

AGENDA ASSEMBLY BUDGET SUBCOMMITTEE NO. 4 ON STATE ADMINISTRATION

Assemblymember Juan Arambula, Chair

**WEDNESDAY, APRIL 23, 2008, 1:30 PM
STATE CAPITOL, ROOM 444**

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CONSENT ITEMS

ITEM 0250 JUDICIAL BRANCH

ISSUE 1: COURT FACILITIES TRUST FUND ADJUSTMENT

This request would augment expenditure authority from the Court Facilities Trust Fund by \$9.2 million and increases reimbursements by \$811,000 in the budget year to enable expenditure of County Facility Payments (CFP) for 40 additional court facilities that have been transferred to the state in the current year. The increased revenues to the Court Facilities Trust Fund are also due to lease revenues from the Long Beach Court.

COMMENTS

Upon transfer of responsibility and/or title to the state, counties provide funding for facilities operation and maintenance costs based on historic funding patterns. CFPs are deposited in the Court Facilities Trust Fund to support operations and maintenance of court buildings that have been transferred to the state.

ISSUE 2: FINANCE LETTER - COURT FACILITIES TRUST FUND ADJUSTMENT

This proposal includes \$2.4 million in additional expenditure authority from the Court Facilities Trust Fund and \$588,000 in reimbursements to enable expenditure of CFPs for five additional court facilities that have been transferred to the state in the current year and 13 additional facilities that are expected to transfer.

ISSUE 3: JUDICIAL SUPPORT FOR THE MENTAL HEALTH SERVICES ACT

This proposal would add \$431,000 from the Mental Health Services Fund, offset by a \$137,000 reduction in reimbursements, and an additional position to address the increased workload relating to mental health issues in the courts and to develop a research component to evaluate court appointed programs for the mentally ill. The proposal would also make a technical adjustment to switch the funding for the existing position from an interagency agreement with DMH to a direct appropriation.

COMMENTS

In the 2006-07 Budget Act the Administrative Office of the Courts (AOC) received funding from the Department of Mental Health (DMH) through an interagency agreement to strengthen the judicial branch responses in addressing the needs of adult and juvenile mentally ill court users. This funding has been used to support one position dedicated to providing technical assistance to trial courts and serving as a liaison with DMH and other related organizations.

ITEM 0820 DEPARTMENT OF JUSTICE

ISSUE 1: AIR RESOURCE BOARD WORKLOAD

The Governor's budget proposes \$1.9 million from the Legal Services Revolving Fund to support 9.8 positions permanent positions (4 attorney positions) to respond to increased litigation workload required by DOJ's client/agency the Air Resources Board (ARB). This request includes \$500,000 for external consultant funding for experts.

COMMENTS

The ARB has a corresponding budget proposal to fund these litigation expenses with \$1.9 million from the Motor Vehicle Account.

ISSUE 2: AUTOMATED FIREARMS SYSTEM REDESIGN

This proposal requests \$1.3 million one-time from the Dealer's Record of Sale Account to augment the support for a multi-year effort to redesign the Automated Firearms System. The DOJ indicates that this project is included in an approved Special Project Report that is part of the California Justice Information Systems (CJIS) redesign project that is currently ongoing.

COMMENTS

The proposed redesign will allow the DOJ to enhance its efforts to trace illegal gun traffic and develop and implement changes to maintain and electronically forward California crime gun information to the National Tracing Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives.

**ISSUE 3: FEDERAL FUNDS – NATIONAL CRIMINAL HISTORY
IMPROVEMENT PROGRAM**

This proposal would provide \$550,000 in federal funds to support additional efforts to improve the completeness, accuracy, and accessibility of the state's criminal history records consistent with the National Criminal History Improvement Program.

COMMENTS

The DOJ is responsible for the compilation and dissemination of criminal history information submitted by various local agencies. The DOJ has received federal grants under the National Criminal History Improvement Program since the inception of the program in 1995. These monies have helped DOJ to improve the completeness, accuracy, and accessibility of the state's criminal history records.

**ISSUE 4: REDUCTION – SEXUAL HABITUAL OFFENDER PROGRAM FUND
AUTHORITY**

This proposal would result in a reduction of \$642,000 in spending authority from the Sexual Habitual Offender Program Fund. This reduction is made possible by placing some important information regarding training and the provision of goods and services that is needed by client agencies on various DOJ web sites and eliminating staff time providing the information.

COMMENTS

The Sexual Habitual Offender Program Fund is supported by fees received from various agencies requesting criminal history information regarding an application for employment or licensing and court-ordered fines levied on persons convicted of certain sexual offender offenses.

ISSUE 5: REDUCTION – FINGERPRINT FEES ACCOUNT

This proposal would result in a \$4 million reduction in expenditure authority from the Fingerprint Fees Account as a result of reduced user fees set by the FBI for fingerprint-based criminal history information checks and improved efficiency by transitioning to an electronic system.

COMMENTS

The DOJ is currently implementing the DNA Live Scan Automation Project that allows local agencies to electronically submit offender information and thumbprints to DOJ databases. The implementation of the DNA Live Scan system is eliminating the need for hard fingerprint cards and has improved the efficiency of getting and storing fingerprint information.

ISSUE 6: REDUCTION – FALSE CLAIMS ACT FUND

This proposal would result in a \$3 million reduction in expenditure authority from the False Claims Act Fund. This action will reduce external consulting contracts and is needed to keep the fund solvent.

COMMENTS

One of the duties of the Attorney General is to diligently investigate entities or persons that file false claims against the state. A claim includes any request or demand for money, property, or services made to any employee, officer, or agent of the state.

