliminating the ability of courts to contract out for automated and personal services that would be less expensive than retaining employees. Additionally, AB 2332 could be used to undo existing automation by clawing back contracts that are up for extension or renewal. Fiscal impacts to courts are difficult to calculate and are compounded by the likely reduction in services that would accompany a reduction in court service automation.

Further, the terms of AB 2332 require significant reporting for personal services contracts. The branch already is subject to myriad reporting, data tracking, and audit requirements. Provisions within AB 2332 add to this burden, and in so doing, detract resources away from the personnel and services that provide direct public access to courts and to justice. Below is a description of the kinds of reporting, data tracking and audit requirements the branch undertakes.

Internal Audits

The Office of Internal Audit Services was established in 2001 in response to the Trial Court Funding Act of 1997, which made the AOC responsible for financial oversight of the trial courts. Auditing responsibilities of this unit include all entities within the judicial branch. The unit conducts risk assessments, develops audit programs, performs audits of the judicial branch entities, assists state and external auditors, and recommends improvements based on audit results, thereby playing a key role in meeting the branch's fiscal oversight responsibilities.

The California Judicial Branch Contract Law (JBCL; Stats. 2011, ch. 10): The JBCL requires the courts, the Judicial Council, the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (HCRC) to comply with provisions of the code related to the procurement of goods and services. The JBCL applies to contracts, including purchase orders, entered into or amended on or after October 1, 2011. The JBCL directed the Judicial Council to adopt and publish a *Judicial Branch Contracting Manual* that sets out policies and procedures that the courts, the AOC, and the HCRC must follow and that are consistent with the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*. (It should be noted that the *Judicial Branch Contracting Manual* was developed in a timely manner and became effective on October 1, 2011.) The requirements for judicial branch procurement and contracting activities under the JBCL and *Judicial Branch Contracting Manual* were often in addition to those in the *Trial Court Financial Policies and Procedures Manual* (TCFPPM), AOC policy 7.2.1 Procurement of Goods and Services, and other applicable policies. Other features of the JBCL include the following:

- Local contracting manuals: The JBCL requires each court, the AOC, and the HCRC to adopt a local contracting manual for procurement and contracting.

- Reporting: The JBCL imposes mandatory periodic reporting requirements on the Judicial Council concerning contracting activities of the judicial branch.
- Audits: The State Auditor is required to audit the trial courts to assess their implementation of the JBCL. The State Auditor is also required to audit the appellate courts, the AOC, and the HCRC to assess their implementation of the JBCL. The first round of audits is to be completed by the end of 2013, and then periodically thereafter. And finally, the State Auditor has undertaken an extensive audit of the Administrative Office of the Courts to determine how the courts' funding is managed and allocated. This audit should be available by the end of this calendar year.
- Large contracts: The JBCL requires that the courts, the AOC, and the HCRC notify the State Auditor, in writing, within 10 business days of entering a contract with a total cost estimated to be more than \$1 million. Contracts for administrative or infrastructure IT projects with total costs estimated to be more than \$5 million also are subject to the review and recommendations of the California Technology Agency.

Legislative reports: The judicial branch currently prepares nearly three dozen reports annually, totaling more than 4,500 pages, for submission to the Legislature, some of which are due biennially and quarterly.

Additionally, AB 2332 imposes a reporting requirement for courts that enter into contracts between July 1, 2014 and December 31, 2014, the six months preceding the bill's date of enactment were it signed into law. As a result of requiring courts to report retroactively rather than through an urgency clause that would make the provisions effective upon signing, courts will face additional unknown, but potentially significant, costs to comply with this provision.

Please let me know if I can provide additional information.

Sincerely,

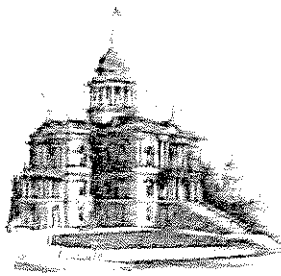


Cory T. Jasperson
Director

CTJ/AL

Attachments

cc: Members, Assembly Appropriations Committee
Hon. Bob Wieckowski, Member of the Assembly
Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance



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In and For The County of Placer
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September 20, 2013

David Lanier, Chief Deputy Legislative Secretary
Office of Governor Brown
State Capitol, First Floor
Sacramento, CA 95814

Mr. Lanier,

Thank you for the opportunity to clarify the facts surrounding the Superior Court of Placer County's decision to move from employee court reporters to the use of a court reporting firm in February 2013. We understand that this court's decision, a decision that was difficult and made only due to the severity of the financial challenge facing this court, has led to some concern and has been stated as the reason for AB 566. We appreciate the opportunity to provide additional information as the Governor considers whether to veto this Legislation.¹ Before providing the facts surrounding the process by which that specific decision was made, some context is necessary.

As a result of a combination of reductions in state funding, unfunded retirement and benefit cost increases, contractual obligations to employee organizations, and other inflationary cost increases, this court has faced significant budget shortfalls each year since FY 2009/2010. Below are a few of the largest efforts taken by this court between FY 09/10 and into FY 12/13 to balance expenses with revenues:

- Discontinued valuable programs like Youth Peer Court, Family Law and Domestic Violence Case Management Programs, and programs supporting families in high-conflict child custody cases and reducing operating hours for our Family Law Facilitator & Self-Help Center;
- Limited access of the public to the court by reducing clerk's office hours by two hours on Fridays, closing at 1:00 pm, in FY 2012/2013;
- Instituted limited service days – where only emergency matters are handled and all but one clerk's office and courtroom are closed – 12 days in FY 2011/2012 and 8 days in FY 2012/2013;

¹ Presiding Judge Alan V. Pineschi has separately sent a letter to Governor Brown expressing the Superior Court of Placer County's opposition to AB 566 and requesting that Governor Brown veto the legislation.

- Closed two trial courtrooms in July 2009 and severely reduced use of a third courtroom;
- Reduced non-judicial positions by 45%, including more than 50 staff subject to layoff (this includes all reductions through the end of FY 12/13, including the decision on court reporters); and
- Laid off the Court's lone Traffic Referee and one of the court's four legal research attorney positions.
- Furloughed employees each year from FY 2009/2010 through FY 2012/2013 and required all employees to pay the full employee share of retirement.

This list of cuts and reduced services should provide some understanding of the depth of the impacts in services provided by our court.

In the summer of 2012, as the court looked for additional solutions to extreme funding shortfalls, few options remained. Entering FY 12/13, before making the decision on court reporter services, staffing had already been reduced by approximately 30% - with no reduction in court reporter staffing. Decisions on limited service days and a reduction in hours had already been made. Impacts on the public of these decisions were apparent, such as a nearly three hour wait time to speak to a clerk in family law for example.

In the process of this court's across-the-board review of all budget items, the court undertook an analysis of the cost of delivery of mandated court reporter services. Please note that our court long ago eliminated court reporters for civil trials, family law hearings, and other non-mandated matters. On preliminary review, it appeared there was the potential for substantial savings of taxpayer money by contracting for required court reporter services - a method already utilized by one of our neighboring courts for many years. Further, the court's negotiated contract with our labor union *specifically allowed for privatization of a court function* and how existing employees would be compensated if laid off as a result of such action.

To determine whether any actual savings could be achieved, the court issued a public request for proposals on September 10, 2012 with proposals due October 15, 2012. The court reviewed those proposals for completeness and minimum qualifications. Interviews were held with the top scoring firms and those firms had cost proposals opened and scored. The court prepared a cost benefit analysis that identified *\$600,000 annually in savings* for the court by transitioning to a court reporter firm.

The court asked to meet with our union prior to making any decision on a potential contract and privatization of this function. The court and union met in November 2012. The court and union discussed potential salary concessions by the existing employees and also mutually concluded that the requirements within our MOU related to privatization of a function had been met. On December 3, 2012, the court notified the union that a decision had been made to privatize this function and that existing court reporters would be subject to layoff in early-February 2013. Following this notification, the court and union continued to discuss potential concessions by the employee court reporters. This included an offer by the employees to take a significant pay reduction. Unfortunately, despite this offer, the savings proposed by the union and employees did not reach the savings that could be achieved by the move to a court reporting firm.

There have been three primary complaints raised by some regarding our contract. First, there is a claim that our costs will rise under this contract. That is not accurate. The court's contract with the third party is for three years with the potential for two one-year extensions. The contractor has *no ability to increase rates* during the term of this contract.

Second, there is a claim that our transcript rates will increase. This is not accurate. Transcript rates are set in statute. The amounts paid for transcripts to the court reporters working under the vendor are the same amounts paid for transcripts when the court reporters were employees.

Third, there is a claim that the court reporters provided by the vendor will not be qualified. This is not accurate. The court reporters provided by the vendor must be certified by the same organization that certified those previously employed by the court.

Moving to a private firm to provide court reporting services was an extremely difficult decision. However, the fiscal climate under which all of us in California government now operate demands that these difficult decisions are made. If it had not been this decision, the court *would have laid off additional clerk's office and courtroom staff*, resulting in direct impacts on access to justice. This was not a rash or hasty decision, but one that weighed the needs for access to justice, our employees, and the public. This was a decision, no matter how difficult, to preserve access to justice to the greatest extent possible while 'operationalizing' the new fiscal reality.

Thank you for your time and attention. Should you, or anyone in your office, have any questions, please do not hesitate to contact me at the number above.

Sincerely,

/s/

Jake Chatters
Court Executive Officer

EXAMPLES OF SERVICE-BASED IMPACTS

In responding to the amendments to AB 566 post-Senate Appropriations, courts provided significant information relative to the impacts they anticipate if the bill is signed into law. AB 566 applies retroactively not only to contracts in place prior to the legislation's effective date, but to any services "historically performed by trial court employees." In other words, the bill now applies to any work ever ("historically") done by court employees. Consequently, the bill will likely reduce services to the public in a wide range of areas as well as restrict staffing and management decisions that allow courts to serve the public as effectively as possible.

Impacts on Technology (document scanning, records and data management)

Overview: If courts must forego current or future contracting relationships for technological services, they will be unable to apply advances in technology to serve more people more quickly, and will have to reallocate funds to new staff that would otherwise have gone toward critical services. Consequently, court users will experience increased service delays, drastically reduced services, and/or continue to struggle with significant barriers to service.

San Diego Superior Court, traffic citation input

"Before the spring of 2012, court employees input traffic citations into the court's electronic traffic system. The typical court backlog for citation data entry was up to 4 weeks, meaning that citations were received from law enforcement agencies, but not entered into the case management system for up to 4 weeks. To the "customer" what that meant is that s/he couldn't look up their ticket on the Online Payment System, couldn't pay their ticket, and didn't receive a courtesy notice with payment information and options for 4+ weeks after they received the citation. This resulted in more phone calls to the court and more people showing up in person, and the court couldn't help them because their cases weren't entered into the case management system yet.

"In spring of 2012, the Court entered into a contract with a private vendor for traffic citation data entry. The contractor currently enters all citations within 48 or 72 hours. If the court was required to end this contract and have court staff perform this task, the delay in input could be longer than the aforementioned 4 weeks since the vacancy rate is currently higher now (27%) than it was at the point in time (17%).

