



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT BUDGET
ADVISORY COMMITTEE

TRIAL COURT BUDGET ADVISORY COMMITTEE
FUNDING METHODOLOGY SUBCOMMITTEE

Materials for September 17, 2014 Meeting
Table of Contents

Item 1 – Consideration of the Judicial Council’s July 29, 2014 Action on the TCTF Funding Shortfall.....	1
Item 3 – WAFM – Benefits Factor (Discussion Item).....	7
Item 4 – Court-Appointed Dependency Counsel: Allocation Methodology (Discussion Item)	51
Item A – Funding Methodology Subcommittee Work Plan (Information Only)	58

Item 1
Consideration of the Judicial Council’s July 29, 2014 Action on the TCTF Funding Shortfall (Action Item)

Issue

Should the Trial Court Budget Advisory Committee recommend to the Judicial Council a formula different than the one adopted by the council to allocate a \$22.7 million reduction related to a projected shortfall in Trial Court Trust Fund revenues that support courts’ base allocations for operations?

Background

At its April 25, 2014 business meeting the Judicial Council directed the Judicial Council staff to prepare and submit to the state Department of Finance (DOF) a fiscal year 2014–2015 Spring Finance Letter requesting a \$70 million General Fund ongoing augmentation to the TCTF to address a projected shortfall in revenue in the TCTF that supports trial courts’ allocations for operations. The decline in projected revenues was primarily a result of a decline in paid, first paper civil filings and court operations assessment on criminal convictions.

The Spring Finance Letter was submitted. In his May revision the Governor proposed to provide \$30.9 million of General Fund revenues to backfill the potential fee revenue loss. In the May revision the Governor concluded that a portion of the projected fee revenue loss constituted revenues from locally based charges which are not part of a court’s allocation from the TCTF. None of the projected shortfall was based on local revenues and the DOF has been advised of and has acknowledged such. Despite this acknowledgement, the 2014–15 enacted budget only provided for the \$30.9 million, leaving a projected deficit of \$22.7 million.

The Funding Methodology Subcommittee met by phone on June 23 and 30, 2014 to discuss how to address the revenue shortfall. The subcommittee was provided with four options (see Attachment 1B).

At its July 9, 2014 meeting, the TCBAC adopted the following recommendations, which were considered by the council at its July 29, 2014 business meeting:

Related to an estimated shortfall of \$22.7 million in 2014–2015 TCTF revenue that supports courts’ base allocation for operations, adopt the following recommendations:

- a. Pursuant to Government Code section 68502.5 (c)(2)(A) the council should preliminarily allocate courts’ 2014–2015 base allocation of \$1.557 billion from the TCTF and General Fund Program 45.10 appropriation under the assumption that any revenue shortfall that

supports base allocations will be fully backfilled or funded. The council should then finalize allocations to trial courts in January of the fiscal year.

- b. The council should direct the Administrative Director of the Courts to send a letter to the Department of Finance indicating that a deficiency request for any shortfall of revenue that supports courts' base allocations will be submitted by the Judicial Council after September 30, 2014, and subsequently direct the Administrative Director to submit such deficiency request after September 30, 2014.
- c. If the deficiency request is not adopted by the Governor, the council should direct the TCBAC to provide the council with a recommendation on how the shortfall should be allocated among the courts.
- d. The council should review two preliminary options for allocating a reduction to the extent a shortfall in revenue that supports courts' base allocation is not backfilled or funded.

At its July 29, 2014 meeting, the council took the following action related to the TCBAC's recommendation:

With one opposing vote, related to an estimated shortfall of \$22.7 million in 2014–2015 TCTF revenue that supports courts' base allocation for operations:

- a. Under Government Code section 68502.5(c)(2)(A), preliminarily allocated courts' 2014–2015 base allocation of \$1.535 billion from the TCTF and General Fund Program 45.10 appropriation under the assumption that any revenue shortfall that supports base allocations will not be fully backfilled or funded. The council will finalize allocations to trial courts in January of the fiscal year.
- b. Directed the Administrative Director to send a letter to the Department of Finance (DOF) indicating that a deficiency request for any shortfall of revenue that supports courts' base allocations will be submitted by the Judicial Council after September 30, 2014, and subsequently directed the Administrative Director to submit such deficiency request after September 30, 2014.
- c. Allocated among the courts a share of the \$22.7 million shortfall based on their pro rata share of the 2014–2015 base allocation, less each court's 2011–2012 nonsheriff security allocation and invited the TCBAC to recommend a different allocation method for consideration at the council's October 2014 meeting.

The council used the second of the two preliminary options provided by the TCBAC (Scenario 2) to allocate a reduction of \$22.7 million and the corresponding funding floor adjustment (see

Attachment 1C). The formula used by the council is identical to the option provided in column 4 of Attachment 1B, except that the council's method incorporates the actual allocation of the \$41 million in new benefits funding whereas the option provided to the subcommittee in June 2014 assumed a different allocation formula. The first preliminary option (Scenario 1) is identical to the option provided in column 3 of Attachment 1B.

Options

Option 1: Do not recommend a different reduction allocation formula to the council.

Option 2: Recommend a different reduction allocation formula to the council for consideration at its October 28, 2014 business meeting.

**Options for Allocation Reduction Related to Potential
Revenue Shortfall**

Court	Pro-rata using WAFM Historical Base	Pro-rata using 2014-15 WAFM Funding Need	Pro-rata using Estimated 2014- 15 base	2% Reserve Method (pro- rata using estimated 2014- 15 base less security)
	1	2	3	4
Alameda	(1,096,588)	(827,285)	(1,017,137)	(998,630)
Alpine	(8,701)	(3,220)	(10,067)	(10,318)
Amador	(32,786)	(25,641)	(31,501)	(32,285)
Butte	(114,845)	(124,162)	(120,595)	(117,155)
Calaveras	(30,743)	(25,526)	(26,832)	(27,501)
Colusa	(21,562)	(17,793)	(20,666)	(21,181)
Contra Costa	(518,558)	(521,323)	(510,418)	(523,130)
Del Norte	(34,705)	(33,354)	(33,506)	(34,340)
El Dorado	(92,674)	(87,534)	(85,917)	(88,057)
Fresno	(542,980)	(594,732)	(536,870)	(550,241)
Glenn	(28,550)	(22,007)	(25,082)	(25,572)
Humboldt	(78,886)	(71,037)	(75,896)	(75,472)
Imperial	(99,189)	(109,370)	(102,942)	(99,705)
Inyo	(27,143)	(18,779)	(27,898)	(26,018)
Kern	(453,559)	(643,898)	(502,082)	(513,682)
Kings	(75,098)	(84,653)	(80,776)	(76,967)
Lake	(45,758)	(36,028)	(43,191)	(41,556)
Lassen	(29,794)	(26,082)	(30,521)	(27,228)
Los Angeles	(6,184,949)	(6,936,306)	(6,570,720)	(6,537,178)
Madera	(93,814)	(91,863)	(91,936)	(88,964)
Marin	(210,200)	(129,243)	(174,684)	(178,901)
Mariposa	(14,507)	(11,880)	(14,426)	(14,786)
Mendocino	(69,008)	(59,887)	(66,633)	(64,163)
Merced	(142,353)	(166,589)	(145,059)	(148,672)
Modoc	(14,036)	(7,661)	(12,547)	(12,848)
Mono	(19,420)	(18,510)	(19,169)	(19,313)
Monterey	(205,005)	(215,211)	(210,049)	(203,278)
Napa	(95,953)	(77,052)	(92,853)	(91,089)
Nevada	(60,154)	(55,695)	(64,355)	(59,978)
Orange	(1,938,041)	(1,611,364)	(1,801,924)	(1,809,090)
Placer	(175,143)	(196,313)	(183,210)	(187,773)
Plumas	(22,709)	(13,408)	(18,457)	(18,916)
Riverside	(900,450)	(1,143,981)	(988,495)	(986,469)
Sacramento	(970,222)	(943,026)	(956,904)	(955,017)
San Benito	(39,334)	(28,486)	(33,549)	(34,385)
San Bernardino	(966,553)	(1,290,833)	(1,085,540)	(1,067,474)
San Diego	(1,934,151)	(1,583,435)	(1,776,886)	(1,812,074)
San Francisco	(835,016)	(600,648)	(764,468)	(783,508)
San Joaquin	(372,521)	(414,499)	(370,342)	(375,596)
San Luis Obispo	(167,118)	(173,225)	(170,200)	(171,105)
San Mateo	(469,133)	(410,054)	(449,251)	(454,328)
Santa Barbara	(289,411)	(240,725)	(276,809)	(269,148)
Santa Clara	(1,170,347)	(872,980)	(1,022,248)	(1,047,708)
Santa Cruz	(156,173)	(144,990)	(144,375)	(147,971)
Shasta	(116,757)	(120,035)	(150,014)	(120,785)
Sierra	(8,545)	(3,175)	(10,069)	(10,319)
Siskiyou	(51,288)	(28,334)	(42,489)	(43,547)
Solano	(247,475)	(266,546)	(251,233)	(251,484)
Sonoma	(296,984)	(305,121)	(292,347)	(293,559)
Stanislaus	(244,223)	(307,100)	(249,774)	(255,866)
Sutter	(53,627)	(61,568)	(56,173)	(54,164)
Tehama	(45,815)	(46,118)	(42,885)	(43,953)
Trinity	(15,607)	(13,679)	(21,252)	(15,565)
Tulare	(193,720)	(212,638)	(193,482)	(198,086)
Tuolumne	(40,812)	(33,349)	(39,432)	(37,372)
Ventura	(383,986)	(439,254)	(405,851)	(394,451)
Yolo	(102,496)	(107,026)	(110,290)	(104,996)
Yuba	(50,823)	(45,764)	(47,724)	(47,084)
Total	(22,700,000)	(22,700,000)	(22,700,000)	(22,700,000)

Courts' Share of Estimated Revenue Shortfall of \$22.7 Million

Court	Scenario 1 - Pro-Rata of 2014-15 Base Allocation			Scenario 2 - Pro-Rata of 2014-15 Base Allocation less 2011-12 Non-Sheriff Security Allocation			Scenario 2 as % of Scenario 1
	Allocation of Shortfall	Additional Adjustment Related to Funding Floor	Net Allocation	Allocation of Shortfall	Additional Adjustment Related to Funding Floor	Net Allocation	
	A	B	C (A+B)	E	F	G (E+F)	
Alameda	(1,018,529)	(6,510)	(1,025,039)	(1,000,038)	(6,272)	(1,006,310)	98%
Alpine	(6,488)	6,488	(0)	(6,650)	6,650	0	0%
Amador	(28,828)	(199)	(29,026)	(29,546)	(191)	(29,737)	102%
Butte	(120,834)	(758)	(121,592)	(117,395)	(732)	(118,127)	97%
Calaveras	(26,889)	(187)	(27,076)	(27,559)	(179)	(27,738)	102%
Colusa	(19,024)	19,024	0	(19,498)	19,498	0	0%
Contra Costa	(508,962)	(3,347)	(512,309)	(521,652)	(3,206)	(524,858)	102%
Del Norte	(33,573)	(218)	(33,791)	(34,410)	(209)	(34,619)	102%
El Dorado	(85,516)	(587)	(86,103)	(87,648)	(563)	(88,211)	102%
Fresno	(537,377)	(3,606)	(540,983)	(550,775)	(3,455)	(554,229)	102%
Glenn	(24,659)	24,659	-	(25,139)	25,139	-	0%
Humboldt	(76,055)	(495)	(76,549)	(75,634)	(476)	(76,110)	99%
Imperial	(103,038)	(653)	(103,691)	(99,800)	(630)	(100,431)	97%
Inyo	(25,401)	25,401	0	(23,456)	23,456	(0)	0%
Kern	(502,760)	(3,296)	(506,056)	(514,390)	(3,158)	(517,548)	102%
Kings	(80,920)	(499)	(81,419)	(77,111)	(483)	(77,594)	95%
Lake	(43,267)	(273)	(43,540)	(41,633)	(264)	(41,896)	96%
Lassen	(30,575)	(181)	(30,756)	(27,279)	(177)	(27,456)	89%
Los Angeles	(6,581,606)	(41,321)	(6,622,927)	(6,548,299)	(39,737)	(6,588,036)	99%
Madera	(90,784)	(589)	(91,373)	(87,780)	(569)	(88,349)	97%
Marin	(174,714)	(1,171)	(175,885)	(178,938)	(1,122)	(180,059)	102%
Mariposa	(13,141)	13,141	(0)	(13,468)	13,468	-	0%
Mendocino	(65,649)	(423)	(66,071)	(63,151)	(409)	(63,560)	96%
Merced	(144,130)	(970)	(145,100)	(147,724)	(930)	(148,653)	102%
Modoc	(12,095)	12,095	0	(12,386)	12,386	0	0%
Mono	(17,984)	17,984	0	(18,099)	18,099	-	0%
Monterey	(209,652)	(1,336)	(210,988)	(202,865)	(1,289)	(204,155)	97%
Napa	(92,936)	(581)	(93,516)	(91,171)	(559)	(91,731)	98%
Nevada	(64,485)	(373)	(64,858)	(60,107)	(362)	(60,469)	93%
Orange	(1,809,768)	(11,912)	(1,821,680)	(1,817,137)	(11,444)	(1,828,581)	100%
Placer	(182,831)	(1,168)	(184,000)	(187,389)	(1,119)	(188,509)	102%
Plumas	(18,508)	(128)	(18,636)	(18,970)	(123)	(19,092)	102%
Riverside	(984,223)	(6,317)	(990,540)	(982,088)	(6,073)	(988,161)	100%
Sacramento	(955,348)	(6,224)	(961,573)	(953,420)	(5,984)	(959,404)	100%
San Benito	(33,613)	(232)	(33,845)	(34,451)	(223)	(34,673)	102%