ISSUE 7: REIMBURSEMENT CHANGES – VARIOUS PROGRAMS

This proposal would result in adjustments to the DOJ's projected reimbursement authority in the budget year. The DOJ requests a permanent reduction in reimbursement authority of \$3.8 million to account for fewer grant and contract funds in the budget year and to reflect a contract with the California Department of Corrections and Rehabilitation to screen out of- state convictions of California inmates and parolees to determine if they should be included in the Jessica's Law database for sex offenders.

COMMENTS

The DOJ gets grant funds and contract funds from various other state agencies through reimbursements, which support a wide variety of activities.

ITEMS TO BE HEARD

ITEM 0280 COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is an independent agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges pursuant to the California Constitution. The Commission is composed of 11 members: three judges appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, of whom two are appointed by the Governor, two are appointed by the Senate Committee on Rules, and two are appointed by the Speaker of the Assembly.

The Governor's budget includes \$4.1 million from the General Fund to support the Commission in the budget year. This is \$422,000 and 9 percent less than estimated expenditures in the current year, which is due primarily to the Governor's across the board Budget Balancing Reduction.

ISSUE 1: BUDGET BALANCING REDUCTION

The Governor's Budget Balancing Reduction would result in a decrease of \$453,000 General Fund for the Commission on Judicial Performance.

BACKGROUND

The Commission estimates that the only way they can meet the reduction target set by the Governor is to keep five positions (3 attorney positions) vacant. The Commission has indicated that under this scenario each attorney on staff will have to take on a larger caseload, which will result in less timely disciplinary investigations and proceedings. This assumes that there is no significant change in the number of complaints and investigations.

COMMENTS

The 2007 Annual Report for the Commission on Judicial Performance reported that in 2007 it considered 1,077 new complaints that named 812 different judges. The Commission also received 148 complaints about subordinate judicial officers and two complaints about State Bar Court judges.

ITEM 8830 CALIFORNIA LAW REVIEW COMMISSION

The California Law Revision Commission (CLRC) was given the responsibility for substantive review of California statutory and decisional law. The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms. The Commission studies topics that have been authorized by the Legislature.

The Commission consists of the following members:

- A Senator appointed by the Rules Committee
- An Assembly Member appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Governor's budget proposal includes \$677,000 to support the CLRC in 2008-09. This is about \$70,000 less than is estimated for expenditure in the current year, which is due primarily to the Governor's across the board Budget Balancing Reduction.

ISSUE 1: BUDGET BALANCING REDUCTION

The Governor's Budget Balancing Reduction would result in a decrease of \$74,000 General Fund for the CLRC.

BACKGROUND

The CLRC has indicated that it will reduce out of state travel, consolidate office space, forego some computer and software upgrades, and take additional measures to economize its resources to meet the reduction target set by the Governor. However, this cut may result in the need to reduce staff in future years.

COMMENTS

There are nine pieces of legislation pending in the Legislature to implement recommendations from recent CLRC studies. The following is a description of the legislation that is currently being considered by the Legislature:

- AB 250 (DeVore) – Creation of a new non-probate property transfer instrument called the “Revocable Transfer of Death Deed”, which could be effective upon death of the transferor.
- AB 567 (Saldana) – Establishes the Office of the Common Interest Development Bureau as a pilot project within the Department of Consumer Affairs to provide education, dispute resolution, data collection, and abatement of violations of the law in common interest developments.
- AB 1921 (Saldana) – Makes additional changes to state law related to common interest developments.
- AB 2166 (Tran) – Makes clarifications to current law related to the jurisdiction of bail forfeiture. This is one of several law changes resulting from CLRC’s work on trial court restructuring.
- AB 2193 (Tran) – Establishes the Interstate and International Depositions and Discovery Act which clarifies and refines the procedures for obtaining discovery from a witness in this state for purposes of a case pending in an out-of-state jurisdiction. California courts currently vary widely in how they handle these matters and this legislation will provide guidance on the applicable procedures in these instances.
- AB 2299 (Silva) – Makes numerous technical changes to current law to modernize existing references to audio or video recording. These revisions would thereby allow for use of existing digital recording technology.
- SB 1182 (Ackerman) – Makes various changes to amend or delete statutes made obsolete by trial court restructuring. The focus of this legislation is the transfer of cases based on lack of jurisdiction.
- SB 1264 (Harman) – Makes various changes to no contest clauses in relation to wills, trusts, and other instruments. No contest clauses are provisions of these instruments that penalize beneficiaries if the beneficiaries file a contest with the court.
- SB 1691 (Lowenthal) – This legislation makes various changes to Mechanics Lien Law.

ITEM 8910 OFFICE OF ADMINISTRATIVE LAW

The Office of Administrative Law is responsible for reviewing administrative regulations proposed by over 200 state regulatory agencies for compliance with standards set forth in California's Administrative Procedure Act, for transmitting these regulations to the Secretary of State, and for publishing regulations in the California Code of Regulations. The Office assists state regulatory agencies through a formal training program, as well as through other less formal methods, to understand and comply with the Administrative Procedure Act. Through its Reference Attorney service, the Office provides direct legal advice to state agencies and members of the public regarding California rule making law.

In response to petitions by interested persons, the Office evaluates whether rules being used by state agencies constitute underground regulations which have not been properly adopted pursuant to the requirements of the Administrative Procedure Act and issues formal determinations reflecting those evaluations. The Office oversees the publication and distribution, in print and on the Internet, of the California Code of Regulations and the California Regulatory Notice Register.

The Governor's budget proposal includes \$2.6 million to support the Office of Administrative Law in 2008-09. This is about \$274,000 less than is estimated for expenditure in the current year, which is due primarily to the Governor's across the board Budget Balancing Reduction.

ISSUE 1: BUDGET BALANCING REDUCTION

The Governor's Budget Balancing Reduction would result in a decrease of \$293,000 General Fund for the Office of Administrative Law (OAL).