"These eliminated positions would primarily need to be replaced with positions that are not directly helping the public in business offices or courtrooms (e.g., payroll clerks)... The court would need to consider things such as closing entire facilities and consolidating criminal and traffic departments into a single location (currently the four divisions each have criminal and traffic departments). This would be a last-resort as it would impose a significant burden on prosecutors, attorneys, law enforcement, and the public. Other things we would need to consider include closing additional civil courtrooms and converting others to criminal to help

with mandatory deadlines in criminal cases; reducing or closing civil harassment clinics and clinics to assist self-represented litigants in family court so that resources can be diverted to mission-critical matters; and further reductions to business office and phone hours. In short, we would have to look at everything.”

San Mateo Superior Court; jury and traffic notices printing, processing, and mailing

“Historically, and perhaps over 10 years ago, the county printed the summonses and court employees stuffed and mailed the envelopes. The contractor uses a highly automated bulk mailing process, which would be prohibitively costly to purchase for the relatively small volume of jury summonses that are mailed. The court would be forced to hire 4-5 FTE jury office specialists to conduct the same service in house. If replacement funding is not provided, jury trials would be significantly delayed as the few staff left in jury division would have to stuff and mail the summonses, in addition to responding to jury calls, and processing jurors. Delays in jury trials could delay civil and criminal trials by up to 1 year. To ensure constitutional rights to speedy trials in criminal cases, civil trials would be sacrificed, which would delay those trials indefinitely...”

San Bernardino Superior Court, scanning/archiving

“If the Court could not contract for [scanning and archiving] services, it would need to hire staff to provide those services. Present staffing is critically insufficient to take on any additional duties. For example, it is estimated that in order to take on the work performed by Softfile, [document imaging and scanning service], the Court would need to hire a minimum of 40 additional staff.

“The Court has planned to use the new funding [San Bernardino’s share of the \$60 million augmentation] to avoid closing the Joshua Tree District Courthouse, which serves more than seventy-five thousand residents in a remote southeastern section of the county. If closed, residents would have to commute up to one and one half hours, each way, to access the nearest courthouse.

“If the new funding is diverted to hire additional staff, it is likely the Court would also have to close a minimum of an additional six (6) courtrooms, countywide, which means delayed court dates, longer wait times and longer commutes to courthouses.

“It is also planned that the new funding will be used to hire additional temporary self-help staff. At present, there are no in-person self-help services available in the Barstow, which means residents of the easternmost one-third of the County have virtually no access to in-person self-help services. The Court will also have to abandon these expansion plans if it must hire staff to take on the work now handled by contractors.”

San Francisco Superior Court – traffic citation data entry

“[As a result of AB 566] our Court would terminate contracted data entry of traffic citations...The Court would have no choice but to replace our data entry vendor with staff because traffic citation data must be entered into our traffic case management system to process traffic cases. However, because this would be an unfunded mandate, the Court would have no choice but to reduce services in other areas to meet this new expense. Examples of reduced areas would be: reduced self-help services to self-represented litigants; closed courtrooms; increased wait times for trials and hearings; and increased wait times (longer lines) at clerks’ offices.”

County residents will be unable to benefit from any advances in technology going forward in the handling of their legal matters

Imperial Superior Court

“Records and data management is currently performed by staff. Similar to document imaging, as technology advances, the court sees an opportunity for cost savings in this area that can only be achieved if courts are continually provided the flexibility to purchase in the most efficient manner possible.”

Marin Superior Court

“If AB 566 is signed into law and the Court is required to hire 1 additional FTE official court reporter the Court will have to make a proportionate reduction in other areas of court operations which will impact public access, including the self-help center and investments in technology to better serve the public.”

Collections

Overview: If courts are unable to engage in contracting to enhance their collections services, they will lose revenue or fail to maximize their potential to generate revenue. This in turn could (1) prevent courts from hiring more employees; (2) degrade services including victim compensation; and/or (3) increase, or at least maintain, the dependence of courts on the legislature for funding.

Contra Costa Superior Court

“This [service] is not a Rule 10.810 function. We could be forced to terminate the service and stop collections...[Termination of collections would result in] significant reduction in distribution of revenue to the State, the county, local agencies, and the Court until the county could re-create the service and begin collections again. In addition there would be a reduction in compensation to victims of crime.”

Imperial Superior Court

“The Court employs five people in the collection department and has contracts with 3 collection agencies. Enhancing collections requires that we use the best mix of employees plus outside services to collect the greatest amount of past due fines. The mix of employees versus contractors will change over time as the market responds to needs. Courts should have the greatest flexibility possible to collect the greatest amount State, County and City revenue.”

Mono Superior Court

“We have used trial court employees to do [a] modest collections program, [and] we are just now contracting with an outside collection agency to take over a good deal of the collections functions so we can expand our collections efforts...[W]ith the anticipated additional revenues of an enhanced collections program, we actually added a part-time employee collection’s clerk position to work with the outside collection agency among other collections duties and tasks. Our court is counting heavily on the projected revenue from our enhanced collection program to cover our budget shortfall. If we are not allowed to maximize our enhanced collection revenue by minimizing our costs through the use of an outside collection agency, we will have two very significant impacts, furloughs and continuing vacancies in staff positions...

This will result in the closure of our courthouses to the public for 12 court days in the year.”

Self-help and family law facilitation

The following are of particular relevance to the impact of AB 566 on self-help and family law services: (1) how these services are funded; (2) retaining qualified personnel to deliver these services; (3) these services seem to be most significantly affected by AB 566 in terms of where reductions are likely to occur. Such reductions will drastically affect the main service users - self-represented litigants (including vulnerable groups such as those seeking protection from domestic violence).

Imperial Superior Court

“The Court currently employs a child custody mediator and uses outside help for vacations, medical leaves and when the employee has a conflict. The Court could not afford to hire two employee mediators to cover vacations, etc., and our Court does not hire part time employees. If the Court was required to hire an evaluator, it would take away resources from customer service, case processing and increase the court’s backlog. Retaining a well-qualified employed mediator has been more successful than outsourcing this service...

“Self help and FLF services are provided by staff, interns and volunteers. As our court has made this a priority, the current facilitator is a full time employee partially funded by the grants and partially funded by the general fund. Should the general fund deteriorate, the court would

want the flexibility to contract for this position. It is important for the Court to have flexible options to manage the workload and the budget, especially when funding has been reduced... The employees at the greatest risk [of reduction] are employees funded by the general fund. As general fund dollars are used to pay for positions required by AB566, the staff that service the public and the staff that process cases will see the greatest reduction as this is our highest staff area...The impact to the justice system [of these staff reductions] would be catastrophic as we would only have half of the current workforce in operations to service the public and to process the case files.”

Kings Superior Court

According to the Kings Court Executive Officer, “The Court currently employs one FTE to assist in our Self Help Center. We currently contract with a local attorney to assist in Self Help and perform the function of the Family Law Facilitator. By utilizing the contract attorney we are able to work within the constraints of the Self Help Funding and AB 1058 Family Law Facilitator grant. Over the past 10 years we have attempted several times to employ an attorney. What we have encountered time and again is that it is almost impossible to find an attorney in our area that is willing to work for the salary that we can pay and stay within the budget. We have had three attorneys hired and they both left because of the low pay, the hours and commute. Our current annual contract rate for an attorney is \$72,000. A fulltime attorney at a mid-range salary of \$75,000 plus benefits and travel would cost us upward of \$106,471. We would be over budget by \$34,471. The equivalent of .75 court service clerk.”

San Mateo Superior Court

“Attorneys at Bay Area Legal Aid supplement the restraining order services that court staff attorneys once performed, but [which are] now eliminated due to the State budget cuts. If funding this contract is prohibited...restraining order assistance for pro pers would be eliminated.”

Solano Superior Court

“If we are no longer authorized to use pro tem reporters, we will be required to eliminate court reporter services in civil and family law. Most litigants in Solano County cannot afford to hire a court reporter. Accordingly, this will eliminate their ability to obtain a transcript and will virtually eliminate their right to an appeal for lack of a complete record. This is especially true in family law matters wherein up to 85% of litigants are self-represented.”

Other courts noting a negative impact on self-help and family services due to funding reallocation include, but are not limited to:

- | | |
|----------|--------------|
| ■ Lassen | ■ Placer |
| ■ Marin | ■ Stanislaus |
| ■ Napa | |

Janitorial services

Overview: As Placer's comment helps to demonstrate, rural counties with multiple facilities spread across a large area, must rely on contracting to feasibly maintain those facilities. Otherwise, application of AB 566 to janitorial contracts shows similar impacts as mentioned above: displacement of funds and reduced services, including unmaintained facilities.

Placer Superior Court

"Custodial services are contracted out for our Tahoe facility only due to its (1) remote location and (2) small size. This contract costs less than \$12,000 per year. If we were required to hire a half time custodian to perform these same functions, this would increase to \$45,000 annually- for [a net] increase of \$33,000."

Riverside Superior Court

"Contracting for janitorial services... provides services to multiple court facilities at a reduced cost. Forcing the court to hire janitorial employees as a result of AB 566 would lead to higher costs that could ultimately result in the loss of 10 janitorial positions which would cause a reduction in services."

Kings Superior Court

According to the Kings Court Executive Officer, "The fiscal impact to the Court to replace currently contracted services with the FTE necessary to perform the functions/services provided would be so significant as to cause the Court to no longer provide them to the level they are currently provided.

"Closing or reducing the Self Help Center would impact 20 to 40 individuals daily. The lobby and restrooms would not be maintained. The entire appearance and safety of the court facilities would degenerate."

Court reporting

Overview: As in self-help and family law-oriented services, the effect of AB 566 on court reporting could have devastating impacts on lower income litigants. Many courts faced with the choice of hiring additional staff or cutting/reducing services must choose the latter due to inadequate funds. Many unrepresented litigants cannot afford to hire their own court reporter. Otherwise, the impact of AB 566 on these contracts would have effects similar to those mentioned above.

Riverside Superior Court

"The classifications / job titles of employees that would be at greatest risk of reductions in order to implement the conditions of AB 566 would be court reporters and janitors.

“While reporters are employees at this court, there are times when the court must use additional contract reporters to cover for vacations and for federal- and state-mandated leaves. This occasional use of contract reporters to supplement regularly-employed reporters helps to keep costs manageable. AB 566 would require that the court hire additional reporters as employees, in lieu of using contract reporters, thereby dramatically increasing costs. An unintended consequence of this bill is that it would likely force the court to actually reduce the areas where the court provides reporters to only those areas of law where the court is required to do so. It is estimated that the court could lose approximately 15 court reporter positions as a result of this bill. This step would force a dramatic reduction in the service the court is able to provide to the people of California.”

Solano Superior Court

“Pursuant to the hiring freeze and through attrition, we have lost five court reporters. We do not have sufficient funding to hire for these positions. We are using pro tem reporters to maintain court reporting services in civil and family law departments. If we are no longer authorized to use pro tem reporters, we will be required to eliminate court reporter services in civil and family law. Most litigants in Solano County cannot afford to hire a court reporter. Accordingly, this will eliminate their ability to obtain a transcript and will virtually eliminate their right to an appeal for lack of a complete record. This is especially true in family law matters wherein up to 85% of litigants are self-represented.”