Courts' Share of Estimated Revenue Shortfall of \$22.7 Million

	Scenario 1 - Pro-Rata of 2014-15 Base Allocation			Scenario 2 - Pro-Rata of 2014-15 Base Allocation less 2011-12 Non-Sheriff Security Allocation			Scenario 2 as % of Scenario 1
	Allocation of Shortfall	Additional Adjustment Related to Funding Floor	Net Allocation	Allocation of Shortfall	Additional Adjustment Related to Funding Floor	Net Allocation	
Court	A	B	C (A+B)	E	F	G (E+F)	H
San Bernardino	(1,086,660)	(6,872)	(1,093,532)	(1,068,603)	(6,619)	(1,075,223)	98%
San Diego	(1,778,378)	(11,741)	(1,790,119)	(1,813,641)	(11,255)	(1,824,897)	102%
San Francisco	(765,018)	(5,015)	(770,033)	(784,091)	(4,804)	(788,895)	102%
San Joaquin	(370,895)	(2,461)	(373,356)	(376,169)	(2,361)	(378,529)	101%
San Luis Obispo	(170,483)	(1,090)	(171,573)	(171,396)	(1,047)	(172,442)	101%
San Mateo	(449,877)	(2,923)	(452,800)	(454,975)	(2,805)	(457,780)	101%
Santa Barbara	(277,223)	(1,765)	(278,987)	(269,564)	(1,702)	(271,266)	97%
Santa Clara	(1,023,888)	(6,894)	(1,030,782)	(1,049,416)	(6,605)	(1,056,021)	102%
Santa Cruz	(144,580)	(961)	(145,541)	(148,184)	(921)	(149,105)	102%
Shasta	(149,727)	(750)	(150,477)	(120,460)	(745)	(121,205)	81%
Sierra	(6,394)	6,394	0	(6,553)	6,553	0	0%
Siskiyou	(42,213)	(283)	(42,495)	(43,265)	(271)	(43,536)	102%
Solano	(250,497)	(1,634)	(252,132)	(250,730)	(1,570)	(252,301)	100%
Sonoma	(292,464)	(1,927)	(294,391)	(293,679)	(1,852)	(295,531)	100%
Stanislaus	(250,217)	(1,685)	(251,902)	(256,327)	(1,615)	(257,942)	102%
Sutter	(56,256)	(364)	(56,621)	(54,247)	(352)	(54,599)	96%
Tehama	(42,965)	(297)	(43,262)	(44,036)	(285)	(44,321)	102%
Trinity	(20,110)	20,110	0	(14,389)	14,389	0	0%
Tulare	(193,682)	(1,282)	(194,964)	(198,296)	(1,228)	(199,524)	102%
Tuolumne	(39,505)	(247)	(39,752)	(37,445)	(239)	(37,684)	95%
Ventura	(406,514)	(2,580)	(409,094)	(395,118)	(2,489)	(397,607)	97%
Yolo	(110,465)	(656)	(111,121)	(105,170)	(635)	(105,804)	95%
Yuba	(47,826)	(316)	(48,143)	(47,188)	(304)	(47,493)	99%
Total	(22,700,000)	0	(22,700,000)	(22,700,000)	(0)	(22,700,000)	100%

Item 3
WAFM – Retirement Contribution Factor
(Discussion Item)

Issue

How should employer provided member contributions be treated in the WAFM?

BackgroundGovernor’s May Revision 2014–2015 Budget Summary and Budget Act of 2014

The Judicial Branch section of the Governor’s Budget Summary included the following message:

“The Administration recognizes that, like the rest of state government, the Judicial Branch has growing costs related to employee retirement, health care, and other areas. The Budget recognizes these costs and provides an augmentation of \$100 million General Fund to support trial court operations and \$5 million General Fund to support the state judiciary, but like the rest of state government these costs must be managed. The Administration has worked with state employee groups to require current employees to contribute approximately half of the normal retirement costs, pursuant to the Public Employees’ Pension Reform Act of 2013. In contrast, the Judicial Branch still has many court employees who do not contribute towards their retirement costs.” See Attachment 3B for a fact sheet on the Public Employees’ Pension Reform Act of 2013.

In addition, “The Judicial Branch must continue to implement uniform standards, employee compensation changes, and operational efficiencies with the goal of increasing access to justice.”

Based on the Department of Finance’s estimate of court retirement costs that courts could have saved in 2013–2014 by not covering the current employee share of costs for retirement, the Governor proposed funding only \$42.8 million of the requested \$64.8 million for ongoing costs to the trial courts in 2014–2015 of the retirement, employee health, and retiree health cost changes that occurred in 2012–2013 and were anticipated to occur in 2013–2014. Consistent with the Governor’s proposal, the Budget Act of 2014 provided \$42.8 million in benefits funding. The DOF has indicated that it is willing to provide new ongoing funding in 2015–2016 if the actual employer contributions towards employee’s share of retirement costs in 2013–2014 were less than the \$22 million estimated by DOF staff.

Judicial Council Action

At its July 29, 2014 business meeting, the Judicial Council allocated the \$42.8 million using the option that was recommended by the TCBAC, which proposed allocating the funding based on each court’s percentage of the \$64.8 million cost change. The TCBAC recommendation was not necessarily intended to be a recommendation on a standard formula to be used by the council in future years for allocating partially-funded benefits monies.

Michael Cohen’s Presentation to the Judicial Council

Michael Cohen, Director, Department of Finance, addressed the council on August 22, 2014. In portions of his comments regarding employee retirement funding he said the following:

“In terms of the benefit increase, we did reduce it by as you said about a third, based on our estimate of where we -- we weren’t at the pension reform standard of employees paying for their retirement. So what we’ve said is that when we build the January budget, we’ll have updated information from your staff. And to the extent that employees are moving towards the pension reform standard of paying for half of their normal annual pension costs, that we would provide that additional \$22 million or so. So it really was a signal of the Governor’s commitment to the implementation of the 2012 Pension Reform Act. And we encourage -- we’re encouraging every branch of government, every layer of government, to move towards those standards. So that funding is tied to that, but we’ll take another look at it as we build the budget.”

“On your first point in terms of employee benefits, absolutely, not covering that last \$22 million of benefit costs was an effort to achieve parity of -- in terms of our executive branch workers, increase their annual contributions to pensions, typically by 3 percent. And are now sharing in half of the annual, taking outside the unfunded liability piece of it, sharing in half of the annual cost of the pension system, and as your employees get to that standard, that was my previous comment that we would view the \$22 million as getting provided at that point.”

A transcript of Director Cohen’s presentation is provided in Attachment 3C.

Benefits Funding Need Factor in WAFM

Currently, using the information provided by courts in the Schedule 7A, each court’s benefit cost ratio (as a percentage for salary-driven benefits and a average per filled position for non-salary-driven benefits) for staff whose workload is included in the WAFM is used to compute the funding need related to employer contributions towards employee benefits, including both the employer share of retirement costs and any employer provided member contributions. Attachment 3D provides a table that lists the courts that have budgeted for the employer provided member contribution of retirement costs in the 2014–2015 Schedule 7A (as of July 1, 2014).



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MEMORANDUM

Date

September 5, 2014

Action Requested

Please Review

To

Members of the Funding Methodology
 Subcommittee of the Trial Court Budget
 Advisory Committee

Deadline

None; informational only

From

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Subject

Pension Contribution Cost-Sharing After
 PEPRA

The California Public Employees' Pension Reform Act of 2013 (PEPRA) (Gov. Code, § 7522 et seq.¹) made changes both to the level of public pension benefits, and to the respective required contributions of employees and employers to fund those benefits. One of the tenets of PEPRA is that public employers and employees should share the costs of providing the employees with pension benefits. This informational memorandum summarizes the law regarding the trial courts' obligations under PEPRA to adopt equal cost-sharing of employee and employer pension contribution rates for all court employees.²

As explained more fully below, PEPRA requires equal sharing of the normal pension contribution costs between public employers and public employees, specifically, "that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee

¹ All further statutory references are to the California Government Code.

² PEPRA specifically exempts various public pension systems from its coverage, including charter-based retirement systems which are not governed by state statutes, such as the San Francisco Employees' Retirement System. (Gov. Code, § 7522.02(a)(2).)

September 5, 2014

Page 2

contribution,” for employees hired on or after PEPRA’s effective date of January 1, 2013. (Gov. Code, § 7522.30(a).) However, such cost-sharing may only be imposed immediately if doing so would not impair an existing union contract that covers the new employee (Gov. Code, § 7522.30(f).) With respect to employees hired before January 1, 2013 (the effective date of PEPRA), the PEPRA amendments to the Public Employees’ Retirement Law (PERL) (Gov. Code, § 20000 et seq.) and the County Employees’ Retirement Law of 1937 (the ’37 Act) (Gov. Code, § 31450 et seq.) provide that employers may impose such cost-sharing beginning in 2018, but do not require them to do so.³

Statutory Overview

PEPRA states that equal cost-sharing of pension benefits shall be the “standard” in the state. However, the relevant statutory language also provides that this standard is mandatory only for new employees, that is, those hired on or after January 1, 2013:

- (a) This section shall apply to all public employers and to all new members. Equal sharing of normal costs between public employers and public employees shall be the standard. The standard shall be that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.
- (b) The “normal cost rate” shall mean the annual actuarially determined normal cost for the plan of retirement benefits provided to the new member and shall be established based on the actuarial assumptions used to determine the liabilities and costs as part of the annual actuarial valuation. The plan of retirement benefits shall include any elements that would impact the actuarial determination of the normal cost, including, but not limited to, the retirement formula, eligibility and vesting criteria, ancillary benefit provisions, and any automatic cost-of-living adjustments as determined by the public retirement system.⁴ (Gov. Code, § 7522.30.)

As discussed in the following sections, for employees hired before January 1, 2013, PEPRA’s amendments to PERL and the ’37 Act state that beginning in 2018, it will be discretionary for

³ PEPRA’s provisions on cost-sharing discussed herein also apply to independent public retirement systems established as pension trusts under Government Code section 53216 (Gov. Code, § 7522.02(a)(1)) but PERL, the ’37 Act, and PEPRA’s amendments thereto do not apply to such systems.

⁴ Subdivision (f) of section 7522.30 provides that if a new member (hired on or after PEPRA’s enactment) is covered by an existing union contract, the contract terms for employee contribution rates apply until a new contract is negotiated, at which time the rates for new members must comply with PEPRA’s requirements (§ 7522.30 is included in the attachments to this memorandum):

(f) If the terms of a contract, including a memorandum of understanding, between a public employer and its public employees, that is in effect on January 1, 2013, would be impaired by any provision of this section, that provision shall not apply to the public employer and public employees subject to that contract until the expiration of that contract. A renewal, amendment, or any other extension of that contract shall be subject to the requirements of this section.

September 5, 2014

Page 3

covered government employers to require pre-PEPRA employees (those who were employee members prior to PEPRA's enactment) to pay 50 percent of the normal cost of benefits.⁵

PEPRA Amendments to PERL

Government Code section 20516.5⁶ (added to PERL by PEPRA) states in subsection (a) that 50 percent cost-sharing is the "standard," but adds in subsection (b) that "contracting agencies," *may* require such cost-sharing, and that the contribution amount would be capped at 8 percent for pre-PEPRA employees. For purposes of the CalPERS system and PERL, trial courts are considered "contracting agencies" because court employees are covered under county contracts with CalPERS.

- (a) Equal sharing of normal costs between a contracting agency or school employer and their employees shall be the standard. It shall be the standard that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.
- (b) Notwithstanding any other provision of this part, a contracting agency or a school district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 8 percent of pay for local miscellaneous or school members, no more than 12 percent of pay for local police officers, local firefighters, and county peace officers, and no more than 11 percent of pay for all local safety members other than police officers, firefighters, and county peace officers. (Gov. Code, § 20516.5.)

Subsection (c) states that the permissive cost-sharing in subsection (b) does not go into effect until 2018, and must be bargained in good faith for represented employees, also following an employer's required impasse procedures (such as fact-finding and mediation) before the employer can unilaterally impose new cost-sharing contribution rates.⁷ Therefore, until at least 2018, pre-PEPRA represented employees' contribution amounts are determined by the terms that the courts have negotiated with the unions. The courts may also negotiate pension cost-sharing contribution rates prior to 2018, as the courts deem appropriate, but they do not have the authority under PEPRA to unilaterally impose such rates until 2018.

⁵ PEPRA prohibits an employer from paying the *employee's* pension contribution (commonly called the employer-paid member contribution "EPMC") for post-PEPRA employees (Gov. Code, § 7522.30(a)). However, if an employer currently pays all or part of the EPMC under a current union contract, that payment will continue until the end of the contract's term, at which time the employer must discontinue that benefit for post-PEPRA employee members. Conversely, PEPRA does not contain any language affecting a trial court's ability to continue paying the EPMC for pre-PEPRA employees. Nor does PEPRA affect an employer's ability under the various labor relations statutes (such as the Trial Court Employment Protection and Governance Act) to unilaterally impose, after exhausting mandatory impasse procedures, up to the full employee contribution on pre-PEPRA employee members.

⁶ Section 20516.5 is included in the attachments to this memorandum.

⁷ A trial court's impasse procedures are typically found in the court's Employer-Employee Labor Relations Rules.

September 5, 2014

Page 4

PEPRA Amendments to the '37 Act

Similarly, in the '37 Act, PEPRA added Government Code section 31631.5,⁸ which states that the government employer in a county retirement system “may require that members pay 50 percent of the normal cost of benefits” beginning in 2018. Section 31631.5 also includes percentage contribution caps and requires that the employer complete the good faith bargaining process and impasse procedures before imposing equal cost-sharing on represented employees. Section 31631.5 states, in relevant part:

- (a)(1) Notwithstanding any other provision of this chapter, a board of supervisors or the governing body of a district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 14 percent above the applicable normal rate of contribution of members established pursuant to this article for local general members, no more than 33 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 21639) for local police officers, local firefighters, county peace officers, and no more than 37 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 31639) for all local safety members other than police officers, firefighters, and county peace officers.
- (2) Before implementing any change pursuant to this subdivision for any represented employees, the public employer shall complete the good faith bargaining process as required by law, including any impasse procedures requiring mediation and fact-finding. This subdivision shall become operative on January 1, 2018. (Gov. Code, § 31631.5.)

Therefore, like the courts that participate in CalPERS, courts participating in a '37 Act retirement system also may negotiate pension cost-sharing contribution rates prior to 2018, but do not have the authority under PEPRA to unilaterally impose such rates until 2018.

Other Resources Discussing PEPRA

On its website, CalPERS discusses the effects of PEPRA's enactment and provides FAQs regarding the cost-sharing contribution rates that are consistent with the information provided herein.⁹ Various county retirement associations' websites also contain discussions and FAQs regarding PEPRA's effects on employee contribution rates consistent with the information

⁸ Section 31631.5 is included in the attachments to this memorandum.

⁹ Two of the relevant CalPERS FAQs are included in the attachments to this memo and may be accessed at the following link: http://www.calpers.ca.gov/index.jsp?bc=/employer/program-services/pension-reform/faq-pra-2013.xml#Employer_and_Member_Contributions. Once connected to the CalPERS website, click the tab for “Public Agency Employer,” then click the tab for “Pension Reform Impacts,” then the tab for “FAQs: Pension Reform Act of 2013.”

September 5, 2014

Page 5

provided in this memorandum.¹⁰ For example, the Sacramento County Employees Retirement System (SCERS) states on its website concerning PEPRA, “after January 1, 2018, the employer may (but is not required to) negotiate under collective bargaining for current members to pay up to 50% of the ‘normal cost’ of the benefits.”