BACKGROUND

To achieve this reduction, the OAL will reduce operating expenses and equipment, and score savings from staff benefits and rent expenses. In addition, the department has indicated that, in order to meet the reduction target, it would have to eliminate a contract with the Department of General Services for human resource services and an IT contract that provides services and maintenance to their website and database.

COMMENTS

The OAL has 21 employees with no staff vacancies. Additionally, the OAL does not have the ability to control or limit the numbers or the complexity of proposed regulations submitted for our review. Further impacting workload is that the OAL's review of regulations is time restricted – 30 working days. Failure of the OAL to approve or disapprove a regulation results in the regulation being deemed approved. Due to workload and prior budget cuts, the OAL does not feel it can absorb the entire Budget Balancing Reduction without severely impacting its services. As such, the OAL has offered the Legislature an alternative to consider whereby they would absorb a reduction of \$176,000 (approximately 6 percent).

ITEM 8140 STATE PUBLIC DEFENDER

The Office of the State Public Defender (OSPD) was originally created to represent indigent criminal defendants on appeal. However, since 1990, the mandate of the office has been refocused to death penalty cases. The primary focus of the OSPD is to represent defendants in post capital conviction appeals. The Office has handled habeas corpus appeals in the past, but at present focuses primarily on appeals.

The Governor's budget proposal includes \$11 million to support the OSPD. This is over \$600,000 or 5 percent less than estimated expenditures in 2007-08. This reduction is the result of the Governor's 10 percent across-the-board budget balancing reduction which is offset by an increase in lease costs for the OSPD. The OSPD budget for 2008-09 includes virtually no adjustments for employee compensation.

ISSUE 1: LEASE INCREASES

The Governor's Budget proposes \$170,000 General Fund for increased rental costs at the OSPD Sacramento and San Francisco offices.

BACKGROUND

In 2003-04, the total cost to rent both the Sacramento and San Francisco offices was approximately \$750,000 for the year. The rental amount has steadily increased over the last five years and is currently \$918,600. The increased costs have historically been covered by the use of salary savings. However, the OSPD is currently at or near its capacity, staffing level, and can no longer afford to absorb these costs.

COMMENTS

The OSPD currently maintains a staff of between 85-87 employees who live in various areas throughout the San Francisco Bay Area and Sacramento Valley. The Sacramento based attorney staff process cases located throughout the Sacramento Valley, the Central Valley, and share the Southern California caseload. The San Francisco based attorney staff handle cases located throughout the Bay Area and share the Southern California caseload. These factors coupled with the size of the department and the unique makeup and geographical location of its staff make it difficult to consolidate both offices in one location.

ISSUE 2: BUDGET BALANCING REDUCTION

The Governor's Budget Balancing Reduction would result in a decrease of \$1.2 million General Fund for the OSPD.

BACKGROUND

The Governor has proposed that the OSPD take a budget balancing reduction in both the current year and the budget year. The Legislature approved the Governor's proposed budget balancing reduction for the current year as part of Chapter 1 3x, Statutes of 2008 (AB 3, Budget) that was enacted in February 2008. This level of reduction requires the OSPD to hold 9.5 positions (6.5 attorney positions) vacant for the rest of the current year for savings of \$249,000. It also requires OSPD to make a \$156,000 reduction to its operating expenses in the current year. This significantly reduces the resources available for litigation expenditures in the remainder of the current year since over two-thirds (\$1.5 million) of the office's operating expenses are for fixed costs (rents, information technology licenses, etc.). Therefore, the Office reports that this reduction will likely impact the quality of their representation.

The budget balancing reductions proposed for the budget year require OSPD to eliminate the 9.5 positions (6.6 attorney positions) it is holding vacant in the current year. This will reduce the ability of the OSPD to take additional capital conviction appeals cases and will increase the backlog of capital conviction appeals. Eliminating the vacancies will reduce personnel services by \$912,000. Therefore, the department will have to reduce approximately \$302,000 from its operating expenses to meet the \$1.2 million target in the budget year. This would require the OSPD to cut into its fixed costs and eliminate nearly all litigation support for capital conviction cases. The OSPD indicates that it would likely have to start the lay-off process to reach this level of savings in the budget year.

COMMENTS

Since 1999-00 the OSPD has lost 41 positions (18 attorney positions). The Governor's budget balancing reduction will eliminate another 9.5 positions (6.6 attorney positions). These staff reductions have seriously hampered the ability of the OSPD to take additional capital appeals cases. Over the same time period, over 150 persons (19 per year) have been sentenced to death resulting in a growing backlog of individuals on death row that have no attorney representation.

The OSPD estimates that there are currently 80 sentenced individuals on death row that have no attorney representation. The OSPD estimates that sentenced individuals on death row wait an average of 5 years to have an appeals attorney appointed and about 10 years to have a habeas corpus attorney appointed. This wait impacts the quality of the appeals process because as time goes by evidence is lost, witnesses die, and other facts related to the original case are lost. This wait will continue to grow if the Governor's budget balancing reductions are implemented.

The Governor's budget balancing reductions would completely eliminate all salary savings, including the 5 percent that is standard practice in state budgeting. This means that the OSPD may have to pursue a lay-off process and be forced to further reduce their already low support staff ratio. Currently, OSPD has one legal secretary for every 11 attorneys. This is significantly below the rate at the DOJ (one legal secretary for every four attorneys), which means that presently attorney productivity is hampered by limited support resources. The Governor's budget balancing reductions would further exacerbate this problem.

Staff notes that recently legislation has been introduced to expedite the system for reviewing cases in which a death sentence is imposed, addressing concerns related to the length of time inmates serve on death row.