Examples of Services Trial Courts Contract Out For

- Child custody evaluations
- Probate investigations
- Court reporters
- Information services (IT)
- Collections
- Interpreters
- Family law facilitator
- Self help director, assistance, attorneys
- Court Commissioner
- Security guards
- Personnel services
- Payroll
- Minor's counsel in dependency cases
- Psychotropic medication doctor
- Jury systems software and maintenance
- Maintenance of computer and CMS
- Small claims advisor
- Adoption investigation services
- Mediators/ADR
- Supervised visitation services in problematic family law cases
- Labor negotiation services
- Courier services
- Dependency counsel
- Background investigations
- Services for self-represented litigants
- Attorneys to review and draft ruling on habeas corpus matters
- Persons to review evidence timelines and provide notices to return or destroy
- Transcripts for electronically recorded proceedings
- Organizations providing advice for small claims litigants
- Child custody mediation services
- Custodial/janitorial
- TVS/traffic assistance program services
- Records/document scanning, imaging, archiving services



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June 18, 2014

Hon. Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, California 95814

Subject: AB 2332 (Wieckowski), as amended May 23, 2014 – **Oppose Unless Amended**
Hearing: Senate Judiciary Committee – June 24, 2014

Dear Senator Jackson:

The Judicial Council opposes AB 2332 because, in its current form, the bill would severely hamper the trial courts' ability to contract for personal services. The council has submitted amendments (attached) that, if adopted, would remove Judicial Council's opposition. The council remains committed to working with the author to reduce the extreme and undue burden that AB 2332 would place on the trial courts' ability to enter into personal services contracts.

In his October 13, 2013 veto message for AB 566, a bill almost identical to AB 2332, Governor Brown stated that the measure as drafted went too far. Specifically, he said, "It requires California's courts to meet overly detailed and—in some cases—nearly impossible requirements when entering into or renewing certain contracts." These concerns have not been addressed in AB 2332. For example, AB 2332 requires trial courts to demonstrate actual cost savings for the duration of every personal services contract but does not allow this cost savings to be achieved through lower contractor pay rates. Further, the contract cannot cause any existing trial court employee to lose their job, seniority, or experience a reduction in wages, benefits, hours, or an involuntary transfer requiring a change in residence. In other words, AB 2332 requires courts to use court employees to perform many services even if it would be more efficient and cost effective for courts to contract for these services. AB 2332 also imposes audit requirements on

courts that do enter into contracts that are far more extensive and costly than requirements placed on other state entities.

The Judicial Council opposes AB 2332 because the bill:

- Presumes no personal services contract is valid unless it meets one of several very limited exceptions or has achieved the near impossible balance of attaining actual savings without reducing labor and benefits costs. The bill states that a “contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits” and prohibits local trial courts from entering into any personal services contract unless the court can demonstrate *both* “that the contract will result in actual overall cost savings...” *and* that “the contractor’s wages...do not undercut trial court pay rates.” Nor can the contract cause a trial court employee to lose their job or seniority, or experience a reduction in wages, benefits, hours, or involuntary transfer requiring a change in residence.

AB 2332’s contradictory and conflicting provisions requiring that personal services contracts demonstrate savings while forbidding those savings from lower salary and benefit costs present a literal *Catch-22*; a contract that cannot demonstrate savings from lower contracting rates will have no savings and thus be prohibited.

- Inhibits the trial courts’ ability to manage their staff and resources, which is critical in view of a funding gap of \$875 million, as detailed in the Chief Justice’s Blueprint for a Fully Functioning Judicial Branch. The funding gap refers to the difference between the General Fund support currently received by the trial courts, and the funds needed. It is based on a calculation that takes into account both the number of trial court filings annually as well as the types of cases filed. The flexibility of contracting out for certain services is integral to the trial courts’ ability to meet their budget obligations while also providing access to justice for the public.
- Reduces local control and discretion over trial court management. Trial courts are uniquely and constitutionally independent, as well as different from one another. Each presiding judge has the responsibility to manage the court in a manner deemed appropriate to the unique characteristics of that court and its court users. Restrictions on the way trial courts provide for appropriate staffing reduces the courts’ ability to serve the public. Many courts currently contract for services, such as child custody evaluations and probate investigations. In light of judicial branch autonomy, and taking into consideration the budget crisis facing the trial courts, the courts should not be even further hampered in their ability to provide court services.
- Conflicts with recently enacted legislation regarding judicial branch contracting. The Judicial Branch Contract Law (JBCL), Chapter 10, Statutes of 2011, is modeled after Public Contract Code provisions governing state agency contracting. AB 2332 is

inconsistent with JBCL and the Judicial Branch Contracting Manual (JBCM). For example, under the JBCM, not all service contracts need to be procured through a publicized, competitive bidding process. Courts may procure services without conducting a competitive procurement for contracts less than \$5,000 and contracts for services from other governmental entities. Also, AB 2332 applies to court reporters and the JBCM specifically excludes court reporters. The detailed requirements of the JBCM obviate the need for provisions of AB 2332 requiring a publicized, competitive bidding process; contract specifications regarding staff qualifications; and nondiscrimination standards to be met by contractors. Further, AB 2332 goes beyond what is required for other state entities and undermines the goals of fair competition and efficiency embodied in the Public Contract Code (as set forth in sections 100 and 101) and the Judicial Branch Contract Law.

- Affects circumstances that are more appropriately addressed at the local level through collective bargaining agreements. Currently, trial courts bargain individually with labor unions for their employee collective bargaining agreements. Notably, at least 20 local trial courts have collective bargaining agreements that include provisions relative to contracting for personal services. Applying one-size-fits-all contracting restrictions on the 58 trial courts unnecessarily interferes with the ability of the trial courts and the respective bargaining units to enter into agreements the courts and court employees consider best for the individual courts, court users and court employees.

AB 2332 appears to be modeled after a Government Code section that limits contracting in the executive branch for services that could be performed by civil service employees (Gov. Code, § 19130). This contracting restriction model is inappropriate for the trial courts because, unlike the executive branch agencies, the trial courts must operate independently from one jurisdiction to the next. Moreover, most executive branch agencies can manage the amount of work they receive, the number and types of people they serve, and the services provided. In contrast, trial courts must accept all filings from the public, have no control over the number and types of cases they must process, and have no ability to limit court users. In order to effectively manage their caseloads, courts need flexibility in managing their costs and contracts.

Further, AB 2332 as currently drafted is overly broad and restrictive. Though it includes some of the same restrictions on contracting that apply to executive branch agencies, K–12 school districts, and community colleges, it differs from these other statutes by including additional restrictions for contracts over \$100,000. Additionally, when contracting restrictions were extended to new entities (K–12 schools and community colleges), the legislation included a “grandfather clause” allowing for the continuation and renewal of existing contracts without being affected by the new restrictions. AB 2332 does not include a grandfather clause. Rather, it refers to the presumed effective date of the bill should it be signed into law, as the date after which it would be prohibited to renew or extend an existing contract for personal services, even though that existing contract was legally entered into and relied upon for court management and budget decisions.

Hon. Hanna-Beth Jackson

June 18, 2014

Page 4

In order to move the dialog forward with the author and the bill's sponsors, presiding judges and court executive officers met regularly over the spring to respond to the bill, and to craft amendments that, if adopted, would remove Judicial Council opposition. After several months of internal meetings and discussions, those amendments were available and presented to the author on June 11th and representatives from the Judicial Council, the Trial Court Presiding Judges Advisory Committee, and the Court Executives Advisory Committee met with the author's staff and proponents to review the proposed amendments on June 17th.

The Judicial Council is open to continuing discussions about the bill and would be happy to meet with you and your staff on the amendments it has proposed in order to make AB 2332 workable for the courts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cory Jaspersen', with a long, sweeping horizontal line extending to the right.

Cory T. Jaspersen

Director

CTJ/AL/lmb

Attachment

cc: Members, Senate Judiciary Committee
Hon. Bob Wieckowski, Member of the Assembly
Ms. Ronak Daylami, Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor

Judicial Council Amendments Mock-up for AB-2332 (Wieckowski)

*****Amendments are in BOLD*****

Mock-up based on Version Number 96 - Amended Assembly, 5/23/2014

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

1 **SECTION 1.** Section 71621 is added to the Government Code, to read:

2 **71621.** (a) If a trial court intends to enter into a ~~new contract, or renew or extend an existing~~
3 ~~contract,~~ for any services that are currently or customarily performed by that trial court's
4 employees, all of the following requirements shall apply:

5 (1) The trial court shall clearly demonstrate that the contract will result in actual overall cost
6 savings to the trial court for the duration of the entire contract as compared with the trial court's
7 actual costs of providing the same services. In comparing costs, all of the following shall occur:

8 (A) The trial court's additional cost of providing the same services as proposed by the contract
9 shall be included. These additional costs shall include the salaries and benefits of additional staff
10 that would be needed and the cost of additional space, equipment, ~~and materials, and other~~
11 factors needed to perform the services.

12 (B) The trial court's indirect overhead costs shall not be included unless those costs can be
13 attributed ~~solely~~ to the function in question and would not exist if that function was not
14 performed by the trial court. For the purposes of this subparagraph, "indirect overhead costs"
15 means the pro rata share of existing administrative salaries and benefits, rent, equipment costs,
16 utilities, and materials.

17 (C) The cost of a contractor providing a service for any continuing trial court costs that would
18 be directly associated with the contracted function shall be included. Continuing trial court costs
19 shall include, but not be limited to, costs for inspection, supervision, and monitoring.

20 (2) ~~The contract shall not be approved solely on the basis that savings will result from~~
21 ~~lower contractor pay rates or benefits.~~ Contracts shall be eligible for approval if the
22 contractor's ~~wages pay rates or benefits~~ are at the industry's level and do not materially
23 undercut trial court pay rates or benefits.

24 (3) The contract shall not cause an existing trial court employee to incur a loss of his or her
25 employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary
26 transfer to a new location requiring a change in residence.

27 (4) The contract shall not be approved if, in light of the services provided by trial courts and
28 the special nature of the judicial function, it would be inconsistent with the public interest to
29 have the services covered by the contract performed by a private entity.

30 (5) To the extent the contract is subject to the Judicial Branch Contracting Manual
31 adopted by the Judicial Council required by section 19206 of the Public Contract Code, the
32 contract shall comply with the applicable provisions of the operative manual. ~~The contract~~
33 ~~shall be awarded through a competitive bidding process.~~

34 (6) ~~The contract shall include specific provisions pertaining to the qualifications of the~~
35 ~~staff that will perform the work under the contract, as well as assurances that the~~
36 ~~contractor's hiring practices meet applicable nondiscrimination standards.~~

1 ~~(7) The contract shall provide that it may be terminated at any time by the trial court~~
2 ~~without penalty if there is a material breach of the contract and notice is provided within~~
3 ~~30 days of termination.~~

4 ~~(8) If the contract is for services in excess of one hundred thousand dollars (\$100,000)~~
5 ~~annually, all of the following shall occur:~~

6 ~~(A) The trial court shall require the contractor to disclose all of the following information~~
7 ~~as part of its bid, application, or answer to a request for proposal:~~

8 ~~(i) A description of all charges, claims, or complaints filed against the contractor with a~~
9 ~~federal, state, or local administrative agency during the prior 10 years.~~

10 ~~(ii) A description of all civil complaints filed against the contractor in a state or federal~~
11 ~~court during the prior 10 years.~~

12 ~~(iii) A description of all state or federal criminal complaints or indictments filed against~~
13 ~~the contractor, or any of its officers, directors, or managers, at any time.~~

14 ~~(iv) A description of any debarments of the contractor by a public agency or licensing~~
15 ~~body at any time.~~

16 ~~(B) The trial court shall include in the contract specific, measurable performance~~
17 ~~standards and provisions for a performance audit by the trial court, or an independent~~
18 ~~auditor approved by the trial court, to determine whether the performance standards are~~
19 ~~being met and whether the contractor is in compliance with applicable laws and~~
20 ~~regulations. The audit shall be made available to the public upon request within 10~~
21 ~~calendar days from receipt of the request. A charge per page, per copy, may be charged~~
22 ~~representing the direct costs of equipment, supplies, and staff required to duplicate or~~
23 ~~produce the requested audit. The trial court shall not renew or extend the contract prior to~~
24 ~~receiving and considering the audit report.~~