Finally, we attach hereto information from two law firms regarding PEPRA, and in particular PEPRA’s statutory cost-sharing contribution requirements summarized in this memorandum. The information and guidance in these attachments are consistent with the information provided above. First is an excerpt from the white paper prepared by the law firm of Renne Sloan Holtzman Sakai LLP, entitled *A Guide to Pension Reform Under AB 340 and AB 197*, which discusses post-PEPRA pension cost-sharing under both PERL and the ’37 Act.¹¹ Next is a chart prepared by the Burke, Williams & Sorensen firm describing the various PEPRA amendments to PERL and the ’37 Act, including the effects on employee contribution rates for both pre-PEPRA and post-PEPRA employee members.¹²

Summary

PEPRA requires equal sharing of the normal costs between public employers and public employees for new pension member employees hired on or after PEPRA’s effective date of January 1, 2013. (Gov. Code, § 7522.30(a).) In addition, the PEPRA amendments to both PERL and the ’37 Act provide authorization for government employers, including the trial courts, to negotiate and then, beginning in 2018, to impose after impasse, equal cost-sharing at the employers’ discretion.¹³

¹⁰ PEPRA information from the Sacramento County Employees Retirement System (SCERS) and the Stanislaus County Employees Retirement Association (StanCERA) is included in the attachments to this memorandum with links to the respective websites.

¹¹ The Renne Sloan publication can be found at this link: <http://publiclawgroup.com/2012/12/12/white-paper-a-guide-to-pension-reform-under-ab-340-and-ab-197/>.

¹² The Renne Sloan excerpt and the Burke Williams chart have been reproduced with permission of the authors. As noted on the chart, it was prepared in late 2012, and there have been minor amendments to PEPRA since it was enacted, but no amendments have affected the cost-sharing provisions discussed herein. We recommend that the trial courts consult Legal Services attorneys concerning any other PEPRA issues.

¹³ For unrepresented trial court employees, the pension statutes apply in the same manner as for represented employees based upon whether the employee first became a pension system member before or after PEPRA’s enactment. Of course, however, there is no need to negotiate changes to pension contribution rates with unrepresented employees; the trial courts would follow their normal policies in setting contribution rates for unrepresented employees to match the rates set for represented employees.

Government Code § 7522.30. Sharing of normal costs

(a) This section shall apply to all public employers and to all new members. Equal sharing of normal costs between public employers and public employees shall be the standard. The standard shall be that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.

(b) The "normal cost rate" shall mean the annual actuarially determined normal cost for the plan of retirement benefits provided to the new member and shall be established based on the actuarial assumptions used to determine the liabilities and costs as part of the annual actuarial valuation. The plan of retirement benefits shall include any elements that would impact the actuarial determination of the normal cost, including, but not limited to, the retirement formula, eligibility and vesting criteria, ancillary benefit provisions, and any automatic cost-of-living adjustments as determined by the public retirement system.

(c) New members employed by those public employers defined in paragraphs (2) and (3) of subdivision (i) of Section 7522.04, the Legislature, the California State University, and the judicial branch who participate in a defined benefit plan shall have an initial contribution rate of at least 50 percent of the normal cost rate for that defined benefit plan, rounded to the nearest quarter of 1 percent, unless a greater contribution rate has been agreed to pursuant to the requirements in subdivision (e). This contribution shall not be paid by the employer on the employee's behalf.

(d) Notwithstanding subdivision (c), once established, the employee contribution rate described in subdivision (c) shall not be adjusted on account of a change to the normal cost rate unless the normal cost rate increases or decreases by more than 1 percent of payroll above or below the normal cost rate in effect at the time the employee contribution rate is first established or, if later, the normal cost rate in effect at the time of the last adjustment to the employee contribution rate under this section.

(e) Notwithstanding subdivision (c), employee contributions may be more than one-half of the normal cost rate if the increase has been agreed to through the collective bargaining process, subject to the following conditions:

(1) The employer shall not contribute at a greater rate to the plan for nonrepresented, managerial, or supervisory employees than the employer contributes for other public employees, including represented employees, of the same employer who are in related retirement membership classifications.

(2) The employer shall not increase an employee contribution rate in the absence of a memorandum of understanding that has been collectively bargained in accordance with applicable laws.

(3) The employer shall not use impasse procedures to increase an employee contribution rate above the rate required by this section.

(f) If the terms of a contract, including a memorandum of understanding, between a public employer and its public employees, that is in effect on January 1, 2013, would be impaired by any provision of this section, that provision shall not apply to the public employer and public employees subject to that contract until the expiration of that contract. A renewal, amendment, or any other extension of that contract shall be subject to the requirements of this section.

Government Code § 20516.5. Contracting agency or school employer; sharing of normal costs

(a) Equal sharing of normal costs between a contracting agency or school employer and their employees shall be the standard. It shall be the standard that employees pay at least 50 percent of normal costs and that employers not pay any of the required employee contribution.

(b) Notwithstanding any other provision of this part, a contracting agency or a school district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 8 percent of pay for local miscellaneous or school members, no more than 12 percent of pay for local police officers, local firefighters, and county peace officers, and no more than 11 percent of pay for all local safety members other than police officers, firefighters, and county peace officers.

(c) Before implementing any change pursuant to subdivision (b), for any represented employees, the employer shall complete the good faith bargaining process as required by law, including any impasse procedures requiring mediation and fact-finding. Subdivision (b) shall become operative on January 1, 2018. Subdivision (b) shall not apply to any bargaining unit when the members of that contracting agency or school district are paying for at least 50 percent of the normal cost of their pension benefit or the contribution rates specified in subdivision (b) under an agreement reached pursuant to Section 20516.

Government Code § 31631.5. Member payment of 50 percent of normal cost of benefits

(a)(1) Notwithstanding any other provision of this chapter, a board of supervisors or the governing body of a district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 14 percent above the applicable normal rate of contribution of members established pursuant to this article for local general members, no more than 33 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 21639) for local police officers, local firefighters, county peace officers, and no more than 37 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 31639) for all local safety members other than police officers, firefighters, and county peace officers.

(2) Before implementing any change pursuant to this subdivision for any represented employees, the public employer shall complete the good faith bargaining process as required by law, including any impasse procedures requiring mediation and fact-finding. This subdivision shall become operative on January 1, 2018. This subdivision shall not apply to any bargaining unit when the members of that unit are paying at least 50 percent of the normal cost of their pension benefit or are subject to an agreement reached pursuant to paragraph (1). Applicable normal rate of contribution of members means the statutorily authorized rate applicable to the member group as the statutes read on December 31, 2012.

(b) Nothing in this section shall modify a board of supervisors' or the governing body of a district's authority under law as it existed on December 31, 2012, including any restrictions on that authority, to change the amount of member contributions.

CalPERS FAQs

PEPRA provides that beginning in 2018 an employer may require employees to pay 50 percent of the total annual normal cost up to an 8 percent contribution rate for miscellaneous employees, and an 11 percent or 12 percent contribution rate for safety employees. Does this provision apply to all public employers?*(added 10/24/2012)*

No. This provision only applies to contracting agencies and school districts. Once it is operable in 2018, PEPRA does not require any employer to implement the change discussed in the statute, rather the statute says that an employer may do so where all other statutory requirements are met. http://www.calpers.ca.gov/index.jsp?bc=/employer/program-services/pension-reform/faq-pra-2013.xml#Employer_and_Member_Contributions

What is the minimum employee contribution rate for new members employed by a contracting agency, school employer, the judicial branch, CSU and the Legislature? *(added 4/18/2014)*

For new members of these employers, PEPRA requires employees to pay at least 50 percent of the total normal cost unless this amount would impair an existing MOU. For example, if a new member's benefit has a normal cost of 12 percent of salary, then the new member's contribution must be at least 6 percent, except where to do so would impair an existing MOU. PEPRA allows employee contributions to exceed one-half of the normal cost rate if the increase has been agreed upon through the collective bargaining process and meets the conditions set forth in the statute.

Sacramento County Employees Retirement System (SCERS)

5. Cost Sharing

Pension cost sharing between the employer and current employee may change, but is not required to change:

- Employer may negotiate under collective bargaining for current members to pay cost normally paid by employer (but is not required to).
- Between January 1, 2013 and January 1, 2018 the employer may (but is not required to) negotiate under collective bargaining for current members to pay up to 50% of the 'normal cost' of the benefits.
- After January 1, 2018, the employer may (but is not required to) negotiate under collective bargaining for current members to pay up to 50% of the 'normal cost' of the benefits, subject to the limits noted above. However:
 - Employer may (but is not required to) use impasse procedures to compel new cost sharing.
 - If impasse procedures are used, normal cost to be paid by member cannot

be increased by more than 14% above then current normal cost contribution rate for Miscellaneous members and by more than 33% above then current normal cost contribution rate for Safety members.

- Employer prohibited from paying ('picking up') any part of the required employee contribution.

<http://www.retirement.saccounty.net/Documents/CalPEPRA%20Assessment.pdf>

Stanislaus County Employees Retirement Association (StanCERA)

8. Employee contributions (31631, 31631.5)

AB 340 does not require any immediate change to employee contributions. It does set a standard that members pay at least 50% of the total normal cost of the plan, but does not require it. However, after January 1, 2018 the new legislation gives governing bodies the ability to impose the 50% standard on all members.

All current StanCERA members pay different contribution rates that are determined by the age at which the member is hired. Currently, StanCERA does not publish the total normal cost for either the plan in the aggregate or on an individual basis. Should this information become necessary in the future, we would begin doing so.

Through the collective bargaining process, AB 340 also allows member cost sharing of any or all of the total cost of the plan. In addition to the ongoing (normal) cost of the plan, this includes the unfunded liability portion.

http://www.stancera.org/sites/default/files/News/20130125_AB340_Implementation_Rules_and_Facts_Current_Members.pdf

E. Employee Cost-Sharing

The central tenet of AB 340's approach to employee contributions is that all public employees contribute at least 50% of the normal cost of their pensions, and that employers not pay *any* of the employees' required share.²⁶ For new members, this standard will be applied effective January 1, 2013 – with exceptions noted below.

Effective January 1, 2013, new members must pay an initial contribution rate that is the greater of “at least” 50% of the normal cost for the new plan, *or* the current contribution rate of similarly situated employees.²⁷

- “Normal cost” is the present value of the increase in retirement benefits attributable to the current year.²⁸
- Although “similarly situated employees” is not defined, likely it means members of the same group or class of employment. Under this definition, new members could pay the same contribution rate as current members, even if it is higher than 50% of the normal cost of the new retirement plans.²⁹

New members may not have to pay the full 50% contribution immediately if, under a memorandum of understanding (MOU) in effect on January 1, 2013, the employee contribution for current members is less than 50% of normal cost.³⁰ But once the MOU expires, new

²³ Gov't Code § 31461(b)(2), as amended by AB 197.

²⁴ Gov't Code § 31461(b)(2), as amended by AB 340.

²⁵ On November 29, 2012, a Contra Costa Superior Court judge enjoined the Contra Costa County Employees Retirement Association from implementing this provision until a lawsuit alleging that the provision impairs vested constitutional rights is resolved.

²⁶ New Gov't Code § 7522.30(a).

²⁷ New Gov't Code § 7522.30(c).

²⁸ New Gov't Code § 7522.04(g).

²⁹ CalPERS has relied on this reading of the provision in estimating savings from cost-sharing under PEPRA.

CalPERS, *Actuarial Cost Analysis – California Public Employees' Pension Reform Act of 2013*, August 31, 2012, p. 7.

³⁰ New Gov't Code § 7522.30(f).

members will be required to pay the full 50% contribution, and this requirement cannot be evaded or delayed through further contract extension, amendment, or renewal.³¹

As for how 50% of the normal cost will be calculated, new members must contribute 50% of the “normal cost rate.” Prior to AB 340, CalPERS excluded the statutorily mandated employee contribution from the annual valuation of normal cost it provided to employers. Going forward, any statutorily required employee contribution (for current members) will be included in the CalPERS valuation. For public employers that do not participate in a risk pool, CalPERS will provide a single blended normal cost rate for all retirement tiers. For those who do participate in a risk pool, CalPERS will provide a separate PEPR normal cost valuation.³²

4. COST-SHARING FOR CURRENT MEMBERS

While AB 340 sets a standard that employees pay at least 50% of the normal cost and employers no longer pay *any* of that employee contribution (EPMC), for current members this standard is not a mandate.

First, EPMC has not been eliminated. If an employer currently pays all or part of the EPMC under an MOU now in effect, that payment will continue until the end of the MOU term. More importantly, unlike for new members, nothing in AB 340 precludes an employer from agreeing in a subsequent contract to pay all or part of the EPMC for current members. On the other hand, AB 340 contains no limitation on an employer’s ability to unilaterally impose, after exhausting mandatory impasse procedures, up to the full employee contribution on current members. Thus, AB 340 does not explicitly change the EPMC landscape for current members.

Second, unlike new members, the employer cannot unilaterally implement provisions requiring members to pay 50% of the normal cost until January 1, 2018. Nor can the employer unilaterally implement provisions that require employees pay 50% if to do so exceeds the contribution caps set forth in the statute. In short, unless *agreed* to through collective bargaining, AB 340 prohibits an increase in employee contribution above the mandatory employee contribution prior to January 1, 2018.³³ After that date, an employer can increase the employee contribution after exhausting mandatory impasse procedures, but for CalPERS members, the employee contribution can be no more than 8% of pay for miscellaneous employees, 12% for police and fire, and 11% for other safety.³⁴ For many employers, these contribution rates may not equal 50% of the normal cost for current plans, and will not mandate an increase for miscellaneous employees with enhanced retirement formulas who already pay 8%.

³¹ *Ibid.*

³² See www.calpers.ca.gov for Frequently Asked Questions on Pension Reform Impacts.

³³ New Gov’t Code § 20516.5(c).

³⁴ New Gov’t Code § 20516.5(b).

The same holds true for agencies in 1937 Act systems. AB 340 amends the Act to place a similar five-year ban on unilateral implementation of employee contribution between the mandatory employee contribution and 50% of normal cost.^[1] After January 1, 2018, the employer can increase the employee contribution after exhausting mandatory impasse procedures.^[2] However, the increase can be no more than 14% above the normal contribution rate for miscellaneous employees, no more than 33% above the normal contribution rate for police and fire, and no more than 37% above the normal contribution rate for other safety.^[3] The “normal contribution rate” is the percentage of pay the employee contributes each pay period, as set annually by the system’s retirement board based on revised actuarial assumptions. To calculate the amount the employer can impose, the employee’s normal contribution rate is multiplied by the applicable percentage. For example, if the normal contribution rate for a miscellaneous employee is 10%, the employer can impose up to an 11.4% contribution rate. (10% Employee Contribution Rate x 14% Maximum Increase = 1.4%; 10% + 1.4% = 11.4%).