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 Judicial Branch budget proposes total appropriations from all fund sources of just under \$3.7 billion in 2008–09. This is a decrease of \$14 million, under one-half percent below revised current-year expenditures. As illustrated in Figure 1, the budget proposes an unallocated reduction of about \$246 million in General Fund support that is applied to the budget after proposals that would increase the amount allocated to the judicial branch from the General Fund. The net effect is total General Fund expenditures of \$2.2 billion, a decrease of about \$20 million, or less than 1 percent, below estimated current-year expenditures. Total expenditures from special funds and reimbursements are proposed at about \$1 billion, an increase in spending of about \$7 million, or less than 1 percent. The counties' contribution of support remains unchanged at almost \$500 million.

ISSUE 1A: INFORMATIONAL – LAO OPTION – SUSPENSION OF SAL

The LAO recommended that the Legislature should consider the option of suspending the SAL adjustment for 2008–09 (\$126 million) and letting the trial courts use their considerable reserves to buffer against the loss of state funding. Because the SAL spending increase received by the trial courts is calculated, in part, on the General Fund support provided in the previous year, a one-time suspension of the SAL would lead to ongoing and modestly growing savings. The Legislature would have to adopt trailer bill legislation to suspend SAL for 2008–09, but no further legislative action would be needed to achieve these ongoing savings.

BACKGROUND

The State Appropriations Limit-or SAL-was established in the State Constitution in 1979 by Proposition 4, and later amended by Propositions 98 (1988) and 111 (1990). The purpose of the SAL is to provide a limit on annual spending for state and local government appropriations from tax revenues. Every year, the SAL is adjusted to account for changes in the cost-of-living (COLA) and population using the following specific measures:

- The COLA measure is defined to be the percent change in the state's per-capita personal income.
- The "population" measure is a weighted average of growth in California's civilian population and K-14 average daily attendance.

Although written into law as a statewide limit, the SAL growth factor is also used to provide annual budget adjustments for some state entities.

Chapter 227, Statutes of 2004 (SB 1102, Committee on Budget), changed the process for budgeting the Trial Court Funding program. The state shifted from the traditional state budget process—in which annual adjustments are separately requested and approved based on demonstrated need—to a process in which the amount of new funding for this program is based on a formula and does not require demonstration of need. The adjustment is made based upon the SAL.

COMMENTS

As directed by the *Supplemental Report of the 2006–07 Budget Act*, the Administrative Office of the Courts (AOC) submitted a report on individual trial court financial statements for 2006–07. The report suggests that, on a collective basis, trial courts are in a strong financial condition. Specifically, in 2006–07, the aggregate amount of revenue received by the 58 superior courts exceeded their expenditures in that same fiscal year by \$54 million. In addition, the total amount of assets that remained unspent in 2006–07 totaled \$590 million. Only about \$235 million is classified as having being restricted by contractual or statutory obligations, leaving \$355 million that had not been obligated.

ISSUE 1B: INFORMATIONAL – BBR AND AOC ALTERNATIVE REDUCTION

The AOC has put forward an alternative proposal that would reduce the Judicial Branch's General Fund allocation by \$246 million on a one-time basis in 2008-09.

BACKGROUND

The 2008-09 Governor's Budget included an unallocated ongoing General Fund reduction to the Judicial Branch of \$246 million as part of the Administrations across the board budget balancing reductions.

COMMENTS

While the AOC's proposal would achieve a \$246 million General Fund reduction in the budget year, it does not address the ongoing structural deficit.

ISSUE 2: INFORMATIONAL – LAO OPTION – COMPETITIVE BIDDING FOR COURT SECURITY

According to the LAO, allowing courts to contract with private security companies, the California Highway Patrol, as well as local law enforcement agencies would likely result in significant state savings.

It would take time to phase in such a new system, including as much as a year for the preparation of bids and allowing a suitable time for potential private and public sector bidders to respond to such an opportunity. (This delay would also provide sheriffs with some lead time to adjust to the new competitive bidding environment.) Thus, the savings from such a change in 2008–09 would probably be minor, and some new costs might be incurred by the state on a one–time basis to develop a model solicitation for bids and a model contract to implement such new arrangements. The AOC could also incur additional ongoing costs to administer such contracts. However, the LOA's analysis suggests that these administrative costs would be exceeded by significant savings on security costs which could begin to be realized in 2009–10. Within a few years, depending upon how this change was implemented, the net savings could exceed \$100 million annually.

BACKGROUND

Current law requires trial courts to contract with their local sheriff's department for court security. In most cases, the county sheriff determines the minimum level of security required in a court facility. In addition, the county board of supervisors, as opposed to the court, negotiates the level of salaries and benefits with the sheriff. These costs have grown rapidly in recent years. Specifically, total security costs have increased from about \$263 million in 1999–00 to about \$450 million in 2006–07, the last year of complete data. This amounts to an average annual increase of 8 percent. Judicial Council staff have attributed the growth largely to negotiated salary increases for sheriff's deputies.

COMMENTS

Because the courts are required to contract only with county sheriffs, the sheriff has no incentive to contain costs of the security provided, and the courts have no recourse to ensure they do. A competitive bidding system would enable courts to exercise more control over the level of security provided to their courts. Courts would be able to select among the proposals offered to them by different security providers, thus allowing them to select the level of security that best meets their needs.

ISSUE 3: INFORMATIONAL – LAO OPTION – ADJUSTMENTS IN CIVIL FILING FEES

The LAO recommended that the Legislature should consider the option of increasing civil filing fees to reflect inflation since 2005–06. If it takes such an action, the Legislature should also reduce General Fund expenditures for the trial courts accordingly, by about \$21 million in 2008–09.