25 ~~(C) The contract shall include provisions for an audit by the trial court, or an~~
26 ~~independent auditor approved by the trial court, to determine whether and to what extent~~
27 ~~the anticipated cost savings have actually been realized. The audit shall be made available~~
28 ~~to the public upon request within 10 calendar days from receipt of the request. A charge~~
29 ~~per page, per copy, may be charged representing the direct costs of equipment, supplies,~~
30 ~~and staff required to duplicate or produce the requested audit. The trial court shall not~~
31 ~~renew or extend the contract before receiving and considering the audit report.~~

32 ~~(9) The term of the contract shall not be more than five years from the date on which the~~
33 ~~trial court approves the contract.~~

34 ~~(b) "Customarily performed" as used in subdivision (a) means performed in that manner~~
35 ~~by that trial court's employees after January 1, 2015 or during the last two years,~~
36 ~~whichever is later. However, the limitations in subdivision (a) on contracts for services that~~
37 ~~are currently or customarily performed by that court's employees do not apply if the~~
38 ~~manner in which a service is currently or customarily performed is contrary to best~~
39 ~~practices. "Best practices" shall be determined by the trial court or the Judicial Council.~~

40 ~~(b)(c) This section does not preclude a trial court or the Judicial Council from adopting more~~
41 ~~restrictive rules regarding the contracting of court services.~~

42 ~~(e)(d) This section does not apply to a contract in any of the following circumstances:~~

43 ~~(1) The contract is between a trial court and another trial court or a local government entity for~~
44 ~~services to be performed by employees of the other trial court or employees of the local~~
45 ~~government entity.~~

(2) The contract is for a new trial court function and the Legislature has specifically mandated or authorized the performance of the services by independent contractors.

(3) The contract is for services for a trial court with fifteen or fewer judges.

~~(3)(4)~~ The services contracted for are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability cannot be obtained from the court's trial court employees.

(5) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the court in the location where the services are to be performed. This paragraph shall not apply to services contracted in order to open closed courthouses if those services were performed by trial court employees before the closure.

(6) The contract is for technology or automation services that can result in cost savings or efficiencies, improved public access, greater information security, or enhanced privacy protection.

~~(4)(7)~~ The services are incidental to a contract for the purchase or lease of real or personal property. Contracts described in this paragraph, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented. ~~Contracts described in this paragraph shall not include agreements to operate equipment or computers, except as necessary to service or maintain that equipment.~~

~~(5)(8)~~ The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of trial court employees because of the need to protect against a conflict of interest or to ensure independent and unbiased findings in situations where there is a clear need for an independent, outside perspective.

~~(6)(9)~~ Due to an emergency, a contract is necessary for the immediate preservation of the public health, welfare, or safety.

(10) The contract is for services that can better protect the safety or security of court employees, judicial officers, court facilities, or members of the public who use court facilities.

~~(7)(11)~~ The contractor will conduct training courses for which appropriately qualified trial court employee instructors are not available from the court, provided that permanent instructor positions shall be filled through the process for hiring trial court employees.

(8)(12) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation through the process for hiring trial court employees would frustrate their very purpose or the temporary nature of the services does not justify the hiring of a regular employee. This paragraph shall not apply to the services of official court reporters, except individual official reporters pro tempore may be used by a trial court when the criteria of this paragraph are met.

(9)(13) The contract is for services that are necessary for court operations following a reduction in force or layoff for organizational necessity pursuant to section 71652 and an applicable memorandum of understanding between the court and a recognized employee organization allows for such a contract.

(14) The contract is a personal services contract developed pursuant to rehabilitation programs in accordance with Sections 19403 and 19404 of the Welfare and Institutions Code, pursuant to habilitation programs in accordance with Chapter 13 (commencing with Section 4850) of Division 4.5 of the Welfare and Institutions Code, or pursuant to a program vendored or contracted through a regional center or the State Department of Developmental Services in

1 accordance with the Lanterman Developmental Disabilities Services Act (Division 4.5
2 (commencing with Section 4500) of the Welfare and Institutions Code), and the contract will not
3 cause an existing trial court employee to incur a loss of his or her employment or employment
4 seniority; a reduction in wages, benefits, or hours; or an involuntary transfer to a new location
5 requiring a change in residence.

6 ~~(14)~~(15) The contract is for the services of any court interpreter. Contracts for the services of
7 any court interpreter, and restrictions on contracting out interpreter services, shall be governed
8 by the Trial Court Interpreter Employment and Labor Relations Act (Chapter 7.5 (commencing
9 with Section 71800)) and any memorandum of understanding or agreement entered into pursuant
10 to that act, or by the other provisions of this chapter, the Trial Court Employment Protection and
11 Governance Act, and any memorandum of understanding or agreement entered into pursuant to
12 that act, as applicable.

13 (16) If the contract is a memorandum of understanding between the court and a
14 recognized employee organization regarding the employment of trial court employees.

15 SEC. 2.

16 Section 71621 of the Government Code, as added by Section 1 of this act, shall apply to ~~any~~
17 ~~contract entered into, renewed, or extended on or after January 1, 2015~~contracts for
18 services entered into after January 1, 2015. This section shall not apply to the renewal of
19 contracts for services subsequent to January 1, 2015, where the contract was entered into
20 before January 1, 2015, irrespective of whether the contract is renewed or rebid with the
21 existing contractor or with a new contractor.

22 SEC. 3.

23 ~~(a) Each trial court shall provide a report by no later than February 1, 2015, to the~~
24 ~~chairperson of the Joint Legislative Budget Committee and the chairpersons of the Senate~~
25 ~~Judiciary Committee and Assembly Judiciary Committee if the trial court entered into a~~
26 ~~contract between July 1, 2014, and December 31, 2014, inclusive, for services that were~~
27 ~~provided or are customarily provided by its trial court employees and that contract has a~~
28 ~~term extending beyond March 31, 2015. The report shall provide all of the following~~
29 ~~information for each of these contracts:~~

30 ~~(1) A copy of the contract.~~

31 ~~(2) An analysis of whether the contract would have been permissible under the standards~~
32 ~~set forth in Section 71621 of the Government Code, as added by Section 1 of this act.~~

33 ~~(3) An analysis of whether the contract resulted in the displacement of trial court~~
34 ~~employees.~~

35 ~~(4) An analysis of whether the contract involves the use of contractors to perform the type~~
36 ~~of services that were customarily performed by trial court employees.~~

37 ~~(b) It is the intent of the Legislature to consider the reduction of future budget~~
38 ~~appropriations to each trial court by the amount of any contract analyzed pursuant to~~
39 ~~subdivision (a) if the Legislature concludes that the contract would not have been~~
40 ~~permissible under the standards provided in Section 71621 of the Government Code, as~~
41 ~~added by Section 1 of this act.~~

1 **SEC. 43.**

2 The provisions of this act are severable. If any provision of this act or its application is held
3 invalid, that invalidity shall not affect other provisions or applications that can be given effect
4 without the invalid provision or application.
5



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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 1, 2014

Hon. Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 5108
Sacramento, California 95814

Subject: AB 2332 (Wieckowski), as amended July 1, 2014—Oppose Unless Amended,
Fiscal Impact Statement
Hearing: Senate Appropriations Committee—August 4, 2014

Dear Senator de León:

AB 2332 establishes requirements and restrictions for courts wishing to enter into personal services contracts. The Judicial Council has significant concerns about the costs to implement the bill, as well as the vagueness of its terms, its potential conflicts with other laws, particularly the Judicial Branch Contracting Law (JBCL), and the burdens it places on an already beleaguered trial court system.

Fiscal Impacts

Based on a recent survey, California's trial courts would be absorbing *no less than \$10 million in new expenses*, and as much as \$15 million, to hire employees to perform work that is being done now, at least in part, by contractors. This is not simply \$10 million in additional dollars for the same services currently being performed; courts anticipate that more clerk and service staff positions within the courts will be eliminated if AB 2332 becomes law, meaning that the public will receive fewer services and experience greater delays as a direct result of the implementation

of AB 2332; the courts would be required to spend millions of additional dollars to satisfy the requirements of the bill for no increase—and a likely decrease—in services to the public. The contracts that AB 2332, as currently amended, will impact include the following:

Contracts that aren't urgent, temporary or occasional: Many small and mid-size courts seamlessly use a combination of employee and contractor court reporters, investigators, mediators, and IT specialists. By the terms of AB 2332, since these are ongoing needs, as opposed to the one-time or limited time-help envisioned by the language “urgent, temporary or occasional,” courts would not be allowed to contract for these services. This unfortunate consequence will mean the loss of qualified, experienced and loyal part-time contract workers from an already struggling court system. It means that in the small and mid-size counties, more people will be out of work. In some counties, the availability of a court-qualified labor pool is nonexistent, making compliance with the bill’s provisions another struggle for already struggling courts.

Contracts for services customarily performed by court employees: Some courts have moved to contracts for a variety of services including court reporting, guardianship and conservatorship investigations, mediations, IT, data entry, and janitorial services. These contracts provide courts with the dual benefits of expertise and lower costs to the courts’ bottom line. Moreover, any cash strapped court that has not yet contracted for these or other services would be prohibited from doing so. Since these are services that the courts identified as currently or customarily performed by court employees, a service contract for these services would be prohibited. The shame here is that better services might be achievable with contractors, which means quality and reliable court services for the public will be denied by the bill.

Contracts for court reporting services: The application of the bill to contracts for court reporter services will negatively impact those courts that contract for court reporter services, perhaps even if they have not recently had court reporters on staff. This provision, based on its placement in the bill as an exception to the exception for contractors that fill a need for “urgent, temporary, or occasional” services, would require contracts for court reporter services to be put through a competitive public bidding process. Many courts that serve counties with small populations have a hard time finding skilled court reporters as it is. Furthermore, the requirements for public contracting contained in AB 2332, separate and apart from what courts are required to do under the Judicial Branch Contracting Law, are an unnecessary burden that won’t result in the protection or enhancement of any court employee rights, but *will* result in new costs to the courts that could require the reduction of other court services.

Contracts with other trial courts and contracts with local government entities that use contractors: Many courts have realized that they cannot comprehensively collect delinquent debt, procure services and supplies, or undertake janitorial or building maintenance. Many of

these courts have contracted with other trial courts and county entities for these services. Many courts and counties, however, contract with professional private enterprises that do not satisfy the terms of AB 2332, which specifically states that contracts between trial courts and local government entities must be for work performed by *the employees* of the trial court or local government entity. Courts would not be protected from this provision of AB 2332 because often they have experience collecting fines, fees, assessments, and penalties, managing janitorial staff, and procuring supplies; for the most part, trial courts lack the funding for staff to assign to these kinds of services, can contract with fellow courts and county entities, and use precious court funding to provide services to the public.

Burden on Limited Court Resources

In addition to the fiscal impacts, AB 2332 may limit the use of technology for data management and reporting. Courts have been attempting to automate services such as filing, document retrieval, payments, court reporting, and others to improve customer services, become more efficient, and save money. Savings from automation have allowed courts to allocate funds to those services and programs that cannot be automated, assigning staff to the work that requires a human element such as court customer/user services. AB 2332 could discourage future technology innovation by eliminating the ability of courts to contract out for services that would be less expensive than retaining employees. Additionally, AB 2332 could be used to undo existing efficiencies in the use of technology by clawing back contracts that are due for extension or renewal. The fiscal impacts of eliminating these kinds of services are difficult to calculate, but any negative fiscal impact is made worse by the commensurate reduction in services that would accompany a reduction in court automation.