Because of these limitations on increased contributions for current members, AB 340 precludes the full savings from a 50/50 normal cost split absent voluntary agreement. Therefore, AB 340 will not provide the short-term cost savings employers hoped to achieve under the Governor’s original proposed pension reform package. Further, AB 340 does nothing to address the staggering unfunded pension liability most public employers face, as it leaves employee contributions toward unfunded liability to the collective bargaining process without the option of unilateral implementation.

5. GENERAL PROVISIONS APPLYING TO ALL MEMBERS

AB 340 enacts other significant changes that affect both current and new members.

A. Revised Rules for Cost-sharing of the Employer’s Cost

Although current members may not be required to pay the full 50% of the normal cost, revisions to Government Code section 20516 will provide much greater flexibility for employers and unions to negotiate cost-sharing of the employer’s contribution for both new and current members. Previously, cost-sharing of the employer’s contribution that was implemented through a CalPERS contract amendment was limited to covering an optional or enhanced benefit, and could not differ by bargaining unit. Those restrictions have been eliminated.

^[1] New Gov’t Code § 31631.5(a)(2).

^[2] *Id.*

^[3] New Gov’t Code § 31631.5(a)(1).



CALIFORNIA PUBLIC EMPLOYEES' PENSION REFORM ACT OF 2013 (PEPRA)*

Major Impacts On CERL ('37 Act) And PERL Agencies

This chart represents an initial assessment of the pension reform legislation's impact on public employers. Questions regarding application of the law remain, and this chart may not accurately reflect application of the law for all public agencies. Agencies should consult their labor attorneys with their agency-specific questions.

*AB 340, chapter 296, statutes of 2012, and AB 197, chapter 297, statutes of 2012.

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
APPLICATION & SCOPE					
§7522.02(a)	PEPRA applies to all state and local public retirement systems and to their participating employers (excludes independent retirement systems not subject to state statutory law currently – San Francisco Employee Retirement System is the only county employer that is excluded from PEPRA).		✓	1/1/2013	
§7522.02(c)	Reciprocity for Current Employees: If the new employee is subject to reciprocity, the employee is not a "new member" and is subject to the retirement in place as of 12/31/2012		✓	1/1/2013	HR and Payroll: Develop HR procedures for separating new hires into "new members" or reciprocal members and for processing payroll contributions for new members vs. current members.
§7522.04(f)	PEPRA and "New Members": A new member is (1) an individual who becomes a member of any public retirement system after 1/1/2013 and was not a member of any other public retirement system before 1/1/2013, or (2) was previously a member of another public retirement system but does not have pension system		✓	1/1/2013	HR and Payroll: Develop HR procedures for separating new hires into "new members" or reciprocal members and for processing payroll contributions for new members vs. current members.

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ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
	reciprocity, or (3) an individual who returns to active membership in the same public retirement system with a new employer after a break in service of more than six months				
PENSIONABLE COMPENSATION CAPS					
Cap on Pensionable Compensation §7522.10	Pensionable compensation capped as follows: <ul style="list-style-type: none"> • 100% of Social Security base (\$110,100) • 120% of Social Security base for those who don't participate in Social Security (\$132,120) • Cap annually adjusted for inflation. 		✓	1/1/2013	Retirement Board's Obligation: Retirement system must modify plan(s) on and after January 1, 2013. Employer's Obligation: Provide notice and opportunity for impact bargaining, if any. Authorizes a defined contribution plan with contributions in excess of the cap. But, contributions cannot exceed employer's contribution level (% of pay) required to fund pensions of employees below comp limits.
NEW LOWER DEFINED BENEFIT PENSION FORMULAS AND HIGHER RETIREMENT AGE					
New Defined Benefit Pension Formulas §7522.02(b)-(c); §7522.20	New members receive new pension formula, which increases retirement age and reduces the pension formula. New hires after January 1, 2013 who were employed by another public agency for the first time and subject to pension system reciprocity shall have the retirement plan that was available to new hires on/before December 31, 2012.		✓	1/1/2013	Retirement Board's Obligation: Shall establish new benefit formulas for new hires. Employer's Obligation: Provide notice and opportunity for impact bargaining, if any. Implementation of new pension formulas is mandatory and supersedes existing contracts.
New Pension Formula for Miscellaneous Employees §7522.20(a)	2% at age 62 with maximum benefit formula of 2.5% @ age 67. Minimum retirement age of 52.		✓	1/1/2013	Retirement Board's Obligation: Shall establish new benefit formulas for new hires. Employer's Obligation: Provide notice and opportunity for impact bargaining, if any. Implementation of new pension formulas is mandatory and supersedes existing contracts.

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
New Pension Formula for Safety Employees §7522.25	Minimum retirement age: 50 3 tiers, employers/retirement systems may use 1 or more; formula offered must be the one that is closest to, and provides a lower benefit @ age 55, than formula in place on December 31, 2012 for same safety class. <u>Basic Safety Formula</u> <ul style="list-style-type: none"> • 1.836% @ 55 • 2% @ 57 <u>Safety Option 1 Formula</u> <ul style="list-style-type: none"> • 2.357% @ 55 • 2.5% @ 57 <u>Safety Option 2 Formula</u> <ul style="list-style-type: none"> • 2.5% @ 55 • 2.7% @ 57 		✓	1/1/2013	If Option 1 or 2 is the required plan: Employer may negotiate with represented employees for a lower option for new members hired after effective date of lower plan; must be part of an agreement – cannot unilaterally impose lower plan. Employer cannot provide different plan for unrepresented, management and supervisors in the same retirement classification.
THREE-YEAR HIGHEST AVERAGE – FINAL COMPENSATION					
Three-Year Highest Average §7522.32	Final compensation based on 3-year highest average.		✓	1/1/2013	Employer's Obligation: Provide notice and opportunity for impact bargaining, if any.
“PENSIONABLE COMPENSATION” DEFINED					
§7522.34(a)	Compensation for new members defined as the normal rate of recurring pay: The normal monthly rate of pay or base pay paid in cash to similarly situated employees in the same group/class of employment for services performed on a full-time basis during normal working hours, pursuant to publicly available pay schedules.		✓	1/1/2013	HR and Payroll: Undertake audit of pay that is “pensionable” for new members under PERL. Employer's Obligation: Before implementing, Employer should provide notice and opportunity to negotiate about any impact or effects of the mandatory subjects. Union must identify any impacts or effects within the scope of bargaining. Until union identifies effects within the scope of bargaining, Employer has no duty to negotiate.

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
§7522.34(b)	Deferred compensation deemed pensionable when earned rather than when paid.		✓	1/1/2013	Employer's Obligation: Before implementing, Employer should provide notice and opportunity to negotiate about any impact or effects of the mandatory subjects. Union must identify any impacts or effects within the scope of bargaining. Until union identifies effects within the scope of bargaining, Employer has no duty to negotiate. It is unlikely that unions will be able to identify effects within the scope of bargaining.
§7522.34(c)(1)-(12)	<p>Pensionable compensation does not include:</p> <ul style="list-style-type: none"> (1) Any compensation the retirement board determines to have been paid to increase retirement benefits. (2) Compensation previously provided in kind or paid directly to a third-party other than the retirement system for the employee's benefit and that was converted to and received by the employee as a cash payment. (3) Any one-time or ad hoc payments. (4) Severance or other payment connected to employee's anticipated separation and received while still employed. (5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensation time off, however named, however paid, regardless of when reported or paid. (6) Payments for additional services performed outside of normal working hours, regardless of how paid. (7) Any employer-provided allowance, reimbursement, or payment, e.g., housing, vehicle, uniforms. (8) Compensation for overtime, except FLSA 		✓	1/1/2013	<p>HR and Payroll: Undertake audit of pay that is "pensionable" for new members under PERL.</p> <p>Employer's Obligation: Before implementing, Employer should provide notice and opportunity to negotiate about any impact or effects of the mandatory subjects. Union must identify any impacts or effects within the scope of bargaining. Until union identifies effects within the scope of bargaining, Employer has no duty to negotiate.</p>

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
	exempted law enforcement/firefighters overtime. (9) Employer contributions to deferred comp or defined contribution plans. (10) Any bonus paid in addition to normal base pay. (11) Any other compensation a retirement board determines is inconsistent with §7522.34(a). (12) Any other form of compensation a retirement board determines should not be pensionable.				
REQUIRED NORMAL COST SHARING FOR NEW MEMBERS					
50% Cost Sharing Mandatory for New Members §7522.30(a)	Sets standard that new members pay at least 50% of normal costs. "Normal cost rate" defined as the annual actuarially determined cost for the defined benefit plan expressed as a percentage of payroll.		✓	1/1/2013	<p>Carve Out To Prevent Contract Impairment: Determine is any MOU will be impaired by elimination of EPMC and 50% normal costs. If the terms of an MOU in place on 12/31/2012 would be impaired by cost sharing, MOU governs until it expires. (7522.30(f))</p> <p>A renewal, amendment, or any other extension of the contract is subject to the new statutory requirements for new members. (7522.30(f)).</p> <p>HR and Payroll: Determine "new member" 50% normal contributions and pay caps. (Information from CalPERS actuaries)</p> <p>Employer's Obligation: Provide notice and opportunity for <i>impact</i> bargaining related to the implementation of the 50% cost-sharing.</p> <p>Bargaining Employee Contribution Rate > 50%: Any change to the contribution rate in excess of 50% is subject to good faith meet and confer process. The Employer must reach agreement with the represented employees by bargaining unit; may <u>not</u> use impasse procedures to impose an employee share greater than 50%. (7522.30(e)(3))</p>

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
					Impact On Unrepresented: Employer shall not contribute more for unrepresented, management, or supervisory employees than the employer contributes for others, including represented employees, in the same retirement classification.
Employer Pick-Up for New Members §7522.30(c)	Prohibits employer from paying employee contribution. (EPMC)		✓	1/1/2013	<p>Effective Date: January 1, 2013, <i>unless</i> there is MOU in place on December 31, 2012 that provides for an employer pick-up. If so, MOU governs until it expires. (7533.30(f))</p> <p>A renewal, amendment, or any other extension of the contract is subject to the new statutory requirements for new employees. (7522.30(f))</p> <p>Employer's Obligation: Provide notice and opportunity for impact bargaining, if any.</p> <p>And opportunity for impact bargaining, if any.</p> <p>Impact on Unrepresented: Employer may require elimination of EPMC at any time, unless a contract in place that provides otherwise.</p>
EPMC AND CURRENT EMPLOYEES					
Employer Pick-up for Current Employees	AB 340 and AB 197 statutory changes do not change employers' ability to negotiate the elimination of EPMC and unilaterally impose EPMC elimination after good faith negotiations through any impasse procedures. Similarly, AB 340 and AB 197 do not prohibit employers from continuing EPMC for current employees although they do provide that EPMC is not the "standard".	✓			<p>Employer's Obligation: Any reduction/elimination of the employer pick-up is subject to good faith meet and confer process, including impasse procedures.</p> <p>Impact on Unrepresented: Employer may require elimination of EPMC at any time, unless a contract in place that provides otherwise.</p>
RETROACTIVE BENEFIT ENHANCEMENTS PROHIBITED					
No Retroactive Pension Benefit Enhancement §7522.44	<p>Employer cannot implement retroactive pension benefit enhancements.</p> <ul style="list-style-type: none"> Any retirement formula or benefit enhancement adopted on/after January 1, 2013 can apply only to 	✓	✓	1/1/2013	

ALL PUBLIC EMPLOYEE RETIREMENT SYSTEMS					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
	service after the operative date. <ul style="list-style-type: none"> “Operative date” pursuant to a collective bargaining agreement cannot be earlier than 12 months before the agreement date or day after last day of expired agreement. 				
UNQUALIFIED SERVICE CREDIT PURCHASE PROHIBITED					
No “Air Time” Purchases §7522.46	“Air-time” service credit prohibited.	✓	✓	1/1/2013	Does not apply to an official application to purchase service credit that is received by the retirement system before January 1, 2013 and later approved.
EQUAL HEALTH BENEFIT VESTING SCHEDULE FOR NON-REPRESENTED AND REPRESENTED EMPLOYEES					
§7522.40	Prohibits employers from providing elected or appointed employee, a trustee, excluded from collective bargaining, exempt from civil service, or a manager any health benefit vesting schedule that is better than that provided generally to other employees, including represented employees, of the same employer who are in related retirement membership classifications.	✓	✓	1/1/2013	HR and Management: Undertake review of management contracts/resolutions to determine whether modifications are necessary.
LIMIT POST RETIREMENT EMPLOYMENT					
§7522.56	No post-retirement employment unless: <ul style="list-style-type: none"> During emergency to prevent work stoppage or special skills to perform work of limited duration Employment limited to 960 hours or 120 days per year 180 day waiting period before retiree can return to work except under limited circumstances (for court employees it requires that the employer certifies that the appointment is necessary to fill a critically needed position before 180 days has passed and the appointment has been approved by the governing board of the employer at a public meeting). 	✓	✓	1/1/2013	Employer can fill a critically needed position with a retiree before the 180 days has passed only if the nature of employment is certified and appointment is approved in a public meeting, not via consent calendar. HR and Payroll: Audit employment of all retirees to ensure that retirees employed after 12/31/2012 meet requirements of rate of pay rule, 960 hours, and 180 day waiting rules, or one of the exceptions.

PERL-SPECIFIC					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
COST-SHARING - PERL					
Employee-Paid Contributions	Between January 1, 2013 and December 31, 2017, may collectively bargain for employees to share the employer's contribution/costs over and above the normal contribution required of employees.	✓	✓	1/1/2013	This new authorization is in addition to any existing authorization to increase member contributions. (§20516(h)). This provision does not apply until the agency elects to be subject to this provision by contract/contract amendment with PERS. (§20516(d)).
§20516					
§20516(a)	<ul style="list-style-type: none"> Ability to negotiate cost-sharing with represented employees does not require any change to existing formula/benefits. 				
§20516(b)	<ul style="list-style-type: none"> Collective bargaining agreement must specify exact % of employee compensation that employees will pay. 				
§20516(c)	<ul style="list-style-type: none"> Can bargain different cost-sharing by bargaining unit, by classifications in different tiers (e.g., new misc or safety who are subject to the new tiers). 				
§20516(b)	<ul style="list-style-type: none"> Agreement required; cannot impose greater cost-sharing than required by law. 				
§20516(a)	<ul style="list-style-type: none"> Remainder of costs are paid by the employer and credited to the employer's account. 				
§20516(b)	<ul style="list-style-type: none"> Cost-sharing authorization applies to unrepresented employees and requires employer resolution. 				
§20516(b)	<ul style="list-style-type: none"> Employee payments of share of employer contribution will be treated as employee normal contributions. 				

