

AGENDA**ASSEMBLY BUDGET SUBCOMMITTEE NO. 4
ON STATE ADMINISTRATION****Assemblymember Juan Arambula, Chair****WEDNESDAY, APRIL 1, 2009, 1:30 PM
STATE CAPITOL, ROOM 444**

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ITEM 8140 STATE PUBLIC DEFENDER

The Office of the State Public Defender (OSPD) was created by the Legislature in 1976 to represent indigent criminal defendants on appeal. The office was formed in response to the need of the state appellate courts, for consistent, high-quality representation for defendants. For the first 13 years of its existence OSPD's workload was predominantly complex non-capital felonies on appeal to the Courts of Appeal, with a handful of capital murder cases in the mix.

Due to the fact that the number of condemned inmates sitting on Death Row awaiting appointment of counsel, often for years, has steadily increased, since 1990 OSPD's mandate from all three branches of government has been redirected toward an exclusive focus upon death penalty cases.

The agency has two regional law offices, located in Sacramento and San Francisco. The State Public Defender is headquartered in San Francisco.

The Governor's Budget proposed expenditures of \$11 million, all from the General Fund, and 72.7 positions for the OSPD. Following is a three-year summary of positions and expenditures (dollars in thousands):

	Positions			Expenditures	
	2008-09	2009-10		2007-08	2008-09
2007-08					
	74.0	72.7		\$11,578	\$10,983
		72.7			\$11,052

ISSUE 1: LEGACY CASE WORKLOAD

An April 1st Finance Letter requests 2009-10 Budget Bill language that would allow the Office of the State Public Defender (OSPD) to submit a deficiency request to address a budgetary shortfall related to habeas corpus legacy case activity ordered by the California Supreme Court.

BACKGROUND

In 1998 the OSPD's primary mission was changed, by statute, from representing all capital cases to only providing representation in capital appeals. At the same time, the Habeas Corpus Resource Center (HCRC) was created to handle habeas corpus petitions. Because the HCRC only took new cases, the OSPD maintained responsibility for the approximately 25 cases it had in the appeal and habeas corpus petition processes at that time. These cases are referred to as "legacy" cases.

As a result of orders of the California Supreme Court in three legacy capital habeas corpus matters, the OSPD incurred a current year (2008-09) deficiency of \$122,250.

The orders in two cases require the OSPD to litigate complex evidentiary matters involving lay and expert witnesses before the superior courts of two different counties, both of them distant from the OSPD offices in Sacramento and San Francisco. The order in the third case will require the OSPD to investigate the factual basis of multiple claims identified by the Supreme Court.

The court's orders in these cases were unanticipated and the OSPD did not have the flexibility in its budget to address the associated expenses, such as significant out-of-state and in-state travel. However, the OSPD did make a successful effort to get the court to appoint the HCRC as associate counsel in two of the cases, which significantly reduced the costs to the OSPD.

The requested Budget Bill Language is necessary to ensure the OSPD will be able to request resources that may be needed should the California Supreme Court issues subsequent orders in these legacy cases. The language specifies that any shortfall for such activity is deemed to be unanticipated for the purposes of Item 9840.

COMMENTS

Although the OSPD is aware that there may be additional costs associated with these legacy cases, at this time, it would be difficult to determine the appropriate budget augmentation. In order to ensure that the OSPD does not violate the requirement that a deficiency request results from an unanticipated cost, staff finds that the proposed Budget Bill Language is a reasonable solution.

ITEM 0820 CALIFORNIA DEPARTMENT OF JUSTICE

The constitutional office of the Attorney General, as chief law officer of the state, has the responsibility to see that the laws of California are uniformly and adequately enforced. This responsibility is fulfilled through the diverse programs of the Department of Justice (DOJ).