Further, the terms of AB 2332, should the bill be signed into law, require significant reporting for personal services contracts if the contracts are entered into before the effective date of the bill. The branch is already subject to myriad reporting, data tracking, and audit requirements. Provisions within AB 2332 add to this burden, and in so doing, detract resources from the personnel and services that provide direct public access to courts and to justice. As a result of requiring courts to report retroactively rather than the bill being the subject of urgency legislation that would make the provisions effective upon signing, courts will face additional costs of \$40,000 to comply with this provision.

The trial courts do not resist providing information about their operations and budgets. On the contrary, the trial courts comply with a host of reporting requirements on an annual or semi-annual basis. Below is a description of the kinds of reporting, data tracking and audit requirements the branch currently undertakes.

Internal Audits

The Office of Internal Audit Services was established in 2001 in response to the Trial Court Funding Act of 1997, which made the AOC responsible for financial oversight of the trial courts. Auditing responsibilities of this unit include all entities within the judicial branch. The unit conducts risk assessments, develops audit programs, performs audits of the judicial branch entities, assists state and external auditors, and recommends improvements based on audit results, thereby playing a key role in meeting the branch's fiscal oversight responsibilities.

The California Judicial Branch Contract Law (JBCL; Stats. 2011, ch. 10): The JBCL requires the courts, the Judicial Council, Administrative Office of the Courts¹ and the Habeas Corpus Resource Center (HCRC) to comply with provisions of the code related to the procurement of goods and services. The JBCL applies to contracts, including purchase orders, entered into or amended on or after October 1, 2011. The JBCL directed the Judicial Council to adopt and publish a *Judicial Branch Contracting Manual* that sets out policies and procedures that the courts, the AOC, and the HCRC must follow and that are consistent with the Public Contract Code and substantially similar to the provisions contained in the *State Administrative Manual* and the *State Contracting Manual*. (It should be noted that the *Judicial Branch Contracting Manual* was developed in a timely manner and became effective on October 1, 2011.) The requirements for judicial branch procurement and contracting activities under the JBCL and *Judicial Branch Contracting Manual* were often in addition to those in the *Trial Court Financial Policies and Procedures Manual* (TCFPPM), AOC policy 7.2.1 Procurement of Goods and Services, and other applicable policies. Other features of the JBCL include the following:

- Local contracting manuals: The JBCL requires each court, the AOC, and the HCRC to adopt a local contracting manual for procurement and contracting.
- Reporting: The JBCL imposes mandatory periodic reporting requirements on the Judicial Council concerning contracting activities of the judicial branch.
- Audits: The State Auditor is required to audit the trial courts to assess their implementation of the JBCL. The State Auditor is also required to audit the appellate courts, the AOC, and the HCRC to assess their implementation of the JBCL. The first round of audits is to be completed by the end of 2013, and then periodically thereafter. And finally, the State Auditor has undertaken an extensive audit of the Administrative Office of the Courts to determine how the courts' funding is managed and allocated. This audit should be available by the end of this calendar year.
- Large contracts: The JBCL requires that the courts, the AOC, and the HCRC notify the State Auditor, in writing, within 10 business days of entering a contract with a total cost estimated to be more than \$1 million. Contracts for administrative or infrastructure IT

¹ Effective July 29, 2014, the use of the name of Administrative Office of the Courts (AOC) was retired. See rule Cal. Rules of Court, rules 10.1, 10.80 and 10.81.

projects with total costs estimated to be more than \$5 million also are subject to the review and recommendations of the California Technology Agency.

- Please review the attached side-by-side chart of the Judicial Branch Contracting Law and the provisions in AB 2332 that are in conflict with it.

Legislative reports: The judicial branch currently prepares nearly three dozen reports annually, totaling more than 4,500 pages, for submission to the Legislature, some of which are due biennially and quarterly. One of these reports, the “Judicial Branch Semiannual Contract Report of Executed Contracts and Vendor Payments,” is prepared and submitted to the Legislature two times per year, contains in excess of 800 pages of details surrounding every required contract entered into and vendor payments made by the trial courts (as well as other judicial branch entities). The most current of these reports was submitted to the Joint Legislative Budget Committee on August 1, 2014, and can be found online on the judicial branch website located here: <http://www.courts.ca.gov/7466.htm>

Need for Judicial Branch Amendments

Attached with this letter is a mock-up version of AB 2332 that was prepared by the Judicial Council following guidance from the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. The mock-up was presented to Assembly Member Wieckowski and the bill’s sponsors in June. Without all of these amendments, AB 2332 continues to be problematic and costly for the courts, and further diminishes public access to, and by extension confidence in, the judicial system. In sum, here are the problems with AB 2332 in its current form and that require the Judicial Council to oppose unless amended:

- **AB 2332 RESULTS IN A CATCH 22:** AB 2332’s contradictory and conflicting provisions requiring that personal services contracts demonstrate savings while forbidding those savings from lower salary and benefit costs present a literal *Catch-22*; a contract that cannot demonstrate savings from lower contracting rates will have no savings and thus be prohibited.
- **THE LANGUAGE IS OVERLY BROAD:** The negative impact on the courts is significant, and includes contracts for services “currently and customarily performed by trial court employees.” In other words, the effect of the bill is retroactive to any work customarily provided by court employees.
- **THE RESULT OF THE BILL WILL BE HARMFUL TO THE PUBLIC:** Courts will be forced to convert functional and effective contract positions to more costly staff positions, necessitating cuts to other court services, thus limiting public access to the courts on an even greater scale than currently faced.

- **THE BILL IMPACTS COURT CONTRACTS DIFFERENTLY FROM OTHER ENTITIES:** AB 2332 is more restrictive than existing contracting laws for state agencies, K-12 school districts, and community college districts. When enacted, these statutes all applied prospectively; in fact, the law for schools and community college districts included a grandfather clause to ensure that the restrictions on contracting applied prospectively and did not claw back existing contracts. AB 2332, however, does NOT contain a grandfather clause and applies to any contract, including existing contracts that are renewed, extended, or amended.
- **AB 2332 CONFLICTS WITH EXISTING LAW:** AB 2332 conflicts with the recently enacted Judicial Branch Contract Law that requires all courts to comply with provisions of the Public Contract Code that are applicable to state agencies and departments related to procurement and contracting policies and procedures. AB 2332 undermines the goals of fair competition and efficiency embodied in the law and burdens courts with a whole new layer of procurement and contracting obligations, making it nearly impossible to comply with existing contracting requirements.
- **AB 2332 IS UNNECESSARY:** As already required by law, court contracts are subject to disclosure, reporting (including a comprehensive report detailing every judicial branch contract, submitted to the Legislature twice each year), and audit requirements, all of which are produced regularly and made public; thus, there is no rational or cost-effective basis for this disparate and drastic treatment of California's local trial courts. A chart that shows the conflicts and duplication between AB 2332 and the JBCL is attached.

The bill's proponents have stated that, if signed into law, AB 2332 will protect and honor court employees and the integrity of sensitive information in court documents. In information provided to the Senate Committee on the Judiciary in June, the sponsors of AB 2332 said, "Given the important work done by the trial courts the sensitivity of the information that is processed and maintained, and the sanctity of the rights of public court consumers, the contracting out of court work should never be used as a cost savings measure."² The trial courts agree that they perform important work and that court files and documents must be treated with the utmost care and discretion. What's more, court leaders share in the desire to protect and honor their employees, as well as the integrity of information in court documents. In their advocacy for a greater General Fund investment, courts specifically identify the fact that many of their employees have suffered years without pay increases, have been required to absorb the work of colleagues whose positions remain unfilled, and yet have remained the court's greatest resource in providing justice. After years of using a combination of full and part time employees, as well as temporary and contract labor, all of whom are held to the same standards of care and reliability, courts continue to ensure that court records are accurate, files current to the fullest extent possible, and sensitive data properly protected. Court staff are appreciated

² Senate Judiciary Committee Analysis on AB 2332 for Hearing date June, 24, 2014; page 9 first full paragraph.

Hon. Kevin de León

August 1, 2014

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greatly; the fact that courts have suffered financially in the past six years and in large measure have not been able to improve the wages of their employees due to significant budget reductions should not be mistaken for disrespect for court staff. Unfortunately, AB 2332, if signed into law, will not protect existing employees or restore separated employees to their jobs, nor will it provide any greater security for court information. Instead, it will make current employees more vulnerable to furloughs, layoffs and budget cut solutions as courts are deprived of the flexibility required to juggle competing needs with ever shrinking financial resources and support.

Please contact me at 916-323-3232 or cory.jasperson@jud.ca.gov if you have any questions or would like further information.

Sincerely,



Cory T. Jasperson
Director

CTJ/AL/nco/lmb

Attachments

cc: Members, Senate Appropriations Committee
Hon. Bob Wieckowski, Member of the Assembly
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Ms. Julie Salley-Gray, Consultant, Senate Budget & Fiscal Review Committee
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Mike Peterson, Policy Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Program Budget Analyst, Department of Finance

**Provisions of AB 2332, as amended in the Senate on July 1, 2014, that are already covered by,
or that conflict with, the California Judicial Branch Contract Law (JBCL)**

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
<p>AB 2332 creates new requirements for any trial court that intends to enter into a contract for any services that are currently or customarily performed by that trial court's employees.</p> <p>Under the proposed Government Code 71621 in Section 1 of AB 2332, a services contract is not valid unless it meets one of the very limited exceptions, or unless the court can demonstrate both that the contract will result in "actual overall cost savings to the trial court for the duration of the entire contract as compared with the trial court's actual costs of providing the same services" and that the contractors wages are at the industry's level and do not undercut trial court pay rates. The proposed GC 71621(a)(2) states that a contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits.</p> <p>Furthermore, under the proposed GC 71621(a)(3), the contract may not cause an existing trial court employee to incur a loss of his or her employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary transfer to a new</p>	<p>The California Public Contract Code (PCC) generally governs how California state entities enter into contracts, and how they procure goods and services (including how to conduct competitive solicitations and award contracts).</p> <p>On March 24, 2011, Senate Bill 78 was enacted, creating a new Part 2.5 of the PCC designated as the California Judicial Branch Contract Law (JBCL).¹ The JBCL is at PCC 19201-19210 (see attached Appendix A). With certain exceptions (PCC 19204(c), 19207, and 19208), the JBCL (see PCC 19204) requires that superior and appellate courts, the Judicial Council of California (Judicial Council), the Administrative Office of the Courts (AOC), and the Habeas Corpus Resource Center (referred to collectively as judicial branch entities) comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.²</p> <p>PCC 19206 of the JBCL requires the Judicial Council to adopt and publish a Judicial Branch Contracting Manual (JBCM) incorporating procurement and contracting policies and procedures that judicial branch entities must follow. Under PCC 19206, the policies and procedures in the JBCM must be "consistent with" the PCC. The original effective date of the JBCM was October 1, 2011.</p> <p>AB 2332's proposed GC 71621(a) conflicts with PCC 100, 101, 102, as well as the JBCL's PCC 19202, 19204, and 19206.</p> <ul style="list-style-type: none"> • PCC 100 states: "The Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find." PCC 100 also states that it is the intent of the Legislature in enacting the PCC to achieve a number of objectives, including: <ul style="list-style-type: none"> (i) to clarify the law with respect to competitive bidding requirements; (ii) to ensure full compliance with competitive bidding statutes as a means of protecting the

¹ The JBCL was amended by SB 92 (effective June 30, 2011) and SB 75 (effective June 27, 2013).