PERL-SPECIFIC					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
COST-SHARING - PERL					
Employee-Paid Contributions §20516.5	Beginning 1/1/2018, <ul style="list-style-type: none"> if employees in a bargaining unit are not paying for at least 50% of their normal pension costs under a collectively bargained agreement, then the employer may negotiate in good faith through all impasse procedures and impose a requirement that employees pay 50% of the normal costs of their benefits, but no more than <ul style="list-style-type: none"> 8% of pay – miscellaneous, 12% of pay – local police officers, firefighters, County peace officers, and 11% of pay – all other local safety members. 	✓	✓	1/1/2013	

COUNTY EMPLOYEES RETIREMENT LAW OF 1937 (CERL OR 37 ACT)					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
CERL -SPECIFIC STATUTORY EXCLUSIONS TO PENSIONABLE COMPENSATION					
Compensation Earnable §31461(b)(1)	“Compensation earnable,” which must be included in a retiring employee’s final compensation for purposes of calculating the amount of a pension, is more precisely defined. “Compensation earnable” excludes any compensation the Retirement Board determines was given to enhance a member’s retirement. Additional specific exclusions from “compensation earnable” are described below.	✓	✓ (See comment)	1/1/2013	HR and Payroll: Undertake audit of pay that is “compensation earnable” for all members under CERL. Employers’ Obligation: Employer should provide notice and opportunity to negotiate about any impacts or effects of implementing the mandatory provisions of PEPRRA. A union must identify specific impacts within the scope of bargaining, or waive its right to bargain. Possible Question of Statutory Interpretation: §7522.34(c), which applies to all pension funds and is specific to new hires, is a list of specific compensation items and payments that are not “pensionable compensation.” Because §7522.34(c) is more specific and detailed than CERL §31461(b)’s list of exclusions from “compensation earnable,” does §7522.34(c) apply to new CERL members? We believe the answer to the question is yes, the more specific provisions of §7522.34(c) apply to new CERL hires.
In-Kind Payments, Payments to Third Parties §31461(b)(1)(A)	May exclude payments that were converted to and received by member in form of cash payment in the final average salary period. Subject to Retirement Board’s determination that benefit was given to enhance a member’s retirement.	✓	✓	1/1/2013	
One-Time/Ad Hoc Payments §31461(b)(1)(B)	May exclude payments that are not made to all members in same grade/class. Subject to Retirement Board’s determination that benefit was given to enhance retirement.	✓	✓	1/1/2013	

COUNTY EMPLOYEES RETIREMENT LAW OF 1937 (CERL OR 37 ACT)					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
Termination Payments §31461(b)(1)(C)	May exclude payments made at termination, <i>except</i> those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when paid or reported. Subject to Retirement Board's determination that benefit was given to enhance retirement.	✓	✓	1/1/2013	
Unused Vacation, Annual Leave, Personal Leave, Sick Leave, Compensatory Time Off §31461(b)(1)(2); §7522.34(c)(5)	Excludes leave payments regardless of how or when paid, <i>except</i> those payments that do not exceed the amount that may be earned and payable in each 12-month period during the final average salary period.	✓	✓	1/1/2013	
Additional Services Payments / Overtime §31461(b)(3); §7522.34(c)(6)	Excludes payments for any additional services provided <i>outside of normal working hours</i> , whether paid in lump sum or otherwise.	✓	✓	1/1/2013	
Exclusions Listed In Subdivision (b) To Be Consistent With Prior Case Law §31461(c)	<p>The list of non-pensionable forms of compensation in §31461(b) are intended to be consistent with and not in conflict with holdings in <i>Salus v. San Diego County Ret. Assn.</i> (2004) and <i>In Re Retirement Cases</i> (2003). Those cases held the following items are not "compensation" under CERL and consequently are not "compensation earnable" for pension calculation purposes:</p> <ul style="list-style-type: none"> • EPMC: Employer pick-up of member contributions are not compensation under CERL, • Termination payments, such as accrued leave cash outs at separation where employees can cash-out only upon retirement, • In-kind benefits where money is not paid directly to employees – insurance premiums, payments into flex benefit plan. 	✓	✓	1/1/2013	Although listing cases in statutory language sometimes creates ambiguity, the holdings of these cases are quite specific, and there is little if any ambiguity about EPMC, termination payments, and in-kind cash-outs being excluded from "compensation earnable."

COUNTY EMPLOYEES RETIREMENT LAW OF 1937 (CERL OR 37 ACT)					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
Employer-Provided Allowance, Reimbursement Or Payment §7522.34(c)(7)	Excludes payments for employer-provided allowances, reimbursement, or payments, including, without limitation, payments for housing, vehicle, or uniforms.		✓	1/1/2013	
Overtime Payments §7522.34(c)(8)	Excludes payments for overtime work, other than regular safety work schedules established under FLSA Section 207(k).		✓	1/1/2013	The safety exception is extremely limited, and an employer must make all other hours worked in addition to regularly-scheduled hours non-pensionable.
Bonus Payments §7522.34(c)(10)	Excludes any bonus paid in addition to compensation as defined in §7522.34(a) (base pay/monthly rate of pay).		✓	1/1/2013	
Catch-All Provisions §7522.34(c)(11)-(12)	Retirement Board may exclude any form of compensation that is inconsistent with definition of pensionable compensation and/or should not be included as pensionable compensation.		✓	1/1/2013	
CERL - NORMAL COST-SHARING FOR CURRENT EMPLOYEES					
Employee-Paid Contributions/Cost-Sharing §31631(a)	<p>Board of Supervisors may require employees to pay all or part of the member or employer contributions, or both, for any CERL retirement benefits, i.e., no change in benefits is needed for cost-sharing.</p> <p>Any change in the contributions is subject to meet and confer for represented employees, and may be implemented only upon agreement.</p> <p>Cost-sharing by unrepresented employees is implemented by resolution or ordinance.</p> <p>These changes can also be negotiated and implemented separately with individual bargaining units.</p>	✓		1/1/2013	<p>Employer's Obligation: Employer must engage in good faith meet and confer process, and must reach agreement before implementing any change in cost-sharing.</p> <p>The employer may reach separate agreements and implement separately with each bargaining unit, or may implement on the traditional basis of all miscellaneous units separate from safety units.</p>

COUNTY EMPLOYEES RETIREMENT LAW OF 1937 (CERL OR 37 ACT)					
ISSUE	EXPLANATION	CURRENT EMPLOYEES	NEW MEMBERS* (Hired on or After 1/1/2013)	EFFECTIVE DATE	REQUIRED ACTION
<p>50% Normal Cost-Sharing §31631.5(a)(1)&(2)</p>	<p>If current employees are not paying at least 50% of normal costs or if no negotiated agreement requires that they pay 50% as limited below, the Board of Supervisors may require that current employees pay at least 50% of normal costs, limited to:</p> <ul style="list-style-type: none"> • 14% above applicable normal rate of contribution for general members, • 33% for local police officers, firefighters, and county peace officers, and • 37% for other local safety officers. <p>This 50% cost-sharing authorization is subject to the meet and confer obligation, including good faith completion of the impasse procedures.</p> <p>Unilateral implementation after good faith completion of the meet and confer process is not permitted until January 1, 2018.</p> <p>"Applicable normal rate of contribution" means the statutory rate as of December 31, 2012.</p>	✓		<p>1/1/2013</p> <p>01/01/2018 (Imposition permitted)</p>	<p>HR and Payroll: Determine the "new member" 50% normal costs contribution and applicable pay caps. (Local Retirement Board to provide valuation)</p> <p>Employer's Obligations: The employer must engage in good faith meet and confer process, including mediation and factfinding if required. Agreements may be reached by bargaining unit, rather than requiring all safety or all miscellaneous to agree.</p>

amazing video about the national efforts that courts are making. And I found her remarks so inspiring and renewing, and I know that my colleagues share that. Thank you so much. It's been a wonderful ride. And I appreciate it.

>> [Applause]

>> I held the flowers for Justice McCabe in front of my face.

>> Thank you so much.

>> That was quick.

>> [Laughter]

>> Chief? May I have a quick word?

>> Yes.

>> As to Bobbie Welling before you leave, I want to say that I came into the judiciary about 10 years ago with no background in domestic violence. I've been involved in domestic violence on the criminal side and family law side throughout my time. And one of the things that our court, a fairly large court, Alameda County, and one of the things that has struck me over the years is the lack of expertise, subject-matter expertise, on domestic violence, both within criminal courts as well as on the family court side. And being involved, I've gone to the *well* in Welling over and over and over again.

>> [Laughter]

>> And I was not aware of Bobbie's departure. And I'm a bit stunned and devastated right now about how that gap's going to be filled. So I want to thank her for the great service she's given me personally over the years.

>> Thank you, Judge Jacobson. A lot of us feel a lot about that with Bobbie Welling. Bobbie, farewell but stay in touch.

>> [Applause]

>> Our other internal reports will be delivered tomorrow as well as liaison reports. At this time, we would address item number one. Is there any public comment before we begin on item one?

>> Items one and two are no action items, educational items.

>> Thank you.

>> So Mr. Michael Cohen, we welcome you from the California Department of Finance. Thank you for being here.

>> Thank you, Chief. Thank you, members of Judicial Council for having me back. Before I start, I want to join the chorus of honoring those that you just honored in particular, Judge Jahr over the last couple years. It's been an honor to work with them. He's always represented the branch with amazing integrity, attention to detail, and passion. I know he has left my office a number of times frustrated, but it's not for a lack of his skill. So I wish him all the best in retirement.

>> Thank you.

>> What I wanted to cover today, I've got some slides specific to the branch, but before I did that, I thought just a little recap of where we've been as a State, from a fiscal standpoint, since 2011 is worth going over just to provide a little bit of perspective, and as I provide my comments and answer your questions, I think it will illuminate how we approach the budget and how we approach the judicial branch's budget as a piece of that process. You'll recall in 2011 when Governor Brown took office, we were facing an immediate \$26.6 billion shortfall, \$20 billion annual shortfalls for as far as the eye can see. If we had done nothing, every year into the future, we were projected to spend \$20 billion more than we were projected to take in. Our state budget is roughly in the range of \$100 billion so we had a 20 percent shortfall every single year. And that obviously required change in the way we approached our finances. The state over the prior decade had had numerous rises and falls, the rises largely overlapped with sharp increases in capital gains being earned by the state taxpayers, which then crashed shortly thereafter. So we had a period of about a decade of tremendous revenue volatility that was only exacerbated by the Great Recession in 2008–2009 that devastated the base of the state's finances. So to close the gap, we really approached the state budget, forcing all areas to take some very tough reductions. We focus first on efficiency, how do we get the same level of service for less money? But along the way we also had to have a reorientation of what can the state do? In many policy areas, we've asked, is there an appropriate state roll here? What is it? And why is that the case? Clearly the judicial branch is one of the core services of state government. That's never been in question. But in other areas, there were questions -- as it related to realignment in the public safety area, local governments were asked to take more responsibility. In our school districts, we provided more authority and flexibility to our schools so that they could make better decisions without being hamstrung by a lot of state rules. The final piece as you well know in the states budget coming back into balance was the passage of Proposition 30, a temporary tax revenue source, which really gives us a short window here to get our state finances in order as well as pay off many of the debts and liabilities that were incurred over the prior decade. As budgets were out of balance, oftentimes they were brought back into balance with short-term solutions that were borrowing gimmicks, deferrals of costs, and all of those costs left a strain on the state's current finances. In 2011 when we counted up these budgetary borrowings and deferrals, the wall of debt, as it became known, we were at \$35 billion. We paid that down at the start of this fiscal year to \$26 billion. This budget will reduce that further by more than \$10 billion. And the plan is really to take this window of opportunity that the voters have provided through proposition 30 to get our fiscal house in order, stabilize our finances, but the revenues are temporary. And so as we've approached our budgeting, we've been incredibly cautious about making more ongoing

commitments than the state can really afford. When we make an ongoing commitment in this administration, the entire focus is on, can we make that commitment for the long term? Are we going to be able to back it up with actually having the money down the road as opposed to the roller coaster that every state program within the state's portfolio as well as recipients of the state's programs have had to deal with these ups and downs, which has not been healthy. And so the final piece on a long-term basis of reestablishing the state's fiscal capacity and stability is a solid rainy day fund. The voters passed a rainy day fund about a decade ago but in a short time, its proven not to be strong enough in terms of when you put money in and too free on when you pull money out. So that's why the Governor has put such a strong commitment this year to getting a more solid rainy day fund into the state constitution that really is tied to those peaks and valleys. So when capital gains tax revenues surge, as we know they will, in the coming years, we put more money away than in those years when capital gains are a smaller share of our budget. It's really that volatility that has been the state's biggest nemesis over the last 15 years or so in keeping a stable budget. With that, let me turn to the judiciary, more specifically the trial courts. Here, you see trial court funding, 2007/8 is typically the peak of finances in state government, before the recession started, as well as the four most recent budgets. I imagine all of your eyes will go to the bottom line, where you will quickly notice that this year's budget is at \$2.6 billion and at your peak, you were at \$2.8 billion. And there's no reason to hide that. There's a reduction in court funding from your peak level. That is true throughout state government. And so it's a matter of how we all deal with that level of reduced funding. The other key piece on the slide that I would point out are the middle rows where from 2011/12 to 2013/14, you will see hundreds of millions of dollars of one-time offsets to state funding. This was intentional. At the time that the deepest cuts were put into place, we in the administration were very clear that those were permanent cuts. But we recognized the difficulty of an immediate transition to that lower level of funding. And so that explains the transfers from various special funds over that three-year period as well as the use of local trial court reserves. Spending goes down was part of a cognizant effort to try to give the branch time to adjust to the lower level of funding. Turning to this year's budget, specifically, as you well know at this point, there's an increase of \$160 million general fund provided compared to the prior year. That \$160 million combined with the \$60 million of 2013/14, those two numbers were really in the, as I said, the cuts were permanent. These are restorations that have been made over and above what was expected in the long-term plan when -- in 12/13 when the final pieces of state budget cuts were put in place. I realize that the \$160 million is well below what you as a branch advocated for. It's well below what you feel is necessary to run the branch at the level that you suggested. I do want to say though, that the \$160 million, you should view that as a real win within the state's budget context. That the number of programs that have been offered permanent, ongoing increases in state funding in the last two budgets are very, very small, outside of those areas where we really have little to no control. So we have a constitutional funding formula that determines how much we provide for our K-14 schools. We have the rules of federal health care reform, which are driving our healthcare costs by -- up by over \$2.4 billion over a two-year period. All of those costs are really outside of the state's immediate control. Whereas there are a number of very compelling interests that have come to my office, to the capital at large, looking for increased funding. The judiciary is one of those areas that we've been able to, because it's been a priority,