BACKGROUND

The trial court system imposes civil fees on parties filing papers related to litigation. For example, the initial filing in a civil case seeking damages is typically \$320, while the charge for filing the legal papers to respond to such a filing is also \$320. The attorney handling a legal action generally pays such fees, except in cases where an individual is representing him or herself and therefore pays the fees personally. The revenue from these fees is intended to offset part, but not all, of the expense incurred by the court that is associated with these cases. These expenses include the administrative costs of setting up hearings, notifying the parties involved, and, in cases where the case goes to trial, the costs associated with conducting the proceedings.

As part of the 2005-06 Budget Act the Legislature passed the Uniform Civil Fees and Standard Fee Schedule Act of 2005. This statute reorganized many of the existing civil filing fees and increased some fees to create uniform statewide fee rates. This measure also stipulated that fees would remain unchanged until December 31, 2007.

COMMENTS

There are currently legislative proposals to raise civil filing fees and use the proceeds to augment court operations. For example, SB 1177 (Ridley-Thomas) would investigate raising civil filing fees to pay for dispute resolution programs, AB 3050 (Judiciary) would raise civil filing fees to pay for interpreters in certain civil court proceedings and SB 1407 (Perata) would raise the fees by \$35 to fund a construction bond.

ISSUE 4: INFORMATIONAL – LAO OPTION – ELECTRONIC COURT REPORTING

The LAO recommended that the Legislature should consider the option of directing the courts to begin now to implement electronic court reporting in California courtrooms.

In order to allow transition time, one approach would be to direct that 20 percent of courtrooms in California switch to electronic court reporting on an annual basis. After factoring in the estimated one-time costs of the equipment, the LAO analysis indicates that this may result in nearly \$13 million in savings during 2008–09. By 2010–11, annual savings from the switchover to electronic reporting could reach \$53 million. If electronic court reporting were fully operational in all California courtrooms the LAO estimates that savings could reach \$111 million on an annual basis. This option would require a statutory change.

BACKGROUND

Current law requires the use of certified shorthand reporters to create and transcribe the official record of most court proceedings. Typically, the court reporter is the sole owner of all the equipment necessary to perform his or her duties, including the stenotype machine, computer-aided software for transcription, and all the elements involved in producing the transcript. Also, for the most part, the court reporter transcribes the record on his or her own time, outside of the eight-hour workday. For these reasons, the transcripts are “owned” by the court reporter and must be purchased by the court. In addition to paying for the first copy, the court must also pay a reduced rate for additional copies. In 2006–07, the total amount spent on such transcripts was nearly \$26 million, while the total amount spent on salaries and benefits for court reporters was about \$202 million.

Electronic court reporting involves using video and or audio devices to record the statements and testimony delivered in the courtroom. Depending on the system used, a monitor may be assigned to oversee the proper functioning of the equipment and provide replays of statements upon request of the judge, though some systems are available that can be used without a monitor. Following a proceeding, typed transcripts can be created by transcription services for use by court staff, attorneys, or in any subsequent appeal. However, the actual recordings created during the proceeding can also be used in a manner similar to a transcript, and the sales of these recordings can generate the court additional revenue.

COMMENTS

California’s exclusive use of certified shorthand reporters contrasts with courts in other states, the federal courts, and even the U.S. Supreme Court. All of these courts use some form of electronic court reporting that involves using video and/or audio devices to record the statements and testimony delivered in the courtroom. The electronic recordings can be used to generate typed transcripts and the actual recording can also be used in a manner similar to a transcript.

ISSUE 5: APPOINTMENT OF JUDGES

The LAO recommended that the Legislature should consider adjusting the budget for the trial courts to reflect a more realistic timetable for the appointment of judgeships in the current and budget year.

BACKGROUND

In 2006, the Governor proposed adding 150 judges over a three-year period. The Legislature approved 50 new judgeships in 2006 (Chapter 390, Statutes of 2006 [SB 56, Dunn]) and another 50 new judgeships in 2007 (Chapter 722, Statutes of 2007 [AB 159, Jones]).

The Judicial Council has approved a plan for allocating the first 50 judgeships and, to date, the Governor has appointed 40 of the new judges. The start date for the 10 judges that have not been appointed by the Governor was delayed to July 1, 2008, by special session legislation (Chapter 6xxx, Statutes of 2008 [AB 8, Budget]) enacted in February 2008.

The Governor's budget included funding to establish the third set of 50 new judgeships on June 1, 2009. The budget contained \$33.9 million for the first month of funding and one-time facility costs for the third set of 50 judgeships. The budget also contained an additional \$37 million to fully fund the second set of 50 judgeships authorized in 2007.

COMMENTS

As mentioned above, special session legislation was enacted in February 2008 to delay the appointment of 10 of the judgeships that had not been appointed from the first set of 50 judgeships authorized in 2006 until July 1, 2008. The legislation also delayed for one year, until June 1, 2009, the appointment of all 50 of the second set of judgeships authorized in 2007. This action also reduced all expenditures related to the third set of 50 judgeships from the budget. This action generated \$21.9 million in one-time General Fund savings in the current year and \$54.2 million in one-time General Fund savings in the budget year. This leaves \$16.8 million in the budget to support one month of funding for the second 50 judgeships plus one-time facility costs related to the judgeships.

ISSUE 6: FINANCE LETTER – WITHDRAWAL OF BCPS

The Judicial Branch proposes to withdraw various BCPs totaling \$4.5 million General Fund that were included in the 2008-09 Governor's Budget. Additionally, the Judicial Branch proposes that the funding related to these BCPs be applied toward the judiciary's 2008-09 unallocated reduction.