² However, the JBCL's PCC 19207 acknowledges that neither the Department of General Services (DGS) nor any other state entity will be involved in the approval or review of judicial branch procurement, except as specifically required by law.

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
<p>location requiring a change in residence.</p> <p>The contradictory provisions in the proposed GC 71621(a) result in a “catch-22” for the courts: the contract must on the one hand demonstrate savings, but on the other hand, the savings may not come from lower contracting rates, and the contract may not cause a trial court employee to lose employment, wages, hours, or benefits.</p> <p>On this issue, AB 2332 is even more problematic than AB 566, which the Governor vetoed last year. For example, under AB 566, the proposed GC 71621(a)(2) provided, in part: “Contracts shall be eligible for approval if the contractor’s wages are at the industry’s level and do not <i>materially</i> undercut trial court pay rates.” (emphasis added.) In AB 2332, “materially” has been deleted from the proposed GC 71621(a). As a result, AB 2332 places courts in an even worse “catch-22.”</p> <p>AB 2332 will force the courts to convert contract positions to more costly staff positions, necessitating significant cuts to other court services, and limiting public access to the courts on an even greater scale than currently faced.</p> <p>Under AB 2332’s proposed GC 71621, the courts will be burdened with a whole new layer of procurement and contracting obligations, making it more difficult for the courts to comply with existing requirements under the California Judicial Branch Contract Law. AB</p>	<p>public from misuse of public funds;</p> <p>(iii) to provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and</p> <p>(iv) to eliminate favoritism, fraud, and corruption in the awarding of public contracts.</p> <ul style="list-style-type: none"> • In addition, the Legislature has declared that California public contract law should be efficient and the product of the best of modern practice and research (see PCC 101) and that, to encourage competition and to aid in the efficient administration of public contracting, to the maximum extent possible, for similar work performed for similar agencies, California’s public contract law should be uniform (see PCC 102). • Contrary to the legislative intent and guiding principles of the PCC (including the JBCL), AB 2332 will result in less efficiency and less competition in public contracting, and will place greater restrictions on the courts’ procurement and contracting, as compared with other California public entities. Therefore, AB 2332 conflicts with PCC 100, 101, and 102. • PCC 19202 of the JBCL states that it is the intent of the Legislature in enacting the JBCL to achieve the objectives as set forth in sections 100, 101, and 102 of the PCC. As explained above, AB 2332 conflicts with PCC 100, 101, and 102. Therefore, AB 2332 also conflicts with PCC 19202. • The JBCL (see PCC 19204) generally requires that the trial courts comply with provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services. Under the JBCL’s PCC 19206, the policies and procedures in the JBCM must be “consistent with” the PCC. However, as described above, and as further explained below, AB 2332 conflicts with PCC sections that are applicable to state agencies and departments related to the procurement of goods and services. Therefore, AB 2332 also conflicts with PCC 19204 and 19206. • Unlike the executive branch, the courts have a decentralized contracting and procurement structure. The requirements of AB 2332 are inconsistent with the trial courts’ procurement and contracting structure, and will take away the flexibility that the courts need in allocating resources to serve the public and provide access to justice. • AB 2332’s proposed GC 71621(a) also conflicts with California Rule of Court

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
2332 will place a substantial burden on court resources and will ultimately impede access to justice.	10.603(c)(6)(D), which requires the presiding judge of each court to approve procurements, contracts, expenditures, and the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively.
<p>Under AB 2332's proposed GC 71621(a)(2), a service contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Contracts shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut trial court pay rates.</p> <p>Under AB 2332's proposed GC 71621(a)(3), a service contract must not cause an existing trial court employee to incur a loss of his or her employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary transfer to a new location requiring a change in residence.</p>	<p>Proposed GC 71621(a)(2) and (a)(3) conflict with PCC requirements relating to competitive solicitations. For example, PCC 10344 (and its corollary in JBCM Chapter 4B) generally requires that service contracts be awarded to the highest scored bid. Proposed GC 71621(a)(2) and (a)(3) could in many cases prohibit the awarding of contracts to the highest scored bid (e.g., under proposed GC 71621(a), awarding the service contract must not result in a reduction of a trial court employee's hours, and the contractor's rates may not be lower than trial court pay rates). As a result, proposed GC 71621(a)(2) and (a)(3) conflict with the process required by the PCC for awarding service contracts.</p> <p>Competition and efficient public contracting are basic tenets of procurement under the JBCL (see PCC 19202). However, the proposed GC 71621(a)(2) and (a)(3) requirements would result in less efficiency and less competition in the courts' contracting. If the courts were subject to the proposed GC 71621(a)(2) and (a)(3), courts would be prohibited from entering into a service contract even if the contract had been competitively bid and even if it would result in more efficient, cost-effective court operations. Therefore, the proposed GC 71621(a)(2) and (a)(3) conflict with PCC 100, 101 and 102 (and also the JBCL's PCC 19202) as well as the JBCL's PCC 19204, which requires the courts to comply with the provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.</p>
Under AB 2332's proposed GC 71621(a)(4) , a service contract shall not be approved if, in light of the services provided by the trial courts and the special nature of the judicial function, it would be inconsistent with the public interest to have the services covered by the contract performed by a private entity.	<p>The proposed GC section 71621(a)(4) is vague. It is also unnecessary because the trial courts are already required under the JBCL to comply with the provisions of the PCC that are applicable to state agencies and departments relating to the procurement of goods and services (PCC 19204). The PCC's objectives, as set forth in PCC 100, already include the following:</p> <ul style="list-style-type: none"> • To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds; • To provide all qualified bidders with a fair opportunity to enter the bidding process,

AB 2332 (as amended on July 1, 2014)	<p>The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.</p>
	<p>thereby stimulating competition in a manner conducive to sound fiscal practices; and</p> <ul style="list-style-type: none"> • To eliminate favoritism, fraud, and corruption in the awarding of public contracts.” <p>The proposed GC section 71621(a)(4) is also unnecessary because California Rule of Court 10.603(c)(6)(D) already requires that the presiding judge of each court approve procurements, contracts, expenditures, and the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. Furthermore, the courts are already subject to PCC and JBCM requirements, policies and procedures for contractor certification clauses in the agreement (for example, JBCM Chapter 8 on contractor certifications regarding compliance with laws, nondiscrimination, no conflicts of interest, etc.).</p>
<p>Under AB 2332’s proposed GC 71621(a)(5), service contracts must be awarded through a publicized, competitive bidding process.</p>	<p>Proposed GC 71621(a)(5) is unnecessary because PCC 19204 of the JBCL already requires the courts to comply with the provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services. Four entire chapters of the JBCM are devoted exclusively to policies and procedures related to competitive procurements.</p> <p>Proposed GC 71621(a)(5) is not only unnecessary, but also impedes efficient court procurement, and conflicts with PCC 101, 102, and 103 (and therefore, also PCC 19202) and other sections of the PCC. For example, the PCC provides that not all service contracts need to be procured through a publicized, competitive bidding process:</p> <ul style="list-style-type: none"> • Under PCC 10335.5(c)(5) and JBCM Chapter 5, Section 5.1, courts may procure services less than \$5,000 without conducting a competitive procurement. • Under PCC 10335.5(c)(4) and JBCM Chapter 5, Section 5.4, courts may procure legal services without conducting a competitive procurement. • Under PCC 10340(b)(3) and JBCM Chapter 5, Section 5.3, courts may procure services from other governmental entities without conducting a competitive procurement. (Proposed GC § 71621(c) has a carve-out for some government contracts, but only between a trial court and another trial court or local government entity for services to be performed by employees of the other trial court or local government entity.) • Under PCC 10298 and JBCM Chapter 5, Section 5.5, courts may procure services without

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
	<p>competitive bidding through the use of leveraged procurement agreements.</p> <ul style="list-style-type: none"> • Under PCC 10340(b)(5) and JBCM Chapter 5, Section 5.6, courts may procure services from a business entity operating as a Community Rehabilitation Program without conducting a competitive procurement. • Under PCC 10340(b)(7) and JBCM Chapter 5, Section 5.7, courts may procure services relating to the development, maintenance, administration, or use of licensing or proficiency testing examinations, without conducting a competitive procurement • Under PCC 10301 and JBCM Chapter 5, Section 5.9, courts may procure services from a contractor without conducting a competitive procurement if the contractor's services are the only services that meet the court's need. <p>Therefore, the proposed GC 71621(a)(5) conflicts with PCC 101, 102, 103 , 10298, 10301, 10335, 10340. Because the proposed GC 71621(a)(5) would require the courts to comply with requirements that are not consistent with the PCC, the proposed GC 71621(a)(5) also conflicts with the JBCL's PCC 19202, 19204, and 19206.</p>
Under AB 2332's proposed GC 71621(a)(6) , service contracts must include specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurances that the contractor's hiring practices meet applicable nondiscrimination standards.	<p>The proposed GC 71621(a)(6) is unnecessary because the JBCM already includes policies and procedures regarding contract provisions for staff qualifications (see JBCM Chapter 8), and the JBCM already has requirements for contract certification clauses regarding nondiscrimination (see JBCM Chapter 8). Furthermore, PCC 19204 of the JBCL already requires all judicial branch entities to comply with the provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.</p> <p>In addition, the JBCM includes policies and procedures for contractor certifications regarding claims or complaints against the contractor, as well as contract provisions on audits and performance standards. For example, under the JBCM, any agreement over \$10,000 must contain a contract provision stating that the agreement is subject to examinations and audit by the California State Auditor for a period of three years after final payment under the agreement (see also JBCM Ch. 8 regarding audit provisions and contractor certifications). The JBCM already includes policies and procedures relating to performance standards (see, for example, Chapters 8 and 10).</p> <p>Furthermore, PCC 19204 of the JBCL already requires all judicial branch entities to comply</p>

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
	with the provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.
Under AB 2332's proposed GC 71621(a)(7) , service contracts must provide that they may be terminated at any time by the trial court without penalty if there is a material breach of the contract and notice is provided within 30 days of termination.	<p>Proposed GC 71621(a)(7) is unnecessary because the JBCM already includes policies and procedures on contract termination clauses. For example, JBCM Chapters 8 and 11 already include policies and procedures regarding contract clauses for termination for convenience, termination for cause, and termination due to nonavailability of funds.</p> <p>Furthermore, PCC 19204 of the JBCL already requires all judicial branch entities to comply with the provisions of the PCC that are applicable to state agencies and departments related to the procurement of goods and services.</p>
AB 2332 applies specifically to court reporters under proposed section 71621(c)(8).	<p>Court reporter contracts are already governed by other specific statutory frameworks (e.g., in the Government Code). For certain proceedings, courts must, under existing law, provide court interpreters. Placing new statutory requirements on court reporter contracting will impede the courts' ability to provide court reporters as needed, adversely affecting court operations and the public's access to justice.</p> <p>Trial courts currently use pro tem reporters in circumstances that AB 2332 would prohibit. Pro tem reporters are used in some courts on an on-going basis to supplement court reporter employees. The use of pro tem reporters in these circumstances gives courts the flexibility to efficiently meet fluctuation in demand for court reporting services without overstaffing with permanent employees. Pro tem reporters are also used in courts when a specific case, such as a lengthy death penalty case, requires additional resources and would otherwise be a drain on the court's existing staff. In these instances, proposed Government Code section 71621(c)(8) would bar the efficient use of pro tem reporters for time periods in excess of 180 calendar days because AB 2332 restricts the use of pro tem reporters except for "temporary" circumstances, where temporary is defined in existing Government Code section 71601(m) as 180 calendar days. Courts would be required to hire additional employee court reporters to address these needs, increasing the expense of these services to the courts and taxpayers of California.</p>
Section 2 of AB 2332 states that the proposed GC 71621 shall apply to any contract entered into on or after January 1, 2015.	As described above, the proposed GC 71621 conflicts with the JBCL (such as PCC 19202, 19204, 19206) and other PCC sections (such as PCC 100, 101, 102, 10298, 10301, 10335, and