The DOJ is responsible for providing skillful and efficient legal services on behalf of the people of California. The Attorney General represents the people in all matters before the Appellate and Supreme Courts of California and the United States; serves as legal counsel to state officers, boards, commissions, and departments; represents the people in actions to protect the environment and to enforce consumer, antitrust, and civil rights laws; and assists district attorneys in the administration of justice. The Department also coordinates efforts to address the statewide narcotic enforcement problem; assists local law enforcement in the investigation and analysis of crimes; provides person and property identification and information services to criminal justice agencies; supports the telecommunications and data processing needs of the California criminal justice community; and pursues projects designed to protect the people of California from fraudulent, unfair, and illegal activities.

The Governor's Budget proposed expenditures of \$800.5 million (\$381.4 million General Fund) and 5,394.5 positions for the DOJ. Following is a three-year summary of positions and expenditures (dollars in thousands):

	Positions			Expenditures	
	2008-09	2009-10		2007-08	2008-09
2007-08	2008-09	2009-10	2007-08	2008-09	2009-10
4,975.5	5,369.4	5,394.5	\$750,111	\$794,321	\$800,497

2009-10 Budget Act. The budget adopted in February for the DOJ differed from the Governor's Budget in that funding related to two proposals (outlined in Issues 2 and 3) totaling \$7.6 million was removed.

ISSUE 1: UNDERGROUND ECONOMY

The 2009-10 Budget Act includes \$575,000 General Fund and 3 Deputy Attorney General III positions to continue and expand the underground economy pilot program established in the 2006-07 fiscal year.

BACKGROUND

"Underground economy" is a term that refers to those individuals and businesses that willfully avoid labor, licensing, insurance, and tax laws by dealing in cash and/or using other schemes to conceal their activities and their true tax liability from government licensing, regulatory, and tax agencies. Specific violations may include fraud, criminal tax evasion, theft, perjury, workers compensation premium fraud, willful violation of health and safety standards, failure to comply with laws relating to wages, hours, employment rights and working conditions, forgery and money laundering.

Despite efforts, the underground economy has continued to grow, as evidenced in two recent reports. In August 2007, the California Commission on Health and Safety and Workers' Compensation issued a report that estimated approximately \$88.3 billion to \$106 billion in total under-reported payroll in California, which was more than triple the rate for 1997. The scope of the problem in California is also illustrated by employment misclassification figures in the courier and delivery industry as reported by the California Employment Development Department (EDD). Between November 2003 and November 2007, EDD audits found over 23,600 employee drivers misclassified as independent contractors by over 480 courier and delivery businesses. The audits resulted in the issuance of tax assessments that totaled over \$52.6 million.

The Economic and Employment Enforcement Coalition is a multi-agency enforcement program that conducts sweep inspections in underground economy industries. The sweeps assemble staff from several state agencies, including the Department of Industrial Relation's Division of Labor Standards Enforcement, the EDD, Cal/OSHA, and the Contractors State License Board. The sweeps often generate administrative citations, which are an important part of the underground economy strategy. However, the Attorney General is equipped to perform the in-depth investigation required to prosecute these cases statewide.

Beginning in the 2006-07 fiscal year, the Attorney General's Office was provided 4.3 positions and \$556,000 on a three-year limited-term basis for its underground economy program. The initial investigations have lead to 11 cases filed in court to date. The first four cases filed by the Underground Economy unit have been completed successfully and illustrate the potential for the unit. A fifth case was jointly filed by the Labor Commissioner and the Attorney General. A motion for default judgment has been filed in superior court.

Following is specific case information provided by the DOJ:

- In *People v Brinas Construction et al.*, the Court entered a default judgment in June 2008 for \$927,714.51 in restitution for the employees, \$450,000 in penalties, and \$677.33 in costs. This money has not yet been collected. The court has permanently enjoined Brinas Corporation, and its successors, agents, and other persons acting in concert with Brinas from engaging in specified acts of unfair competition including failing to pay minimum wages and overtime, paying wages in cash and personal checks without an itemized wage statement, failing to make timely payment of wages, and failing to pay applicable payroll taxes.
- In *People v Roca*, the defendant entered a guilty plea for felony insurance fraud in June, 2008. He is being sentenced to 60 days jail time, 3 years of probation, is required to pay \$50,068.94 in restitution to the insurance company, and will be subjected to a license suspension, license probation, and a disciplinary bond.
- In *People v Interwall*, the defendant has paid \$1.4 million in restitution to employees, approximately \$200,000 in employer-share payroll taxes, \$200,000 in unfair competition law penalties, and \$70,000 in fees and costs. The payroll taxes will be paid to the EDD.
- In *People v Pacifistaff et al.*, a judgment has been finalized requiring the following: the dissolution of Pacifistaff, Inc.; the issuance of a permanent injunction against all defendants enjoining the promotion or sale of any advice or services, and from providing or brokering legal advice related to the abused workers' compensation exemption; and the payment of \$67,500 in unfair competition law penalties, to be paid in installments, as well as \$7,500 in fees and costs. The injunction in this case is significant, because the defendants had been promoting a scheme among numerous businesses to evade workers compensation. This injunction will stop the defendants and help curb the proliferation of this evasion scheme.
- In *People v Excell Janitorial, et al.*, a motion has been filed seeking a judgment for \$715,420 in civil penalties.

ISSUE 2: CLASS ACTION QUALITY IMPROVEMENT

The 2009-10 Governor's Budget included \$3.2 million General Fund and 18 positions to enhance the State's legal defense of class actions.

BACKGROUND

The Correctional Law Section (CLS) within the Civil Division of DOJ defends the Governor, the California Department of Corrections and Rehabilitation (CDCR), the Department of Finance, the Department of Mental Health, and state employees in litigation filed by prisoners, juvenile wards, and parolees challenging their conditions of confinement and parole related issues.

The cases handled by CLS include:

- Federal and state suits for damages or injunctive relief by individual inmates, typically brought under the federal Civil Rights Act
- Class action suits asserting sweeping challenges to the CDCR's or the Governor's compliance with federal and state constitutional and statutory requirements
- Appellate work arising out of appeals of the district and superior court orders and reviews by the United States and California Supreme Courts

Class actions are suits brought by large groups of inmates or parolees (often exceeding 10,000 class members) challenging conditions or policies affecting inmates or parolees. Class actions can often last decades, as once liability is determined the cases usually move into a post judgment or post settlement enforcement stage.

This proposal would provide resources to enhance the CLS' ability in the following areas relating to these class action suits:

- Opposing Class Certification
- Participating in Discovery
- Monitoring and Litigating Remedial Orders
- Termination of Cases

In 2006-07, the CLS was provided an augmentation of four attorneys and one legal analyst and, in 2007-08, the Legislature approved \$2.2 million from the General Fund (8 attorneys) to enhance DOJ's efforts in defending the state in civil and class action cases.

COMMENTS

In order to allow for further vetting, this proposal was not included in the 2009-10 Budget Act. Staff notes that the 2008-09 Governor's Budget included a similar proposal that was not approved by the Legislature.

ISSUE 3: CORRECTIONAL WRITS AND APPEALS WORKLOAD

The 2009-10 Governor's Budget included \$4.5 million General Fund and 28 positions to support correctional habeas corpus workload in the Correctional Writs and Appeals (CWA) section.

BACKGROUND

Habeas corpus cases arise when an inmate seeks some type of immediate relief, such as release from prison or an immediate change in conditions of confinement. Habeas corpus cases may also be brought as quasi-class actions by groups of inmates seeking the same relief, such as changes to the parole system.

The CWA's habeas corpus litigation can be divided into four categories: (1) challenges to the denial of parole to inmates sentenced to life imprisonment; (2) matters relating to parole revocation such as timeliness of revocation hearings, sufficiency of evidence, or due process issues; (3) habeas corpus matters arising in the prison setting, such as challenges to prison discipline, sentence credit calculations, and conditions of confinement; and (4) miscellaneous writs or orders related to criminal prosecutions involving in-prison crimes or petitions seeking conservatorships for medical care. Over half of the habeas corpus workload is related to "lifer" parole denials.

Based on historical workload growth, the department's projections assume that there will be a 25 percent increase in CWA cases in 2008-09 and 2009-10. However, the LAO has found that workload data provided by the department for the past few years, as well as more recent data from the first six months of 2008-09, suggests that the CWA workload will likely only increase between 10 percent and 17 percent.