BACKGROUND

The following BCPs are proposed to be withdrawn:

1. SC1 – Capital Central Staffing Expansion	\$490,000
2. SC2 – SC Committee on Judicial Ethics Opinions	444,000
3. SC3 – Court Appointed Counsel Program	47,000
4. SC4 – Law Library Subscriptions and Book Costs	28,000
5. COA3 – Staffing for Mediation	229,000
6. COA5 – 4 th District, Workload Staffing	430,000
7. AOC2 – Program Support for the Courts	1,498,000
8. AOC4 – Fiscal and Technical Support	1,285,000

COMMENTS

The judicial branch is proposing that there be no net General Fund impact of this proposal, as the ongoing reduced cost resulting from withdrawal of the proposals should be reduced from the overall unallocated reduction for the Judicial Branch as identified in the Governor's Budget.

ISSUE 7: INCREASED SPENDING AUTHORITY FOR FEDERAL FUNDS AND REIMBURSEMENTS

The Governor's budget proposes a \$1.8 million net increase in Federal Fund expenditure authority and a \$929,000 net increase in Reimbursements.

BACKGROUND

The AOC has been successful in receiving three federal grants and two state grants. The federal grants are from the Federal Health and Human Services Agency and the Federal Department of Justice and the state grants are from the Office of Emergency Services (OES) and the Office of Traffic Safety (OTS). The AOC will fund the following projects with these grant monies:

- **Protective Order Registry** – This grant will be used to develop a statewide registry of court protective orders available to judges and law enforcement. Federal grant monies (\$1.4 million) will be used to analyze, develop, and design the registry and state funds (\$1 million grant from OES) that will be used to deploy the registry.
- **Child Data Collection** – This federal grant (\$402,000) will help the courts improve their data analysis and collection in child abuse and neglect and foster care cases. It is intended to help jointly plan for the collection and sharing of relevant data and information to ensure safe and timely permanency decisions between the courts and child welfare agencies on the local and state levels.
- **Judge and Attorney Training** – This federal grant (\$402,000) will improve the courts' training of judges and attorneys.
- **Citation Tracking System** – This state grant (\$495,000 grant from OTS) will be used to implement a statewide Citation Tracking System which enables agencies to issue and track citations electronically, provides capability to update driving records more efficiently, and will help in removing dangerous drivers and repeat offenders from California highways and roads in a timelier manner.

COMMENTS

Government Code Section 13332.01 states that "Any state agency which collects funds from the federal government shall include in the collections, amounts to offset federally allowed statewide indirect costs, as determined by the Department of Finance, except where prohibited by federal statutes." Staff notes that it appears the courts do not follow this requirement, yet use statewide indirect services for these programs (Controller, Treasurer, DOF, etc.). Essentially, this results in the courts using General Fund to backfill amounts they should be collecting from the federal government.

**ISSUE 8: FINANCE LETTER – FEDERAL FUND INCREASE – U.S.
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

The Governor's Budget proposes \$800,000 in Federal Fund authority to reflect a change in the grant award schedule for the Federal Child Access and Visitation Grant program.

BACKGROUND

This request is to accommodate a one-time direct federal funding grant from the U.S. Department of Health and Human Services. This grant is intended to enable states to establish and administer programs that support and facilitate non-custodial parents' access to and visitation with their children. Funding allocations to states are based on the number of single-parent households.

COMMENTS

The Judicial Council is charged with administering and distributing California's share of this grant. The need to increase federal funding was not known until after completion of the 2008-09 Governor's Budget.

ISSUE 9: OPERATIONAL SUPPORT FOR NEW TRIAL COURT FACILITIES

The Governor's Budget proposes to transfer \$525,000 General Fund to the Court Facilities Trust Fund to cover the additional operations and maintenance costs of the new Alameda Juvenile Justice Center, the new Fresno Juvenile Delinquency Courthouse, the new Madera County Superior Courthouse, and the new Merced Iris Garrett Juvenile Justice Center.

BACKGROUND

Upon transfer of responsibility and/or title to the state, counties provide funding for facilities operation and maintenance costs based on historic funding patterns. These payments are referred to as county facility payments (CFPs) and are calculated for each facility prior to the transfer of responsibility and/or title of each court facility. County facility payments are deposited in the Court Facilities Trust Fund to support operations and maintenance of court buildings that have been transferred to the state.

Any costs for operating and maintaining court facilities above the CFPs made by counties are the responsibility of the state. Statutory changes that were enacted as part of the 2006-07 budget provide for increases in state funding for operating and maintaining court facilities in the future. Specifically, beginning two years after the transfer of a facility, inflationary cost adjustments for operations and maintenance are provided in accordance with the State Appropriations Limit.

COMMENTS

These projects will replace smaller outdated facilities and the AOC indicates that the CFPs for the existing facilities will not cover the costs of the new facilities. All of the new facilities have transferred to the state except for the Fresno Courthouse. The Fresno Courthouse is currently under construction and is scheduled to be completed by January 2009.

Staff notes that in last year's May Revision \$201,000 was provided for this purpose for facilities that had been transferred to date (46).

ISSUE 10: TRIAL COURT FACILITY MODIFICATIONS

The Governor's Budget proposes \$17 million annually from the State Court Facilities Construction Fund and \$5 million in reimbursements to support facility modifications of trial court facilities that have been transferred to the state.

BACKGROUND

The AOC defines facility modifications as physical modification to a facility component that restores or improves the designed level of function of a facility. Facility modifications do not include acquisition of court facilities, or change space for court use. In December 2005, the Judicial Council approved a policy for the categorization and prioritization for court facility modifications. This policy defines facility modifications, categorizes facility modifications into six priorities, outlines a process for requesting and prioritizing facility modifications, and establishes a statewide working group. The six priority categories established by the policy are as follows:

1. Immediate or potentially critical
2. Necessary but not yet critical
3. Recommended
4. Does not meet current codes or standards
5. Beyond rated life, but serviceable
6. Hazardous material, managed but not abated

COMMENTS

This request is based on the anticipation that responsibility for court facilities will be transferred to the Judicial Council from all 58 counties by midyear 2008-09 (AB 1491 provides that the end date is Dec. 31, 2009). In addition, according to the Judicial Council, the working group, referenced above, has reviewed over 400 requests to date totaling over \$21 million, of which 146 were funded for approximately \$8.5 million (primarily from the first three priority groups).