<p>AB 2332 (as amended on July 1, 2014)</p>	<p>The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.</p>
	<p>10340), as well as the JBCM and California Rule of Court 10.603.</p>
<p>Section 3 of AB 2332 would require each trial court to provide a report to the Joint Legislative Budget Committee and the chairpersons of the Senate Judiciary Committee and Assembly Judiciary Committee if the trial court entered into a contract between July 1, 2014 and December 31, 2014 for services that were provided or are customarily provided by its trial court employees and that contract has a term extending beyond March 31, 2015.</p> <p>The report shall provide all of the following information for each of these contracts:</p> <ul style="list-style-type: none"> (1) A copy of the contract. (2) An analysis of whether the contract would have been permissible under the standards set forth in Section 71621 of the Government Code, as added by Section 1 of this act. (3) An analysis of whether the contract resulted in the displacement of trial court employees. (4) An analysis of whether the contract involves the use of contractors to perform the type of services that were customarily performed by trial court employees. <p>Section 3 of AB 2332 also states that it is the intent of the Legislature to consider the reduction of future budget appropriations to each trial court by the amount of any contract analyzed pursuant to subdivision (a) if the Legislature concludes that the contract would not have been permissible under the standards</p>	<p>Section 3 of AB 2332 is unnecessary because the JBCL already contains extensive reporting, review, and audit requirements in PCC 19204, 19209, and 19210, including reporting to the Joint Legislative Budget Committee, audits by the California State Auditor, and reviews by the California Technology Agency (see attached Appendix A).</p> <p>Information on court contracts is already subject to disclosure and reporting, including a comprehensive report detailing judicial branch contracts, submitted to the Legislature and the State Auditor twice each year.</p> <p>Furthermore, the JBCL applied prospectively to contracts entered into or amended beginning six months after the effective date of the bill (PCC 19203) while AB 2332 would impose requirements on courts for contracts entered into six months prior to the effective date of the legislation. Section 3(b) of AB 2332 states that the intent of the Legislature is to reduce funding to trial courts even if a contract complies with existing law, is competitively bid and results in significant cost savings to the court and taxpayers.</p>

AB 2332 (as amended on July 1, 2014)	The California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210), including related Public Contract Code sections.
provided in Section 71621 of the Government Code, as added by Section 1 of AB 2332.	
AB 2332 requirements, such as in proposed GC 71621(a).	<p>Pursuant to the JBCL and the JBCM (see Chapter 3), judicial branch entities implement socioeconomic programs in connection with procurement and contracting. For example:</p> <ul style="list-style-type: none"> • The Legislature established the California Disabled Veterans Business Enterprise (DVBE) program to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. In doing so, the Legislature stated its intent “that every state procurement authority honor California’s disabled veterans by taking all practical actions necessary to meet or exceed the Disabled Veterans Business Enterprise participation goals of a minimum of 3 percent of total contract value” (MVC 999(a)). • Under PCC 12102.2(c)), judicial branch entities are required to provide a small business preference in the award of IT goods or services contracts. In competitive procurements of IT goods and services, JBEs must provide a five percent preference to entities that have been certified as a “small business” or “microbusiness” by the Department of General Services. <p>The AB 2332 requirements will make it more difficult for the courts to award contracts to DVBEs or small businesses. For example, a contract award to a DVBE could very likely be prohibited because under AB 2332 the DVBE’s rates must not undercut trial court pay rates, and the contract must not cause a loss of a trial court employee’s employment, wages, hours, or benefits. As a result, AB 2332 would impede the implementation of statewide socioeconomic programs.</p>

APPENDIX A

California Judicial Branch Contract Law (Part 2.5 of the Public Contract Code, Sections 19201-19210, effective March 24, 2011)

19201. This part may be cited as the California Judicial Branch Contract Law.

19202. The Legislature finds and declares that placing all public contract provisions for judicial branch entities in one part will make that law clearer and easier to find. Further, it is the intent of the Legislature in enacting this part to achieve the objectives as set forth in Sections 100, 101, and 102.

19203. This part shall apply to all contracts initially entered into or amended by judicial branch entities on or after October 1, 2011.

19204. (a) All judicial branch entities shall comply with the provisions of this code that are applicable to state agencies and departments related to the procurement of goods and services, including information technology goods and services. All contracts with total cost estimated at more than one million dollars (\$1,000,000), except contracts covered by Section 68511.9 of the Government Code, shall be subject to the review and recommendations of the Bureau of State Audits to ensure compliance with this part. All judicial branch entities shall notify the State Auditor, in writing, of the existence of any such contracts within 10 business days of entering the contract. In addition, all administrative and infrastructure information technology projects of the Judicial Council or the courts with total costs estimated at more than five million dollars (\$5,000,000) shall be subject to the reviews and recommendations of the California Technology Agency, as specified in Section 68511.9 of the Government Code.

(b) Except as provided in subdivision (c), procurement and contracting for the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of court facilities shall be conducted by judicial branch entities consistent with the relevant provisions of this code applicable to state agencies.

(c) Notwithstanding any other provision of law, this part does not apply to procurement and contracting by judicial branch entities that are related to trial court construction, including, but not limited to, the planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities. However, this part shall apply to contracts for maintenance of all judicial branch facilities that are not under the operation and management of the Department of General Services.

(d) Only until the Judicial Council adopts the Judicial Branch Contracting Manual required pursuant to Section 19206, judicial branch entities shall instead be governed by applicable policies and procedures in the State Administrative Manual and the State Contracting Manual, or policies and procedures as otherwise required by law to be adopted by the Department of General Services applicable to state agencies.

19205. (a) As used in this part, "judicial branch entity" means any superior court, court of appeal, the California Supreme Court, the Judicial Council, the Habeas Corpus Resource Center, or the Administrative Office of the Courts.

(b) Where there is a reference in this code to an officer or employee of a state agency, for purposes of this part, these terms shall refer to a member, judicial officer, officer, employee, or other person of a judicial branch entity, as applicable.

19206. The Judicial Council shall adopt and publish no later than January 1, 2012, a Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that must be followed by all judicial branch entities subject to this part. The policies and procedures shall include a requirement that each judicial branch entity shall adopt a local contracting manual for procurement and contracting for goods or services by that judicial branch entity. The policies and procedures in the manuals shall be consistent with this code and substantially similar to the provisions contained in the State Administrative Manual and the State Contracting Manual.

19207. Except as provided in subdivision (a) of Section 19204 or as otherwise specifically required by law applicable to any judicial branch entity, nothing in this part is intended, nor shall it be construed, to require the approval, review, or involvement of any other state entity, including, but not limited to, the Department of General Services or the Secretary of California Technology, in the procurement of any judicial branch goods or services, including information technology goods or services.

19208. Nothing in this part is intended, nor shall it be construed to permit, the application of provisions of this code that do not apply to state agencies and departments.

19209. (a) Notwithstanding Section 10231.5 of the Government Code, beginning in 2012, twice each year, the Judicial Council shall provide a report to the Joint Legislative Budget Committee and the State Auditor that provides information related to procurement of contracts for the judicial branch. One report shall be provided no later than February 1 of each year, covering the period from July 1 through December 31 of the prior year, and the second report shall be provided no later than August 1 of each year, covering the period from January 1 through June 30 of the same year.

(b) Each of the two annual reports shall include a list of all vendors or contractors receiving payments from any judicial branch entities. For each vendor or contractor receiving any payment during the reporting period, the report shall provide a separate listing for each distinct contract between that vendor or contractor and a judicial branch entity. For every vendor or contractor listed in the report, including for each distinct contract for those contractors or vendors with more than one payment during the period, the report shall further identify the amount of payment to the contractor or vendor, the type of service or good provided, and the judicial branch entity or entities with which the vendor or contractor was contracted to provide that service or good.

(c) Each of the two annual reports shall include a list of all contract amendments made during the report period. For each amendment, the report shall identify the vendor or contractor, the type of service or good provided under the contract, the nature of the amendment, the duration of the amendment, and the cost of the amendment.

19210. (a) The State Auditor shall do the following:

(1) On or before March 15, 2014, and biennially thereafter, identify five judicial branch entities, excluding the Administrative Office of the Courts, for audit to assess the implementation of this part by the judicial branch entity based upon risk factors that include, but are not limited to, all of the following:

(A) Significant changes in legal or other requirements that have occurred that impact compliance with this part.

(B) The amount of time since the last audit performed of the identified judicial branch entity to assess its implementation and compliance with this part.

- (C) Previous audit results or known deficiencies.
- (D) Significant or unusual changes in management or high employee turnover.
- (E) The complexity and size of the judicial branch entity.
- (F) The level of sophistication and complexity of existing contracting practices and procedures.
- (G) The total volume and type of procurement made by the judicial branch entity compared with overall judicial branch procurement.
- (H) Substantial changes in total procurements, including, but not limited to, number and allotted amount, from one year to the next.

(2) On or before March 15 of the year in which the judicial branch entities are identified pursuant to paragraph (1), notify the Joint Legislative Budget Committee and the Joint Legislative Audit Committee of the five judicial branch entities identified and the estimated cost to conduct an audit of each judicial branch entity.

(3) On or before July 1 of the year in which the judicial branch entities are identified, commence an audit of each identified judicial branch entity, subject to an appropriation for this audit whereby moneys are allocated in the annual Budget Act to one or more funds that are available for use by judicial branch entities. Upon completion of the final audit report, as identified in paragraph (4), the Administrative Office of the Courts shall reimburse the California State Auditor for the actual costs of the work performed.

(4) Provide the judicial branch entity with a reasonable opportunity to respond to the findings of the audit. An audit report shall not be considered final until this opportunity is provided and any response is included or incorporated into the audit report.

(5) On or before January 15 of the fiscal year for which the appropriation for the audit was made, report the judicial branch entity audit findings, including any response by the judicial branch entity, to the judicial branch entity, the Legislature, the Judicial Council, and the Department of Finance.

(6) Annually provide updates to the Legislature on the status of the judicial branch entity implementation of an audit recommendation.

(b) If, on or before March 15 of the year in which the judicial branch entities are identified pursuant to subdivision (a), the California State Auditor identifies, on the basis of the risk factors described in subdivision (a), judicial branch entities for audit in addition to the five identified pursuant to subdivision (a) and notifies the Joint Legislative Budget Committee and the Joint Legislative Audit Committee of these additional entities, along with the estimated cost of each audit, and an appropriation is made for this purpose in the same manner as described in paragraph (3) of subdivision (a), the California State Auditor shall then audit the additional judicial branch entities and provide a final audit report as described in paragraphs (4) and (5) of subdivision (a).

