

Provision of Supplemental Judicial Benefits

Summary of SBX2 11 (Steinberg, 2009)

BACKGROUND

Prior to and following the passage of AB 233, the Trial Court Funding Act of 1997, some counties have opted to pay supplemental benefits to local judges. Although the record is not entirely clear on which counties currently are providing judicial benefits, we believe that as of February 2009 those counties included, at a minimum, all of the following:

Alameda	Kings	Riverside	Santa Clara
Calaveras	Los Angeles	Sacramento	Sonoma
Contra Costa	Mendocino	San Bernardino	Trinity
Fresno	Monterey	San Francisco	Ventura
Kern	Orange	San Mateo	Yolo

In 2006, a taxpayer filed suit against Los Angeles County over this issue (*Sturgeon v. County of Los Angeles*), challenging the validity of the benefits. In October 2008, a state appellate court overturned the trial court decision — which had initially found in favor of the county — and ruled that the provision of benefits by the county was unconstitutional on the grounds that [Section 19, article VI](#) of the California Constitution requires the Legislature to “prescribe compensation” for judges. (Because the Legislature had not approved local judicial benefits, the provision of such benefits was incompatible with the constitutional limitation.) The California Supreme Court opted not to review the appellate court [decision](#), so the ruling in *Sturgeon* stands.

2009 LEGISLATIVE RESPONSE TO THE *STURGEON* DECISION

To address the *Sturgeon* decision, the Judicial Council and the California Judges’ Association jointly sponsored [SBX2 11](#), by Senate President pro Tempore Darrell Steinberg. The Legislature approved this measure in the 2009–10 Second Extraordinary Session as part of the 17-month budget resolution adopted in February 2009; SBX2 11 was signed into law by the Governor on February 20. Given the enactment of this measure as a non-urgency bill in the second extraordinary session, the measure goes into effect — pursuant to constitutional provisions — on the 91st day following the adjournment of the special session. The second extraordinary session adjourned *sine die* on February 19, meaning that the provisions of SBX2 11 become effective on May 21, 2009.

The key provisions in the supplemental judicial benefits measure do all of the following:

1. Obligates any county that was providing supplemental judicial benefits as of July 1, 2008, to sustain the same level of benefits that were effective on that date for the **term** of the judge, which limits counties’ liability to a maximum of six years per judicial officer;
2. Allows counties to terminate future obligations by giving the Administrative Office of the Courts a 180-day written termination notice;
3. Defines benefits to include federally regulated benefits, deferred compensation plans, and professional development allowances, as specified;
4. Gives immunity to entities that provided supplemental judicial benefits prior to the effective date of the measure; and
5. Requires the Judicial Council to report to the legislative budget and judiciary committees by December 31, 2009, regarding the provision of local judicial benefits.

CSAC remained neutral on SBX2 11 for a number of reasons. First, the measure provided a necessary safeguard for those entities that had provided and were continuing to provide judicial benefits prior to and following the *Sturgeon* decision. Further, several counties expressed an intent to sustain judicial benefits for the foreseeable future.

TECHNICAL NOTE ON LEGISLATIVE FINDING

Although legislative findings and declarations are not codified and, therefore, have no force of law, courts routinely take note of these for purposes of determining legislative intent. For that reason, we feel it is important to state for the record that we object to the characterization of a historic element described in Section 1 (b) of SBX2 11, which states:

These county-provided benefits were considered by the Legislature in enacting the Lockyer-Ishenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county's maintenance of effort obligations if counties elected to provide benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

This summary is a misstatement of facts. The Trial Court Funding Act of 1997 (AB 233) capped county responsibility for court operations at the 1994-95 level. Responsibility for future court costs and growth transferred to the state. Counties were required to identify for their individual jurisdictions the historical costs of supporting the trial courts, based on statutorily defined cost elements ("allowable costs") that were necessary and required to sustain court operations. These elements were bundled into an operations Maintenance of Effort (MOE).

There were other elements outside of the necessary and required elements of court operations ("unallowable costs"); among those were locally negotiated judicial benefits. (An important distinction: There are two types of "local judicial benefits." The first type was provided to judges across the board, regardless of jurisdiction; responsibility for those *statewide* judicial benefits transferred to the state under AB 233. This second type was a class of supplemental benefits that clearly fell outside the standard benefits judges received statewide. These benefits were agreed upon locally between the court and the county and might have included perquisites such as a car allowance or sabbatical pay.)

The state took the position that this second type of benefits was unallowable, for the following reasons: they were discretionary, were not "necessary and required" elements of court operations, and, therefore, were not appropriate for transfer to the state. Therefore, counties underwent a process to identify costs associated with these extra judicial benefits; this cost element was excised from certain counties' ongoing obligation to the state. The action to amend a county's MOE to *exclude* any component associated with locally provided judicial benefits should not be construed as a benefit to counties; it was at the direction of the Legislature, in recognition of the fact that (1) the state would not assume responsibility for these discretionary benefits and (2) provision of those benefits remained elective, pursuant to local decisions. Stated differently, there was no offset or reduction to the MOE – just an exclusion of unallowable costs that were not going to be assumed by the State. The legislative finding in SBX2 11 characterizes the MOE reduction as a "benefit" to counties, when it in fact was, as stated previously, simply the necessary response to the Legislature's rejection of what it deemed to be unallowable court operation costs.

QUESTIONS

If we can provide any further information about this issue or the specific legislative measure to address local judicial benefits, please do not hesitate to contact Elizabeth Howard at ehoward@counties.org or 916-650-8131.