ISSUE 11: TEMPORARY SPACE – THIRD APPELLATE DISTRICT COURT

The Governor's Budget proposes \$8 million General Fund (\$1.7 million in 2009-10 and \$3.7 million in 2010-2011) to temporarily relocate the Third Appellate District Court and clerk's staff during the construction phase of the historic Library and Courts building capital outlay renovation project. The funding is needed for tenant improvements and rent for the temporary space.

BACKGROUND

The 2005-06 Budget Act appropriated \$49 million to renovate the historic State Library and Courts Building located on Capitol Mall in Sacramento. The current tenants of that building are the Third Appellate District Court, the Supreme Court, and the State Library.

After the remodel, the library staff will be permanently relocated to a building (900 N Street) across the street from the historic building and the Court and Clerk will be consolidated in the restored historic Library and Courts Building. (The Clerk is currently located in the 900 N Street building.)

COMMENTS

A study by the project manager for this project, Department of General Services, determined that maintaining occupancy during construction was not feasible without substantially compromising the safety and comfort of the occupants.

**ISSUE 12: SUPPORT FOR NEW FOURTH APPELLATE, DISTRICT COURT
DIVISION THREE COURTHOUSE IN ORANGE COUNTY**

The Governor's budget proposes \$1.6 million from the Appellate Court Trust Fund and \$70,000 from the General Fund for essential non-capital furniture, equipment, and fixtures needed to make the building operational as an appellate court (Of the total amount, \$2,000 is proposed for ongoing maintenance of equipment).

BACKGROUND

Construction of a new court facility for the Fourth Appellate District, Division Three (Orange County) is scheduled to be completed by May or June of 2009. The new facility will be 53,000 square feet and will replace approximately 34,000 square feet of leased space in two buildings that the court is currently using.

This request is to support the acquisition of the following equipment:

• Telephone System	\$518,000
• Data (Computing) Infrastructure	191,000
• New Free Standing Furniture	475,000
• Reused or Refurbished Free Standing Furniture (Judges Furniture)	64,000
• Bookshelves	227,000
• Office Equipment (Copiers and Faxes)	39,000
• Audio Visual Equipment	179,000
• Ongoing Maintenance	2,000
• Moving and Relocation	120,000
• Less Architectural Revolving Funds	-185,000
• Total	\$1,630,000

COMMENTS

The funding requested in this proposal will be used to equip the new facility for use and move existing operations into the new courthouse. Certain existing furniture and equipment will be reused for the majority of the Justices' offices, public seating in the courtroom and for certain conference rooms.

ISSUE 13: PHOENIX PROJECT ENHANCEMENT AND ADMINISTRATIVE SUPPORT

The Governor's budget proposes \$6 million General Fund to support 37.5 new positions to continue the development and deployment of the Phoenix Project. The AOC anticipates needing an additional \$11 million in 2009-10 to complete the deployment of the project.

BACKGROUND

The AOC is in the process of implementing a statewide employment and financial system for the judicial branch referred to as the Phoenix Project. Significant state resources (over \$110 million) have been dedicated to date to implement this statewide system that will provide the AOC with unified reporting capabilities for all aspects of trial court administrative functions.

To date, 49 courts have implemented Phoenix Financials, which is the financial and accounting component of the Phoenix Project. Implementation of this system includes extensive audits of the local trial court financial operations to ensure that the data being entered in the system is uniform across jurisdictions. The AOC plans to complete the deployment of Phoenix Financials by the end of the current fiscal year.

The AOC is has begun deployment of the human resources component of the Phoenix Project, which the requested resources will support. This system will ultimately restructure and standardize the payroll and other human resources related business practices for the trial courts.

COMMENTS

The majority of the new staff resources are needed to provide ongoing support to the Phoenix systems that will completely replace 58 different county run systems. For example, after the Phoenix Human Resources system is deployed statewide, payroll checks will be processed centrally for the trial court system.

ISSUE 14: JUDICIAL BRANCH - IT SUPPORT

The Governor's Budget proposes a reduction of \$794,000 and elimination of 6 of the 17 limited-term positions authorized in the 2006-07 Budget Act. The budget proposal would also make permanent the remaining 11 positions authorized in the 2006- 07 Budget Act.

BACKGROUND

The 2006-07 Budget Act included 17 positions on a three-year limited-term basis for information technology support for the AOC, the Supreme Court, and the Court of Appeals. This request reflects the ongoing need for additional resources in the areas of application development and system infrastructure, which together form the basis of information technology support.

COMMENTS

The AOC now has substantial responsibilities for court facilities and support services for the trial courts. This has resulted in a significant increase in staffing at the AOC, which has resulted in a greater demand for information technology support services.

**ISSUE 15: HABEAS CORPUS RESOURCE CENTER WORKLOAD
ADJUSTMENT**

The Governor's budget proposes \$139,000 (\$21,000 one-time) General Fund to establish two positions to provide litigation support for the legal defense of death row prisoners.

BACKGROUND

There are approximately 300 sentenced persons on death row that do not have a habeas corpus lawyer. This caseload continues to grow by about 19 annually. Persons sentenced to death currently wait an average of 10 years before a habeas corpus lawyer is appointed. Meanwhile, witnesses die or move away and evidence is destroyed making it more difficult to carry out a fair administration of justice. Habeas corpus proceedings require a significant amount of research and on average take about twice as long as direct appeals cases.