to provide some increased funding acknowledging that it's not as much as the branch advocated for. The other main point I would make is that this budget offers you something that the prior one didn't and that again many other areas of state government don't have the same type of framework is that we tried to frame the 2014/15 budget proposal in the context of providing the judiciary stability. And so it's really a two-year framework. The three bullets at the bottom of the slide really lay out the components of that that would carry forward as I'll talk about in a minute to 2015/16. So the first piece was just a general operating increase of 5 percent, which amounts to \$86 million. The second piece was the recognition that the branch and trial court space costs that are outside of your immediate control, particularly in the employee benefit category. So retirement rates, that's an area that we're all struggling with as we have huge unfunded liabilities that are driving our annual costs higher and higher. But at a trial court level, you have little to no control over that. In a similar vein, healthcare costs for your employees -- that \$43 million was intended to address those sorts of unavoidable employee benefit costs. And then the third piece was \$31 million to offset a potential reduction in fee revenues. And as Judge Jahr pointed out a few moments ago, one of the ways through the last number of years that the state has dealt with diminished capacity to provide general fund dollars to trial courts has been a shift to a greater reliance on fee revenue. That has put trial courts more at risk based on their volatility. And frankly, my staff as well as your staff, needs to, going forward, spend more time putting our best analytical minds forward in terms of forecasting what those revenues are so that we can accurately know the effects of what's going on in fee revenues and how that will play out in the trial court's budget. This \$31 million was intended to recognize the risk that -- based on trends through last year, there's a distinct possibility that fee revenues in some areas are going to continue to decline and here you have a guarantee that the state general fund will backfill up to \$31 million in those fee revenues. So just to highlight some other funding components, the budget includes up to \$1 million for potential increased security costs related to as new courts are completed and come online in many cases. We expect those courts to be more efficient as it relates to security costs but we have discovered the possibility that particularly in some of the smaller counties that the new courts are going to drive security costs higher and we were committed to covering those. In addition, \$15 million to expand or establish collaborative courts and pretrial and risk assessment programs. This was part of a greater package that the budget includes designed to reduce recidivism in the criminal justice system. And so we're excited and looking forward to high variety of proposals coming in for that \$15 million that really stresses innovation, ways we can improve our overall system of criminal justice and reduce recidivism. And then third and finally on this slide, a \$40 million one-time augmentation to boost the branch capital outlay and infrastructure program. So looking to the future, the budget was signed in June and my staff almost immediately turned to building the next year budget that will release the Governor's proposed budget on January 10. And as I mentioned, we really view 2014/15 and 2015/16 as bookends to provide the branch some stability as you do deal with that permanent lower level of funding. So we're expecting to provide an additional 5 percent general-purpose increase in the proposed budget, continuing to provide that ongoing funding to account for the benefit costs that you don't have any control over, continuing to support your efforts to make sure that we have an equitable distribution of funds across the 58 courts, and then finally, working with you as well as the future of the California court system commission, really to take

these two years as an opportunity to step back. As Judge Jahr again alluded to a few moments ago, I know that many of your courts have done many innovative things. They have become more efficient out of necessity. And so we view this as an opportunity within this two-year period to assess the court system as a whole, continuing those efforts that have happened over the last few years, figure out how we build all of those efficiencies and innovations into the system as a whole so that we can move forward together and meet that goal of providing equal access to high-quality justice. I think we as an executive branch share that with you as a judicial branch in terms of what the expectation is and what the goals are of your branch. So with that, I'm happy to take your questions. And I do just want to echo the Chief's comments in closing in terms of our working relationship of two of my staff here -- Chris Ferguson and Brendan Murphy -- who are long-time budget veterans but new to the judicial branch's budget and we want to make sure that there's a good flow of information and perspectives, that's not to say that you're going to be satisfied at the end of each budget process. I can guarantee you that there's virtually no one that walks away from the state budget really feeling like they got everything that they need, want, or deserve. But that's really a reflection, as I started, with the constraints on the state's finances and changing from a world in which we overcommit and then have to make drastic changes, as we hit recessions and downturns in capital gains to one in which we can have a much better and more consistent -- consistently financed judicial, executive, and legislative branch.

>> Thank you, Michael.

>> Mr. Cohen, thank you very much for your time. I enjoyed and found it informative, your presentation when you were here last -- and I find this one equally informative. And I just wanted to ask you referring to the fiscal year that we're in now, the amount of money that the branch advocated for -- I think that may refer to the \$266 million approximately in additional funding that we estimated we needed to so called, tread water. And I've been told -- I don't know if it's true -- I'm sure you can tell me -- basically the Department of Finance agreed with that figure as far as a treading-water amount. Am I misinformed in that?

>> No. I think we did get to a common understanding of the level of funding year-over-year and how many of these offsets that I had in my first slide had occurred. It's really where the difference in perspective came, was more, okay, you've had sort of this time period to adjust to some level of the lower funding so that treading water would be on a strictly -- everything being business as usual per se, so it's a matter of how much of that could be operationalized is sort of the budget term of art that tends to be thrown around the last year or so. But I think it's fair to say that we knew when we made permanent reductions in the judicial budget over the last few years that there would be a reduction in funding. So that's the same that many other areas of the budget have had to do. Treading water -- I'm not sure it's the right term, but it became the parlance. That wasn't a luxury that we had. But to go with the metaphor, I guess it would be everyone needed to figure out a different way to swim to shore.

>> Thank you very much. Thank you, Chief.

>> Judge Herman and Judge Rosenberg.

>> I echo Justice Hull's comments. Thanks for coming back and making the presentation to us, and I am chair of the Judicial Council Technology Committee. So you mentioned efficiencies, looking forward with efficiency. First, does the Governor or Department of Finance have anything specific in mind relative to efficiencies that we can employ? My second question is, does funding for information technology and increasing access to justice for our stakeholders and court users, fit in terms of thinking about efficiencies?

>> Sure. We've tried not to tell the branch how to become more efficient. I know in some respects it's more frustrating. You would -- for us to say well become more efficient. You'd rather have us give the answer at least from our perspective. We've tried not to do that -- to give you the opportunity to struggle with a very, very difficult question on your own. That being said, we're absolutely committed to the Chief's commission and we'll participate in that however we can to struggle with you together to provide -- to get to the answers. So it's not -- we're not walking around with some sort of secret book that -- as soon as they tell us the 10 magic answers, they'll be let into the kingdom. So on your second question in terms of technology, absolutely I think technology is part of the solution to becoming more efficient. And it's an area that every government at the local level, state level, federal level really struggles with how to do it cost-effectively on schedule, on time, and make the systems do what needs to get done without being burdened by excessive functionality that's not really a core. And so technology often has one-time costs with the payback over time. So I'm certainly very open to a technology plan from the branch -- if it's driven by becoming more efficient and more modern, and improving public service, absolutely.

>> Thank you.

>> Judge Rosenberg, then Judge Walsh, David Yamasaki, and then Judge Stout, and Judge O'Malley.

>> Mr. Cohen, I certainly join the other members in saying thank you for coming last time and coming again today. It is very much appreciated and we always find this information useful and the dialogue useful. At the risk -- it's always risky to look at 1 year and draw any conclusions from it. But as was said earlier, we're noticing the statistics are showing a drop off in case filings of virtually 10 percent. That's troubling, particularly in light of the fact that we see so many increases locally with realignment, increases in the workload of judges and courts. It's been speculated that perhaps the decline of 10 percent relates to the increase in filing fees, which discourages people from filing, and the closure of courts and courthouses. Does the Department of Finance have any thoughts or perspectives in why we might be seeing such a 10 percent decline?

>> I don't think I have a whole lot to add -- I think you just quickly captured a pretty complicated topic and have some good hypotheses, only to say that we're also very much interested in the answer to that. And are very ready to work with you to try to figure out what --

because depending on what the answer is to the question and whether it's a short-term change or a longer-term trend, it'll change how we would react to it. But it's on our watch list in terms of things that we want to understand and want to have a good answer for so that we can move forward and go from there.

>> Thank you. Judge Walsh, then David.

>> Thank you. I join in thanking Mr. Cohen for coming today as he did last year. I find you always to be very straightforward and approachable. I want clarify one thing and then ask you a question. One is, we talk about efficiency and Judge Jahr is correct. The Chief was kind enough to appoint me to chair our efficiency task force. And of course I invite you to go on *courts.ca.gov* and check out efficiencies. You'll see many of them. But please remember that efficiency and justice don't always equate. It is the case that it is more efficient to close down outlying courtrooms as Santa Clara County did or announced they're going to do. It is not more just. In fact, it is the antithesis of equal access to justice to adopt that efficiency. People have to travel much longer to get justice. So we're committed as a branch and committed as trial courts to efficiencies. We will never stop developing those and benefiting from them, but we can't efficiency our way out of a deep budget reduction because people get hurt and justice gets hurt. My question goes to the 5 percent. I've been told and you mentioned it's good news that there will be a 5 percent -- it's a two-year plan with a 5 percent increase built into it. As I understand, that 5 percent would be \$86 million. My question is, on the benefit increase side, which you've also committed to, that's great -- this year basically -- the employer side of the benefit increases were funded at about two thirds of the increase. Can we hope for full coverage the coming year? And my second question is, the 5 percent is great but is it sort of like -- I used to write wills for my clients. If anybody contests this will, they get \$1. If we aren't happy with the 5 percent and we ask for more, are we going to get pounded or can we say 5 percent is a good start, now let's keep talking?

>> [Laughter] I never give anyone a hard time for advocating more money than I'm offering. People don't get penalized for being passionate advocates and bringing forward additional information. In terms of the benefit increase, we did reduce it by as you said about a third, based on our estimate of where we -- we weren't at the pension reform standard of employees paying for their retirement. So what we've said is that when we build the January budget, we'll have updated information from your staff. And to the extent that employees are moving towards the pension reform standard of paying for half of their normal annual pension costs, that we would provide that additional \$22 million or so. So it really was a signal of the Governor's commitment to the implementation of the 2012 Pension Reform Act. And we encourage -- we're encouraging every branch of government, every layer of government, to move towards those standards. So that funding is tied to that, but we'll take another look at it as we build the budget.

>> Judge Stout, Judge O'Malley, then Mary Beth Todd.

>> Sorry, first David.

>> Thank you very much, Chief. Mr. Cohen, good afternoon. Thank you for being here today. We hope to also see you on the invitation to have you and your staff join us in September to take a firsthand look at how operations work in Santa Clara. I have a similar question as Judge Walsh although we did not rehearse it. One of them relates to the benefits. I took note of a couple things you said. And they demonstrate sound fiscal policy. One is the importance of having a rainy day fund. As I understand it today, the rainy day fund is about \$1.6 billion. The other thing that you mentioned was the importance to fund the benefit increases, because they don't necessarily represent things that we have under our control. So I'm very interested in touching upon that issue, just briefly. We were short at about \$22 million. And those expenses that we sustained were not within our control. And we certainly appreciate moving in the direction that we did this year. I've been on the council for three years. And it started moving in a downward direction. We are certainly moving upward and certainly understand the challenges that the state has with the finances. But I know there's a lot of emphasis being put on looking at courts in a similar way that other departments in the state are being funded. I understand that other state departments, executive branch increases, that are on the management side of the house are fully funded and I'm hoping that that same approach can be recognized going forward. Again, we're not talking about what employers may contribute for employees, their contributions, but rather what employers have an obligation to provide, again, same approach is what we're hoping to attain. And perhaps that's something that you had already addressed and I'm hoping that that nexus can also be part of what we can see for us as well. The other thing has to do with the rainy day fund. As you know, we have had a similar fund that we have called upon to even up the highs and lows. It's a term that you used. Because of the great uncertainty that exists right now with respect to funding for the trial courts. But in the absence of that rainy day fund, many courts notwithstanding the great work that WAFM and is doing for many courts, there are many courts like mine, Santa Clara, who have to close. I know there's a desire to have the same level of service with less funds, but the fact is we have reduced services with less funds and we're not able to achieve that. But with the benefit of having this rainy day fund that I think your office is very supportive of, the Governor is very supportive of, we have been very, very frugal with those resources, we've used those resources to keep courtrooms open, keep employees in their positions, and we're hoping that that is something that can get further examination going forward because right now at a 1 percent level, we simply have a terrible time planning for the future or keeping those critical services that I think you appreciate, that the citizens of our state need. So I bring that forward and perhaps if you can share with us your thoughts about the 1 percent and how does that differ perhaps with the idea that your office and the Governor's office has about the importance of having a rainy day fund? Can we have the same?

>> Sure. First, let me react to Dave's comment about visiting his court. As I started in California budgeting, I learned the culture, that the way you learn about programs is by going out and seeing them and talking to people that are running things on a day-to-day basis, seeing what kind of work it is. It provides a completely different perspective than having a conversation about something in my office or in a Department of Finance employee's office. So my staff is going out this fall to do a number of site visits, to hit smaller, medium, and larger courts. I'm going to try to join them on as many as possible because even after doing budgeting for as many years as

I have, I have a huge capacity to learn more about how things work. And so I'm very much looking forward to doing that this year and in the coming years. Second, on the rainy day fund and local reserves, I think for us, the 1 percent reserve is really a reflection of one of the final pieces to trial court funding, moving to a state-funded system. So that we at the state, as we build the budget, are responsible for trial court funding level. And we have to weigh the demands on your court systems against many other demands for California students, California residents, taxpayers, all of those types of things. And the 1 percent limit was designed to basically give all of the resources available within the state budget and weigh them against each other. How do you prioritize? What is the highest use? And the rainy day fund at the statewide level will allow us to particularly do that during the next budget crisis. The rainy day fund is not going to be the panacea for recessions. There will be a recession somewhere down the road. In fact, we're already past the halfway point of the longest recovery in the state's history. So it's coming in the next few years, and we want to be able to balance all of the competing demands for those dollars as we enter recession. That said, we've been committed to making sure that the change doesn't provide undue hardship on courts. Obviously it's causing all of you to change the way you do business. And I think we've shown a commitment to talking about what those changes are if we can help mitigate any of them. But the fundamental premise that we do think it's appropriate to sort of have a single rainy day fund for all contingencies isn't likely to change. That said, we recognize that the branch has specific needs. And that was why as part of what we created authority for this body to control a 2 percent reserve for unanticipated expenses. And so I think that model still makes sense for this body to weigh the challenges of all of the 58 courts. But as I said, we're happy to continue to have that dialogue. On your first point in terms of employee benefits, absolutely, not covering that last \$22 million of benefit costs was an effort to achieve parity of -- in terms of our executive branch workers, increase their annual contributions to pensions, typically by 3 percent. And are now sharing in half of the annual, taking outside the unfunded liability piece of it, sharing in half of the annual cost of the pension system, and as your employees get to that standard, that was my previous comment that we would view the \$22 million as getting provided at that point.

>> Thank you. Judge Stout, Judge O'Malley, Mary Beth Todd, Judge So.