Further, the LAO has found several pending actions could reduce future CWA workload. For instance, a federal three-judge panel could order prison populations to be reduced by thousands of inmates at some point in the near future. Moreover, various correctional reforms have been proposed that would significantly reduce the state's inmate and parolee populations. Such population changes would likely reduce the number of habeas corpus cases filed with DOJ's CWA section. Lastly, the passage of Proposition 9 (approved by the voters in November 2008) will likely reduce the CWA's workload. This is because Proposition 9 extends the time (from between 1 and 5 years to between 3 and 15 years) that individuals with a life sentence who are denied parole must generally wait for another parole consideration hearing.

In 2007-08, the Legislature approved \$3.6 million from the General Fund and 23 positions (12 attorneys) to support the increase in federal habeas corpus workload, which was a 60 percent increase to existing resources.

COMMENTS

Similar to Issue 1, this proposal was not included in the 2009-10 Budget Act. Staff notes that the 2008-09 Governor's Budget included a similar proposal that was not approved by the Legislature.

ITEM 0250 JUDICIAL BRANCH

The California Constitution vests the state's judicial power in the Supreme Court, the Courts of Appeal, and the trial courts. The Supreme Court, the six Courts of Appeal, and the Judicial Council of California, which is the administrative body of the judicial system, are entirely state-supported. The Trial Court Funding program provides state funds (above a fixed county share) for support of the trial courts. *Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)*, shifted fiscal responsibility for the trial courts from the counties to the state. California has 58 trial courts, one in each county.

The Judicial Branch consists of two components: (1) the judiciary program (the Supreme Court, Courts of Appeal, Judicial Council, and the Habeas Corpus Resource Center), and (2) the Trial Court Funding program, which funds local superior courts. The *2005-06 Budget Act* merged funding for the judiciary and Trial Court Funding programs under a single "Judicial Branch" budget item. It also shifted local assistance funding for a variety of programs, including the Child Support Commissioner program, the Drug Court Projects, and the Equal Access Fund from the Judicial Council budget to the Trial Court Funding budget.

The Governor's Budget proposed expenditures of \$3.8 Billion (\$2.3 billion General Fund) and 1,983 positions for the Judicial Branch. Following is a three-year summary of positions and expenditures (dollars in thousands):

	Positions		Expenditures		
	2008-09	2009-10	2007-08	2008-09	2009-10
2007-08	1,954.7	1,983.0	\$3,726,890	\$3,873,501	\$3,839,810

2009-10 Budget Act. The budget adopted in February for the Judicial Branch differed from the Governor's Budget in that funding related to two proposals (Infrastructure Support for Trial Courts and Court Security) were removed. In addition, funding to support new judgeships was removed and \$100 million was reduced as an unallocated reduction. In total these changes reduced appropriations for the Judicial Branch by approximately \$256 million (\$171.4

General Fund) as compared to the Governor's Budget. Finally, the 2009-10 Budget Act included a \$40 million transfer from the State Court Facilities Construction Fund to the General Fund.

ISSUE 1: ADMINISTRATIVE INFRASTRUCTURE SUPPORT FOR TRIAL COURT OPERATIONS

The 2009-10 Governor's Budget included \$55.8 million from three special funds (Trial Court Improvement Fund, Trial Court Trust Fund, and Judicial Administrative Efficiency and Modernization Fund) for the continuation of implementation, development, and deployment of the California Court Case Management System (CCMS) and other administrative and information technology services in support of the trial courts.

BACKGROUND

AB 233 consolidated all trial court funding and entrusted the financial management of trial courts to the judiciary as an independent branch of government. Prior to the passage of this legislation, trial courts had a bifurcated funding structure to support their business services, human resources, financial, and technology information systems through a combination of funding and state block grants.