(c) On or before July 1, 2015, and biennially thereafter, the California State Auditor shall commence an audit of the Administrative Office of the Courts, to assess the implementation of, and compliance with, this part, subject to an appropriation by the Legislature to the Judicial Council for transfer to the State Audit Fund for this purpose, and provide a final audit report in the manner described in paragraphs (4) and (5) of subdivision (a).

(d) The California State Auditor may follow up on a prior audit finding at any time.

(e) The California State Auditor shall conduct an audit pursuant to this section in accordance with Chapter 6.5 (commencing with Section 8543) of Division 1 of Title 2 of the Government Code. Pursuant to Section 8546.2 of the Government Code, the California State Auditor shall request updates from an audited judicial branch entity regarding its progress in implementing audit recommendations made pursuant to this section. The audited judicial branch entity shall provide these updates at intervals prescribed by the California State Auditor so that the California State Auditor may conduct appropriate followup activities.

(f) Moneys that have been transferred to the State Audit Fund pursuant to this section to audit a specific judicial branch entity, but have not been expended by the California State Auditor at the time the California State Auditor provides its final audit report for that judicial branch entity, shall revert back to the fund from which the moneys were transferred.

(g) A report submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(h) If the California State Auditor is selected as the auditing entity pursuant to subdivision (j) of Section 77206 of the Government Code, then the California State Auditor may combine the results of an audit of a trial court conducted pursuant to that section with an audit of the same trial court conducted pursuant to this section. The California State Auditor may also combine the results of an audit of the Administrative Office of the Courts pursuant to Section 77206 of the Government Code with the results of an audit of the Administrative Office of the Courts pursuant to this section.

(i) This section shall become operative on January 1, 2014.

Judicial Council Amendments Mock-up for AB-2332 (Wieckowski)

*****Amendments are in BOLD*****

Mock-up based on Version Number 95 - Amended Senate, 7/01/2014

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

1 **SECTION 1.** Section 71621 is added to the Government Code, to read:

2 **71621.** (a) If a trial court intends to enter into a contract for any services that are currently or
3 customarily performed by that trial court's employees, all of the following requirements shall
4 apply:

5 (1) The trial court shall clearly demonstrate that the contract will result in actual overall cost
6 savings to the trial court for the duration of the entire contract as compared with the trial court's
7 actual costs of providing the same services. In comparing costs, all of the following shall occur:

8 (A) The trial court's additional cost of providing the same services as proposed by the contract
9 shall be included. These additional costs shall include the salaries and benefits of additional staff
10 that would be needed and the cost of additional space, equipment, ~~and materials, and other~~
11 factors needed to perform the services.

12 (B) The trial court's indirect overhead costs shall not be included unless those costs can be
13 attributed ~~solely~~ to the function in question and would not exist if that function was not
14 performed by the trial court. For the purposes of this subparagraph, "indirect overhead costs"
15 means the pro rata share of existing administrative salaries and benefits, rent, equipment costs,
16 utilities, and materials.

17 (C) The cost of a contractor providing a service for any continuing trial court costs that would
18 be directly associated with the contracted function shall be included. Continuing trial court costs
19 shall include, but not be limited to, costs for inspection, supervision, and monitoring.

20 (2) ~~The contract shall not be approved solely on the basis that savings will result from~~
21 ~~lower contractor pay rates or benefits.~~ Contracts shall be eligible for approval if the
22 contractor's ~~wages pay rates or benefits~~ are at the industry's level and do not materially
23 undercut trial court pay rates or benefits.

24 (3) The contract shall not cause an existing trial court employee to incur a loss of his or her
25 employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary
26 transfer to a new location requiring a change in residence.

27 (4) The contract shall not be approved if, in light of the services provided by trial courts and
28 the special nature of the judicial function, it would be inconsistent with the public interest to
29 have the services covered by the contract performed by a private entity.

30 (5) To the extent the contract is subject to the Judicial Branch Contracting Manual
31 adopted by the Judicial Council required by section 19206 of the Public Contract Code, the
32 contract shall comply with the applicable provisions of the operative manual. ~~The contract~~
33 ~~shall be awarded through a competitive bidding process.~~

34 (6) ~~The contract shall include specific provisions pertaining to the qualifications of the~~
35 ~~staff that will perform the work under the contract, as well as assurances that the~~
36 ~~contractor's hiring practices meet applicable nondiscrimination standards.~~

1 ~~(7) The contract shall provide that it may be terminated at any time by the trial court~~
2 ~~without penalty if there is a material breach of the contract and notice is provided within~~
3 ~~30 days of termination.~~

4 ~~(8) The term of the contract shall not be more than five years from the date on which the~~
5 ~~trial court approves the contract.~~

6 (b) "Customarily performed" as used in subdivision (a) means performed in that manner
7 by that trial court's employees after January 1, 2015 or during the last two years,
8 whichever is later. However, the limitations in subdivision (a) on contracts for services that
9 are currently or customarily performed by that court's employees do not apply if the
10 manner in which a service is currently or customarily performed is contrary to best
11 practices. "Best practices" shall be determined by the trial court or the Judicial Council.

12 ~~(b)(c)~~ This section does not preclude a trial court or the Judicial Council from adopting more
13 restrictive rules regarding the contracting of court services.

14 ~~(e)(d)~~ This section does not apply to a contract in any of the following circumstances:

15 (1) The contract is between a trial court and another trial court or a local government entity for
16 ~~services to be performed by employees of the other trial court or employees of the local~~
17 ~~government entity.~~

18 (2) The contract is for a new trial court function and the Legislature has specifically mandated
19 or authorized the performance of the services by independent contractors.

20 (3) The contract is for services for a trial court with fifteen or fewer judges.

21 ~~(3)(4)~~ The services contracted for are of such a highly specialized or technical nature that the
22 necessary expert knowledge, experience, and ability cannot be obtained from the court's trial
23 court employees.

24 (5) The contractor will provide equipment, materials, facilities, or support services that
25 could not feasibly be provided by the court in the location where the services are to be
26 performed. This paragraph shall not apply to services contracted in order to open closed
27 courthouses if those services were performed by trial court employees before the closure.

28 (6) The contract is for technology or automation services that can result in cost savings or
29 efficiencies, improved public access, greater information security, or enhanced privacy
30 protection.

31 ~~(4)(7)~~ The services are incidental to a contract for the purchase or lease of real or personal
32 property. Contracts described in this paragraph, known as "service agreements," shall include,
33 but not be limited to, agreements to service or maintain office equipment or computers that are
34 leased or rented. ~~Contracts described in this paragraph shall not include agreements to~~
35 ~~operate equipment or computers, except as necessary to service or maintain that~~
36 ~~equipment.~~

37 ~~(5)(8)~~ The legislative, administrative, or legal goals and purposes cannot be accomplished
38 through the utilization of trial court employees because of the need to protect against a conflict of
39 interest or to ensure independent and unbiased findings in situations where there is a clear need
40 for an independent, outside perspective.

41 ~~(6)(9)~~ Due to an emergency, a contract is necessary for the immediate preservation of the
42 public health, welfare, or safety.

43 (10) The contract is for services that can better protect the safety or security of court
44 employees, judicial officers, court facilities, or members of the public who use court
45 facilities.

1 | ~~(7)~~(11) The contractor will conduct training courses for which appropriately qualified trial
2 | court employee instructors are not available from the court, provided that permanent instructor
3 | positions shall be filled through the process for hiring trial court employees.

4 | ~~(8)~~(12) The services are of such an urgent, temporary, or occasional nature that the delay
5 | incumbent in their implementation through the process for hiring trial court employees would
6 | frustrate their very purpose or the temporary nature of the services does not justify the hiring
7 | of a regular employee. This paragraph shall not apply to the services of official court reporters,
8 | except individual official reporters pro tempore may be used by a trial court when the criteria of
9 | this paragraph are met.

10 | ~~(9)~~(13) The contract is for services that are necessary for court operations following a
11 | reduction in force or layoff for organizational necessity pursuant to section 71652 and an
12 | applicable memorandum of understanding between the court and a recognized employee
13 | organization allows for such a contract.

14 | (14) The contract is a personal services contract developed pursuant to rehabilitation programs
15 | in accordance with Sections 19403 and 19404 of the Welfare and Institutions Code, pursuant to
16 | habilitation programs in accordance with Chapter 13 (commencing with Section 4850) of
17 | Division 4.5 of the Welfare and Institutions Code, or pursuant to a program vendored or
18 | contracted through a regional center or the State Department of Developmental Services in
19 | accordance with the Lanterman Developmental Disabilities Services Act (Division 4.5
20 | (commencing with Section 4500) of the Welfare and Institutions Code), and the contract will not
21 | cause an existing trial court employee to incur a loss of his or her employment or employment
22 | seniority; a reduction in wages, benefits, or hours; or an involuntary transfer to a new location
23 | requiring a change in residence.

24 | ~~(10)~~(15) The contract is for the services of any court interpreter. Contracts for the services of
25 | any court interpreter, and restrictions on contracting out interpreter services, shall be governed
26 | by the Trial Court Interpreter Employment and Labor Relations Act (Chapter 7.5 (commencing
27 | with Section 71800)) and any memorandum of understanding or agreement entered into pursuant
28 | to that act, or by the other provisions of this chapter, the Trial Court Employment Protection and
29 | Governance Act, and any memorandum of understanding or agreement entered into pursuant to
30 | that act, as applicable.

31 | (16) If the contract is a memorandum of understanding between the court and a
32 | recognized employee organization regarding the employment of trial court employees.

33 | SEC. 2.

34 | Section 71621 of the Government Code, as added by Section 1 of this act, shall apply to ~~any~~
35 | ~~contract entered into on or after January 1, 2015~~ contracts for services entered into after
36 | January 1, 2015. This section shall not apply to the renewal of contracts for services
37 | subsequent to January 1, 2015, where the contract was entered into before January 1, 2015,
38 | irrespective of whether the contract is renewed or rebid with the existing contractor or
39 | with a new contractor.

40 | SEC. 3.

41 | ~~(a) Each trial court shall provide a report by no later than February 1, 2015, to the~~
42 | ~~chairperson of the Joint Legislative Budget Committee and the chairpersons of the Senate~~

1 ~~Judiciary Committee and Assembly Judiciary Committee if the trial court entered into a~~
2 ~~contract between July 1, 2014, and December 31, 2014, inclusive, for services that were~~
3 ~~provided or are customarily provided by its trial court employees and that contract has a~~
4 ~~term extending beyond March 31, 2015. The report shall provide all of the following~~
5 ~~information for each of these contracts:~~

6 ~~(1) A copy of the contract.~~

7 ~~(2) An analysis of whether the contract would have been permissible under the standards~~
8 ~~set forth in Section 71621 of the Government Code, as added by Section 1 of this act.~~

9 ~~(3) An analysis of whether the contract resulted in the displacement of trial court~~
10 ~~employees.~~

11 ~~(4) An analysis of whether the contract involves the use of contractors to perform the type~~
12 ~~of services that were customarily performed by trial court employees.~~

13 ~~(b) It is the intent of the Legislature to consider the reduction of future budget~~
14 ~~appropriations to each trial court by the amount of any contract analyzed pursuant to~~
15 ~~subdivision (a) if the Legislature concludes that the contract would not have been~~
16 ~~permissible under the standards provided in Section 71621 of the Government Code, as~~
17 ~~added by Section 1 of this act.~~

18 **SEC. 43.**

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