>> Thank you, Chief, and thank, Mr. Cohen. We appreciate your being here. In addition to the obviously desperate need to reinvest in trial court operations, there's another issue of concern. That's in the area of adequate funding for court appointed counsel and dependency or child abuse and neglect cases. I know the Legislature was supportive of increase last year. It's my understanding that current funding is only sufficient to fund the caseload of 250 clients per attorney, well above the Judicial Council standards for attorney case law. Obviously here, we're talking about children alleged to have been victims of abuse and neglect from the parents, or from the parent's perspective, the government intervening to remove children and possibly terminate parental rights. And the funding here is a concern. As I indicated, in the Legislature was supportive last year and I'm wondering if we're on the radar screen if you will, to receive some increased funding in this area.

>> Absolutely. You're on the radar. As you say, in the mix this year and among the few priorities that were able to be funded, it didn't receive any increased funding, but it continues to be an area that we're looking at, and I know you have some strong advocates, both in Legislature and within the administration. So it's something that we'll be taking another look at in the coming months.

>> Thank you.

>> Thank you very much for being here again this year. Just a couple of questions. The first is there was a reduced collection in fines and fees this year. I noticed in your PowerPoint, you mentioned that the budget had accounted for 30.9 of that. Is there going to be a position in the future where if there's reduced fines and fees that the state as you mentioned is responsible for the trial court funding, that you would pay all of that and not just part of it? I think we were short \$22.7 million this last time.

>> On the fees as I mentioned, we recognized that your trial court funding is more at risk than it used to be given the higher percentage of your revenues coming from fees. I think my first point is going to be wanting to get a better handle on the estimating of those revenues and so there's always going to be some uncertainty within the revenues, but to the extent we can do a better job at following the trends and -- that would be my first and -- my first priority is to build the budget based on the most realistic estimates we can get. And I think that will reduce the level of risk that you enter a year with. And so I'd like to try that in the coming year. But it's something certainly we can revisit depending upon how it works.

>> Thank you. The justification for not making up the difference of the \$22.7 million this year?

>> The \$22.7 million, there was a fair bit of confusion about the number well into the process, but the differentiation was really that it was the carrying shortfall versus the area where I felt strongly that we should backfill is the estimate going forward of if we're going to build the budget expecting \$100 million, but everyone realizes it's more likely to be \$70 million. That's not really fair. That was more the prior year's revenue collections. A little bit different but also a matter of, as I say, some confusion.

>> Any hope for recovery of that in the near future?

>> I don't see how in the current year, we do anything about it. Budget decisions get made and then we tend to need to live with them, within the year. But absolutely, as we build the 2015/16 budget, we'll revisit all of the aspects of the fee revenues and hopefully do a better job of forecasting them.

>> Finally, with the permanent lower level of funding, do you believe that the Governor believes that we're providing a level of access to sufficient to a first world democracy?

>> I think the Governor believes that we can always become more efficient in providing all types of government services and that this two-year window is an opportunity for us to figure out how

much efficiency is still there that doesn't threaten access to Justice and at some point, clearly you go too far. And we're not -- we don't believe we're there but we also have no interest in finding out what that looks like.

>> So in the interest of time I'll call on three more speakers. I'll be including this agenda item. That's Mary Beth Todd, Judge So, and Judge Brownlee.

>> Thank you, Chief. Mary Beth Todd, court executive officer with the Sutter County Superior Court. I don't think we've met before. Thank you for being here. And being one of the last three I've got to pick my question wisely, don't I? I just wanted to follow up on some of the comments that have been made here with respect to some of the actions in the last few years. And just to give you our perspective, I'm kind of exhausted from the whole process. We've had the horrific economic decline. We've had a lot of our budget processes changed. It feels like some decisions have been made, from our perspective, on the fly. I'm not suggesting they really were. We weren't tapped into something was coming. The most recent one was the benefits reduction based on employer contributions to retirement. Just seems to me that some of these things we could have a discussion about so that we could get on the same page and see it coming and plan for it. Or have the opportunity to explain. The more we can do that, I would greatly encourage that. My question for you is, it has to be exhausting on your end too. You've come in new. We had the decline. Hopefully we're pulling out of it. My question for you is, do you see this -- the current budget process, the branch has been participating in -- as the process we will continue to see going forward? Or is there a sense that if you get us to a particular state, we might be able to go back to something I akin to a formulaic approach? I did appreciate your comments with respect to efficiency and wanting to be respectful of the branch and giving us the discretion to determine where we feel we can gain those most. And I'm wondering if there is any type of a plan that once we get to some base, then we might be able to build up from there for the future?

>> Sure. I know that we have a plan through 2016. And what comes after that, I think is more open-ended. Definitely want to see what comes out of the future of the courts commission and hopefully there's some guidance in there in terms of what goes forward. I think I got last year a question about SAL and would I recommend going back to SAL? I'm fairly sure I said no last year. And I continue to believe that that's not the best approach for either the executive branch or the judiciary, that while the increase of course I'm sure was welcome by the branch each year, knowing what was funded and what wasn't funded became an impossibility. That whenever someone wanted to not provide money for something, it was like, that was part of SAL. Something else, it was oh, no, that wasn't part of it. That's outside of SAL, and you need to provide additional money if you want that. And so it caused more confusion outside of just the strict dollars and sense than I think is right. The budget process should do a better job of delineating what exactly we think we're funding. That said, as I said, this year's budget, next year's budget will include a general-purpose 5 percent increase so that there is a pot of money that we view as allocated to your highest priorities within the branch after we've already covered some of these other expenses. But I don't think going back to SAL is what we'll have in 2016/17 and beyond. I just don't know what exactly it's going to look like.

>> Judge So then Judge Brownlee.

>> Thank you. I know you're aware that under the current allocation there are going to be increased delays, reduced access for court users, closing of courthouses, and closing of courtrooms. I know you try and forecast the economic climate in the future. So what is the prognosis?

>> In terms of the overall economy, the prognosis we see is a continued modest expansion to where the national growth will be in the 3 percent range in terms of GDP. Don't really see the factors aligning to having a big strong recovery, but also on the immediate horizon, don't see anything for a recession. I did put that caution in that we're sort of on borrowed time at this point in terms of knowing that a recession's getting closer, just the economists don't have a good way to predict when that exactly is going to hit. And so our hope here is within the proposition 30 window, we do as much as we can to stabilize and fortify key and critical government programs so that we're in the best shape possible when that recession does come.

>> And then lastly, Judge Brandlin.

>> Thank you, Chief. Mr. Cohen, I have a comment and a question for you. First with regards to the comment, as you know in 2007, the Legislature and Governor past AB 159, which created 50 additional judgeships that have been authorized but have never been funded. And under our WAFM formula, the funding for those judgeships and disbursement of those judges greatly affects two severely under resourced courts, namely Riverside and San Bernardino. Each of them would receive nine judges. And as far down as they are in judicial strength, it would be a huge benefit to them. The question would be, what steps and what prognosis do you have about getting funding for those judgeships in the future?

>> It's a difficult issue given all of the fiscal constraints I've talked about this afternoon in terms of -- and if you presume that it's a fixed amount of money, which in my world -- there's a trade-off for everything and we do have a fixed pot -- it's what doesn't happen if you fund those 50 judgeships? Is it that the rest of the courts around the circle have even less funding? Is it some other program outside of the judicial branch that doesn't get the funding? So it's again, it's on our radar in terms of the changing demographics of the state, but I don't have a good prognosis for you in terms of that funding's around the corner for them, and there's a distinct trade-off if that funding is provided. So unfortunately I think my last question ended on -- was not the happiest note, but it is a reality of our budget situation that every demand such as the additional judgeships has a reaction someplace else in our budget, but it's something we'll continue to look at. Just to respond to each of you, thank you very much for having me. I'm very pleased to be able to share this time with you. And it does very much help the communication and making sure that I have the best information available to me as I advise the Governor on the state's fiscal matters. So thank you very much.

>> [Applause]

>> Thank you, Michael, for coming. Thank you for the continuing dialogue. Thank you for sharing your thought processes. As I understand, we have different points of agreement and disagreement but we always appreciate the dialogue. Thank you for bringing Chris and Brendan, who I would ask you to stand please so that folks can see you.

>> [Laughter]

>> Thank you for coming. We appreciate it.

>> [Applause]

>> Council, as you understand, the next item on your agenda is a break. However, I'm going to invite council to please leave as you need to take personal breaks and we come back, but I apologize -- ahead of time to our presenters for the next item but I'd like to according as much time as we possibly can before we must convene -- recess at 4:30. So I apologize for the disruption that that may cause to the presenters but otherwise, in other words, no break.

>> [Laughter]

>> Chief, just another reminder this is a no action item, education public comment.

>> Thank you.

>> Here to help.

>> Everyone left.

>> They will be right back, Justice McConnell. I promise you.

>> They need to stay for the good news part.

>> Yes. Take your time.

>> Good afternoon. Those stout few who remain in the room, I'm Judy McConnell. Administrative Presiding Justice of the Court of Appeal, Fourth Appellate District. And honored to be cochair of the California Task Force on K-12 Civic Learning, established by Chief Justice Cantil-Sakauye and Superintendent Tom Torlakson. My cochair, sitting next to me, is Superintendent Dave Gordon, who is superintendent of the county schools in Sacramento. And next to me on my left is another member of the task force, Senator Joe Dunn, Executive Director of the State Bar.

>> Welcome.

>> Thank you.

Employer Paid Member (Retirement) Contribution and Number of Authorized FTEs (as of July 1, 2014)

Court	0.88%	1.50%	1.98%	2.00%	2.35%	2.50%	3.00%	3.13%	3.34%	3.39%	3.50%	3.51%	3.88%	4.00%	4.10%	4.25%	4.49%	5.00%	5.97%	6.00%	
Alameda																					
Alpine																					
Amador	18																				
Butte								18			103										
Calaveras																	28				
Colusa				17																	
Contra Costa												297	26								
Del Norte																					
El Dorado																					
Fresno																					
Glenn														22							
Humboldt																					
Imperial																					
Inyo														19							
Kern																					
Kings																					
Lake																					
Lassen																					
Los Angeles																					
Madera																					
Marin															91						
Mariposa																					
Mendocino																					
Merced																					
Modoc														13							
Mono																					
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Napa			6																		
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Orange																					
Placer																					
Plumas																1		6			
Riverside																					
Sacramento																					
San Benito																					
San Bernardino																					
San Diego											82										

Employer Paid Member (Retirement) Contribution and Number of Authorized FTEs (as of July 1, 2014)

Court	0.88%	1.50%	1.98%	2.00%	2.35%	2.50%	3.00%	3.13%	3.34%	3.39%	3.50%	3.51%	3.88%	4.00%	4.10%	4.25%	4.49%	5.00%	5.97%	6.00%	
San Francisco																					
San Joaquin																					
San Luis Obispo																				9	
San Mateo					1				50	93											
Santa Barbara																					
Santa Clara		655																			
Santa Cruz																					
Shasta																					
Sierra																					
Siskiyou																					
Solano											3			188							3
Sonoma																					
Stanislaus																					
Sutter						51															
Tehama																					
Trinity																					
Tulare																					
Tuolumne																					
Ventura																					
Yolo							43							5					2		
Yuba																					
Total	18	655	6	17	1	51	43	18	50	93	188	297	26	247	91	1	28	8	9	3	

Employer Pai

Court	6.25%	6.47%	6.50%	6.68%	7.00%	7.74%	8.00%	8.52%	9.50%	11.54%	15.48%	16.41%	25.38%	27.73%	66.50%	67.18%	Total
Alameda																	N/A
Alpine																	N/A
Amador																	18
Butte																	121
Calaveras																	28
Colusa																	17
Contra Costa																	323
Del Norte																	N/A
El Dorado																	N/A
Fresno																	N/A
Glenn							1										23
Humboldt																	N/A
Imperial																	N/A
Inyo																	19
Kern																	N/A
Kings	3				19												22
Lake																	N/A
Lassen																	N/A
Los Angeles																	N/A
Madera																	N/A
Marin																	91
Mariposa							13										13
Mendocino																	N/A
Merced																	N/A
Modoc																	13
Mono																	N/A
Monterey																	N/A
Napa																	6
Nevada			11		34		14										59
Orange										1							1
Placer																	N/A
Plumas					2												9
Riverside							761										761
Sacramento																	N/A
San Benito					0												0
San Bernardino					840												840
San Diego					1,093				53								1,228

Employer Pai

Court	6.25%	6.47%	6.50%	6.68%	7.00%	7.74%	8.00%	8.52%	9.50%	11.54%	15.48%	16.41%	25.38%	27.73%	66.50%	67.18%	Total
San Francisco																	N/A
San Joaquin																	N/A
San Luis Obispo		74				17					35						134
San Mateo				2													146
Santa Barbara																	N/A
Santa Clara							11										666
Santa Cruz					2												2
Shasta																	N/A
Sierra							6										6
Siskiyou																	N/A
Solano							5										199
Sonoma																	N/A
Stanislaus																	N/A
Sutter																	51
Tehama																	N/A
Trinity																	N/A
Tulare																	N/A
Tuolumne																	N/A
Ventura								1				25	262	65	3	4	360
Yolo					23												73
Yuba																	N/A
Total	3	74	11	2	2,013	17	810	1	53	1	35	25	262	65	3	4	5,227

Item 4
Court Appointed Juvenile Dependency Counsel Funding
(Discussion Item)

Issue

Should an alternative funding model be implemented for court appointed counsel funding?

Summary

The \$103.7 million annual base funding for court appointed juvenile dependency counsel represents approximately 75 percent of the \$136.8 million need. Individual court allocations vary widely when the court's juvenile dependency caseload is taken into account: from as little as 10 percent of calculated need to over 150 percent. In December 2013 the Funding Methodology Subcommittee began a review of this allocation methodology but was forced to table the discussion because of other pressing business.

Background

Court appointed juvenile dependency counsel funding need by court is determined by a methodology approved by the Executive & Planning Committee in 2008. The methodology estimates the cost, by court, of a caseload of 188 children per dependency attorney. The cost estimate uses a model based on the number of children in court supervised foster care, the median dependency attorney salary by region, and a set of workload factors in a dependency case derived from a statewide workload study conducted in 2002.

The trial court allocations for court appointed dependency counsel derive from the historical spending level of each trial court on dependency counsel, and have been modified in two ways (see Attachment 4B for a summary). Courts in the DRAFT (Dependency Representation, Administration, Funding, and Training) program had their individual allocations change when new contracts were negotiated with vendors (see Attachment 4E). In addition, all courts had their allocations between 2011 and 2013 modified when the Judicial Council adopted the Trial Court Budget Working Group's (TCBWG) recommendation to reduce court appointed counsel funding to a baseline of \$103.7 million in a two-year phased reduction. The TCBWG recommended a reduction model based on court's percentage of identified funding need, using the attorney caseload-based funding methodology approved in 2008. Reductions were allocated so that courts with greatest funding need received no reduction, courts in the middle tier a 3% reduction, and courts in the upper tier a 7% reduction.