The major trial court initiatives that will be supported by this proposal are:

CCMS – In 2001, a court-by-court assessment was performed by the Administrative Office of the Courts (AOC) to ascertain the viability of existing case management systems used by courts. A number of courts were found to have outdated systems, deficient technical support, the inability to meet reporting requirements, and significant maintenance costs. In early, 2002 the Judicial Council decided to proceed with a common solution and the CCMS project was initiated. The scope of this project includes development and deployment of a single statewide case management system for all case categories at all California courts, converting data from existing systems, and implementation of standardized data exchange capabilities with state and local partners.

Phoenix Project – This project is the implementation of a statewide employment and financial system with the same configurations for all trial courts that will provide the AOC with unified reporting capabilities for all aspects of trial court administrative functions. As of July 2008, 57 courts had implemented the statewide accounting system and six courts were using the statewide human resource system.

California Courts Technology Center/Shared Services – The technology center provides 24/7 application and internet infrastructure management to the

superior and appellate courts for a range of management systems and applications. These include the statewide financial system, the appellate court case management system, and the statewide facilities management system. In 2007-08, the AOC completed a project to transition from Siemens IT Solutions to Science Applications International Corporation as the new provider for services for the technology center.

Data Integration – The Data Integration Program was established in order for the AOC to work with the trial courts to develop a statewide approach to data sharing between trial courts and their justice partners. Today, the program has expanded into many different components including the development of data exchange standards, the Integration Services Backbone, statewide e-filing services, state partner integrations, and the Justice Partner Data Integration Program.

Court Telecommunications Program – The Court Telecommunications program establishes and supports a point-by-point and frame relay network permitting electronic communications between the AOC, regional offices, appellate courts, the technology center, trial courts, state and local partners, and the public.

Following is a five-year display of project costs as provided by the AOC (dollars in millions):

Project	2008-09	2009-10	2010-11	2011-12	2012-13
CCMS	\$137.7	\$281.3	\$337.1	\$434.9	\$232.0
Phoenix	46.5	35.9	34.5	36.7	37.0
Telecom	12.8	13.2	14.0	15.0	15.0
Tech Center	11.5	13.0	13.5	14.2	14.2
Data Int.	11.6	11.4	11.9	11.7	8.6
Other Infra.	44.9	27.9	24.3	22.9	25.2

These costs will result in increased funding needs of \$55.8 million in 2009-10 (as noted above), \$146.2 million in 2010-11, \$372.1 million in 2011-12, and \$178.6 million in 2012-13. In addition, the proposed funding would deplete the fund balances of all three special funds by 2010-11. Lastly, the AOC has proposed to cover out-year costs with debt financing, using annual maintenance payments received from trial courts for debt service.

COMMENTS

Staff notes that the AOC has indicated that they are in the process of developing an alternate proposal, which would utilize a less aggressive implementation schedule of the court's IT initiatives.

ISSUE 2: COURTS UNALLOCATED REDUCTIONS

The 2009-10 Governor's Budget included an unallocated reduction of \$146 million to the State Judiciary and Trial Courts. This reduction equals the sum of various one-time reductions included in the 2008 Budget Act and the annual growth factor adjustment the courts would normally receive. In addition, as mentioned above, the 2009 Budget Act includes an additional unallocated reduction of \$100 million. In total the court's 2009-10 budget includes unallocated reductions of \$246 million.

BACKGROUND

\$21.3 million of the unallocated reduction is in the state support (State Judicial Branch) item, which includes the Supreme Court, the Court of Appeal, the Judicial Council, and the Habeas Corpus Resource Center. This Item has a total appropriation of \$354.9 million General Fund.

\$224.7 million of the unallocated reduction in the local assistance (Trial Court Support) item, which includes Support for Operations of Trial Courts, Compensation of Superior Court Judges, Assigned Judges, Court Interpreters, Court Appointed Special Advocate Program, Self Help Program, Equal Access Fund Program, Family Law Information Centers, and Civil Case Coordination. This item has a total appropriation of \$2.9 million (\$1.7 billion General Fund). The majority of funding is for Support of Trial Court Operations (\$2.7 billion).

COMMENTS

Given that these reductions are unallocated, the AOC should provide the Legislature with information regarding how these cuts will ultimately be accounted for and the corresponding effects on court operations.