The caseload-based funding model calculates that the overall statewide need is \$136.8 million Attachment 4C gives an example of the caseload funding model calculations. The current baseline funding is \$103.7 million or 76 percent of the need. When individual trial court allocations are compared to their funding need there is considerable range (see Attachment 4D). Twenty-six courts are funded at 100 percent or more of need, and 14 courts are funded at below 50 percent of need.

**Court Appointed Dependency Counsel Funding
Summary of Judicial Council or Committee Actions on Allocations**

Year	Action
2001	Implemented policy restricting the use of any amount appropriated to fund CAC to that purpose; implemented reimbursement funding for CAC
2004	10 courts join the DRAFT (Dependency Representation, Administration, Funding and Training) pilot program where Judicial Council provides direct administration of CAC on behalf of the court
2007	Adopted CAC caseload standard of 188 clients per attorney with .5 investigator complement Expanded DRAFT to 20 courts Asked TCBWG to develop an allocation methodology to allocate any Statewide Appropriation Limit (SAL) funding or other new funding to courts by need
2008	E&P adopts TCBWG recommendations for attorney caseload-based funding methodology.
2010	Council adopts TCBWG recommendation to reduce CAC funding to a baseline of \$103.7 million in a two-year phased reduction.
2011	TCBWG recommends a reduction model based on court's percentage of identified funding need, using the attorney caseload-based funding methodology approved in 2008. Reductions allocated so that courts with greatest funding need received no reduction, courts in middle tier a 3% reduction, courts in upper tier a 7% reduction.
2013	Council approved allocation of dependency counsel collections to courts with caseload funding needs. Based on same calculation of need used in prior reports; allocation based on WAFM model of the ratio of court share of base funding to court share of statewide funding need. TCBAC funding methodology subcommittee puts CAC allocation methodology on Dec. 10 2013 meeting agenda but runs out of time before addressing the item.
2014	Chief Justice funding blueprint for trial courts includes \$33.1 million in CAC funding BCP to add \$33.1 million to Judicial Branch budget rejected by DoF Legislative proposal to add \$33.1 million dropped in final negotiations.

Calculation of Caseload Funding Model				
Court	Imperial	Sacramento	Placer	San Francisco
3 yr average of children in dependency	356	2,569	374	1,288
Estimate of parents (82% of total child clients)	292	2,107	307	1,056
Total clients	647	4,676	680	2,344
FTE Attorneys required at 188 clients per attorney	3.4	24.9	3.6	12.5
FTE Social workers/investigators required at 376 clients per worker (188 per .5 FTE)	1.7	12.4	1.8	6.2
Salary region of court	Region 1	Region 2	Region 3	Region 4
Regional Attorney salary	\$67,143	\$79,539	\$95,892	\$114,800
Total Attorney cost	\$231,184	\$1,978,143	\$346,881	\$1,431,434
Regional Social worker salary	\$55,000	\$55,000	\$55,000	\$55,000
Total social work cost	\$94,687	\$683,928	\$99,479	\$342,896
Total attorney + social workers salary cost	\$325,871	\$2,662,071	\$446,360	\$1,774,330
Direct service personnel benefits at 25%	\$81,468	\$665,518	\$111,590	\$443,582
Total direct service personnel cost (75% of grand total)	\$407,338	\$3,327,589	\$557,950	\$2,217,912
Total overhead is 25% of grand total	\$137,694	\$1,116,265	\$185,714	\$733,206
Grand total: caseload funding model	\$545,032	\$4,443,854	\$743,664	\$2,951,118
Overhead breakout estimated:				
Supervising attorney salary	\$131,333	\$131,333	\$131,333	\$131,333
Clerical salary	\$30,000	\$30,000	\$30,000	\$30,000
Supervising attorney at .15 of total attorneys	\$67,830	\$489,940	\$71,263	\$245,637
Clerical at .33 of total attorneys	\$34,087	\$246,214	\$35,812	\$123,442
Total salary	\$101,917	\$736,154	\$107,075	\$369,080
Total benefits	\$25,479	\$184,038	\$26,769	\$92,270
Total indirect personnel	\$127,397	\$920,192	\$133,844	\$461,350
Training for attorneys at \$2,000 per FTE	\$6,886	\$49,740	\$7,235	\$24,938
Other	\$3,411	\$146,332	\$44,636	\$246,918
Total Overhead	\$137,694	\$1,116,265	\$185,714	\$733,206

STATEWIDE COMPENSATION STANDARD IMPLEMENTATION COSTS

Court Appointed Juvenile Dependency Counsel: Statewide Allocations and Need					
	Avg. Client Numbers Based on Reported Periods (Col. A-C)		Funding Analysis		
Court Col. A	CWS/CMS Average Child Clients 2012-2014 Col. B	Total Clients -- Children + Estimated Parents Col. C	CFM Estimated Funding Need Col. D	Current CAC Allocation Col. E	Base/CFM Col.F
Alameda	1,734	3,156	\$3,450,970.68	\$4,171,032.46	121%
Alpine*	1	-	\$0.00	\$0.00	
Amador	49	90	\$85,336.77	\$120,146.93	141%
Butte	544	990	\$833,636.96	\$664,759.00	80%
Calaveras	131	238	\$226,026.98	\$76,519.00	34%
Colusa†	33	60	\$50,569.89	\$0.00	0%
Contra Costa	1,186	2,158	\$2,716,647.74	\$3,120,151.00	115%
Del Norte	110	200	\$168,566.70	\$223,089.81	132%
El Dorado	355	646	\$614,078.75	\$819,764.99	133%
Fresno	1,917	3,489	\$2,937,650.85	\$2,958,296.00	101%
Glenn	96	175	\$166,060.64	\$55,250.00	33%
Humboldt	299	544	\$458,193.85	\$562,460.00	123%
Imperial	356	647	\$545,032.34	\$607,371.00	111%
Inyo	20	36	\$34,019.37	\$76,990.00	226%
Kern	1,797	3,271	\$3,108,447.52	\$2,023,943.00	65%
Kings	448	815	\$686,524.56	\$199,672.35	29%
Lake	138	252	\$239,288.90	\$307,076.27	128%
Lassen	76	138	\$115,953.18	\$108,374.00	93%
Los Angeles	28,717	52,264	\$57,151,311.87	\$32,782,704.00	57%
Madera	339	618	\$586,978.22	\$53,030.50	9%
Marin	108	197	\$247,454.02	\$408,418.72	165%
Mariposa	34	61	\$51,591.50	\$32,243.00	62%
Mendocino	300	546	\$518,939.79	\$742,022.00	143%
Merced	695	1,264	\$1,064,521.71	\$593,861.37	56%
Modoc	13	24	\$20,432.28	\$16,064.00	79%
Mono	10	19	\$17,874.58	\$12,329.00	69%
Monterey	335	610	\$667,373.42	\$329,570.00	49%
Napa	148	269	\$294,546.52	\$176,430.00	60%
Nevada	117	214	\$202,963.00	\$232,799.00	115%
Orange	3,043	5,538	\$6,056,115.22	\$6,583,082.00	109%
Placer	374	680	\$743,663.62	\$418,422.00	56%
Plumas	54	98	\$82,240.12	\$163,290.96	199%
Riverside	5,143	9,360	\$10,235,491.48	\$4,171,897.50	41%
Sacramento	2,569	4,676	\$4,443,854.42	\$5,378,189.72	121%
San Benito	121	221	\$209,882.19	\$31,884.50	15%
San Bernardino	4,615	8,400	\$7,983,595.68	\$3,587,297.00	45%
San Diego	3,858	7,022	\$7,678,774.64	\$9,749,950.36	127%
San Francisco	1,288	2,344	\$2,951,118.03	\$3,907,633.00	132%
San Joaquin	1,470	2,675	\$2,542,228.38	\$3,081,900.92	121%
San Luis Obispo	452	823	\$781,869.29	\$707,000.04	90%
San Mateo	459	835	\$1,050,915.74	\$323,021.73	31%
Santa Barbara	662	1,205	\$1,318,162.00	\$1,610,017.00	122%
Santa Clara	1,458	2,654	\$3,340,629.23	\$4,700,130.81	141%
Santa Cruz	353	643	\$703,196.64	\$894,764.81	127%
Shasta	614	1,117	\$940,395.62	\$569,416.00	61%
Sierra	2	4	\$3,575.65	\$14,898.00	417%
Siskiyou	113	206	\$173,163.56	\$256,552.00	148%
Solano	426	775	\$847,816.33	\$896,319.14	106%
Sonoma	640	1,165	\$1,274,378.06	\$1,150,195.00	90%
Stanislaus	636	1,158	\$1,100,152.36	\$1,130,985.52	103%
Sutter	157	286	\$272,154.93	\$84,082.75	31%
Tehama	205	372	\$313,635.48	\$93,909.01	30%
Trinity	78	142	\$119,528.83	\$83,204.00	70%
Tulare	1,043	1,899	\$1,598,825.80	\$658,892.25	41%
Tuolumne	122	221	\$210,458.79	\$63,980.75	30%
Ventura	1,010	1,839	\$2,010,744.36	\$755,357.00	38%
Yolo	327	595	\$565,644.04	\$333,430.00	59%
Yuba	153	278	\$264,659.14	\$199,732.00	75%
Unallocated	305	556		\$651,641.31	
Total	71,857	130,778	\$137,077,862.19	\$103,725,444.48	



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FACT SHEET

August, 2012

Dependency Representation, Administration, Funding, and Training (DRAFT) Program

The Dependency Representation, Administration, Funding, and Training (DRAFT) program was implemented to address critical trial court needs with respect to attorney quality, availability, and cost through the establishment of partnerships between participating courts and the AOC. Under DRAFT, courts retain responsibility for juvenile dependency counsel selection while the AOC is responsible for direct attorney contracting and service administration. Primary components of DRAFT include competitive bidding for court-appointed counsel services, the execution of standardized appointed counsel contracts, and the development and promulgation of attorney performance and training standards.

Background

Juvenile dependency courts preside over cases that are filed by county social services agencies when a child has been, or is suspected of being, abused or neglected. Parents and children in these cases are statutorily entitled to legal representation, but usually cannot afford to pay for their own lawyers. The court appoints attorneys to represent indigent parents and all children, and the state pays for the attorneys through funds administered by the Administrative Office of the Courts (AOC).

Prior to the implementation of the Lockyer-Isenberg Trial Court Funding Act of 1997, each court arranged for representation in dependency cases, and funding was provided by the county. The transition to state funding of the trial courts modified this system by shifting the funding responsibility to the state, with local courts continuing to select and administer attorney services. As a result, significant disparities have existed among California's 58 counties in terms of attorney caseloads, performance standards, and compensation.

Dependency Representation, Administration, Funding, and Training Pilot Program

Page 2 of 3

DRAFT

In June 2004, the Judicial Council directed AOC staff to pilot uniform dependency counsel caseload, compensation, and performance standards as part of the DRAFT Pilot Program. Pilot program implementation began July 1, 2004, with 10 volunteer courts.¹ DRAFT includes the following components:

- Competitive bidding via standardized requests for proposals.
- Attorney caseload, compensation, and performance standards implemented through direct contracting, which include:
 - Caseload standards developed as a result of a statewide workload study and approved by the Judicial Council;
 - Regional compensation standards developed by the DRAFT committee; and
 - Attorney performance standards developed by the DRAFT committee.
- Attorney caseload and workload reporting requirements, which include:
 - Opened and closed cases, reported monthly; and
 - Time spent, per case, on specified in-court and out-of court activities, reported monthly.
- Training and technical assistance which include:
 - A remotely accessible, comprehensive initial training program for new practitioners;
 - Local multidisciplinary trainings addressing county-specific barriers to permanency; and
 - A juvenile dependency website to house training materials, in-court reference manual, sample motions and briefs, and a comprehensive repository of California dependency cases.
- Outcome evaluation, which includes:
 - Attorney performance evaluations, to be conducted by judicial officers, peers, and clients; and
 - Permanency evaluation utilizing child welfare reunification, guardianship, and placement data.

In October 2007, the Judicial Council adopted a recommendation to expand the DRAFT program to include up to ten additional courts.²

¹ The Superior Courts of Imperial, Los Angeles, Marin, Mendocino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, and Stanislaus Counties.

² The Superior Courts of Alameda, Amador, Del Norte, El Dorado, Lake, Plumas, Sacramento, Santa Clara, Solano and Sonoma Counties.

*Dependency Representation, Administration, Funding, and Training Pilot
Program*

Page 3 of 3

Benefits of DRAFT

In the years since DRAFT was implemented, it has produced the following financial benefits:

- Eliminated court costs for managing court appointed dependency counsel;
- Through a fixed deliverable contracting method, achieved reliability in annual costs (in contrast to direct-funded courts, which frequently have cost overruns);
- Substantially lowered attorney caseloads while maintaining an equivalent funding level to direct-funded courts;
- Used a common database for all DRAFT courts to monitor caseload and spending, and ensure that all funds go to dependency counsel;
- Adjusted allocations to DRAFT courts based on increasing or decreasing foster children populations.

DRAFT has also improved quality of service to the local courts:

- Court executives and judges no longer need to engage in direct negotiation with attorney providers;
- Substantially lowered caseloads in DRAFT courts give judicial officers more time and resources to review cases;
- Foster children in DRAFT courts show improved outcomes of reunification with families;
- Most DRAFT courts that began with low dependency counsel budget allocations have been brought to parity with all courts in the DRAFT program.

Contact:

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FUNDING METHODOLOGY SUBCOMMITTEE WORK PLAN

September 2014

Spring 2014

1. Allocations for complex litigation cases. Pending with IMF review
2. Evaluate the need for additional staffing at multiple locations and factor into the base. Completed

FY 2014/2015

1. Determine how to allocate reductions. Pending September 2014 mtg.
2. Evaluate what to do with employer paid portion of employee retirement costs. Pending September 2014 mtg.
3. Dependency Court Appointed Counsel funding model. Pending September 2014 mtg.

FY 2015/2016

1. Identify technology funding streams (with JCTC and CITMF assistance)
2. Evaluate self-help funding (with Access & Fairness Advisory Committee)

FY 2016/2017

1. Evaluate impact of IMF revenue in a court's base budget
2. Evaluate 1058 revenue as an offset
3. Evaluate the impact of civil assessments
4. Evaluate the impact & application of County MOEs

Indefinite

1. Evaluate impact of AOC provided services
2. Evaluate how to include unfunded costs – courthouse construction
3. Upon funding of new judgeships – consider separating courtroom staff from RAS