COMMENTS

Staff notes that recently legislation has been introduced to expedite the system for reviewing cases in which a death sentence is imposed, addressing concerns related to the length of time inmates serve on death row. Additional litigation support would help to increase the productivity of the habeas corpus lawyers, thereby allowing the lawyers to take more cases in any given year.

ISSUE 16: CAPITAL OUTLAY – GENERAL OBLIGATION BOND PROJECTS

The Governor's Budget proposes \$62 million in funding from proceeds of the general obligation bond for four new court facilities proposed by the Governor.

BACKGROUND**Yolo County – New Woodland Courthouse**

The Governor's Budget proposes \$8.1 million from a proposed general obligation bond for the acquisition phase to construct a new 14-court courthouse in or near the city of Woodland in Yolo County.

The AOC has identified property across the street from the historic courthouse on a site currently occupied by the Old Jail building. The city of Woodland has signed a resolution to donate this property for the new courthouse building. The total estimated project cost is \$158.4 million.

The project will consolidate court operations from six facilities, all of which will be vacated by the project. The following are the facilities that will be vacated by the new project; **1)** Historic Courthouse – county to maintain once vacated by the court. **2)** Old Jail (Department 9) – may be demolished to construct new courthouse. **3)** Family Support and Alternative Dispute Resolution (Department 16) – county to maintain once vacated by the court. **4)** Family and Designated Department (Department 11) – leased space, lease to be terminated. **5)** Fiscal, Human Resources, and Training – leased space, lease to be terminated. **6)** Traffic/Small Claims/UD and Drug Court/Proposition 36 courtrooms (Departments 10 and 12) – leased space, lease to be terminated. All six of the existing facilities have been transferred to the state.

Butte County – New North Butte County Courthouse

The Governor's Budget proposes \$14.5 million from a proposed general obligation bond for the acquisition phase to construct a new 5 court courthouse in or near the city of Chico in Butte County.

The AOC and the county have not located a site for the new facility, but are evaluating alternative sites for a larger northern county government complex. The total estimated project cost is \$79.7 million.

The project will consolidate court operations from two facilities, both of which will be vacated by the court after construction of the new project. The following two facilities will be vacated by the new project; **1)** Chico Courthouse – county may keep this space. **2)** Paradise Courthouse – AOC will offer equity sale to county, but space may be vacated by county and court and sold. Both of the existing facilities have been transferred to the state.

Tehama County – New Red Bluff Courthouse

The Governor's Budget proposes \$16.3 million from a proposed general obligation bond for the acquisition phase to construct a new 5-court courthouse in or near the city of Red Bluff in Tehama County.

The AOC and the county have not located a site for the new facility. The total estimated project cost is \$72.9 million.

The project will consolidate court operations from five facilities, all of which will be vacated by the project. The following are the facilities that will be vacated by the new project; 1) Historic Courthouse – county to maintain once vacated by the court. 2) Tehama County Courts Building (Annex 2) – county may keep this space.

Los Angeles County – New Southeast Los Angeles Courthouse

The Governor's proposes includes \$22.7 million from a proposed general obligation bond for the acquisition phase to construct a new 9-court courthouse in the Huntington Park-South Gate area of Los Angeles County. The total estimated project cost is \$122.5 million.

The AOC and the county have not located a site for the new facility. The total estimated project cost is \$72.9 million.

The project will consolidate court operations from five facilities, all of which will be vacated by the project. The following are the facilities that will be vacated by the new project; **1)** Historic Courthouse – county to maintain once vacated by the court. **2)** Tehama County Courts Building (Annex 2) – county may keep this space.

COMMENTS

The Governor has proposed \$2 billion in general obligation bonds for new and expanded court facilities. The Governor indicates that the \$2 billion being proposed will handle the most critical infrastructure needs and allow the courts to leverage private funding through public-private partnerships. In addition, legislation (SB 1407, Perata) authorizing a court construction bond is currently pending in the Legislature.

**ISSUE 17: CAPITAL OUTLAY – TRIAL COURT FACILITIES CONSTRUCTION
FUND PROJECTS**

The Governor's Budget proposes \$113.4 million from the Trial Court Facilities Construction Fund to continue support for 11 courthouse projects that were started in prior fiscal years.

BACKGROUND**Funding for the following 11 projects is proposed:****Contra Costa County – New Antioch Courthouse**

This proposal includes \$51.6 million from the State Court Facilities Construction Fund for construction of a new seven-court courthouse in eastern Contra Costa County.

The site for this building was selected and approved by the Public Works Board in September 2007. The site is adjacent to and south of the existing courthouse that is being replaced in the City of Pittsburg. Preliminary plans were approved by the Public Works Board in February 2008. The Legislature has appropriated \$13.1 million from the State Court Facilities Construction Fund for this project since 2005-06. The total estimated project cost is \$64.7 million.

Plumas and Sierra Counties – New Portola/Loyalton Courthouse

This proposal includes \$5.4 million from the State Court Facilities Construction Fund for construction of a new one-court courthouse in the Sierra Valley of Plumas County to serve both Plumas and Sierra Counties.

The new courthouse will replace a part-time courthouse in Portola and leased space in Loyalton. The county will buyout the court for the space in the part-time courthouse in Portola and the lease on the space in Loyalton will be terminated. The Legislature has appropriated \$1.1 million from the State Court Facilities Construction Fund for this project since 2006-07. The total estimated project cost is \$6.5 million.

Mono County – New Mammoth Lakes Courthouse

This proposal includes \$13.1 million from the State Court Facilities Construction Fund for construction of a new two court courthouse in Mammoth Lakes, Mono County. There is a Finance Letter (Issue 15) that augments this request.

Site selection for this project was approved by the Public Works Board in March 2007. The new courthouse will be part of a complex that will include the Southern Mono Hospital District, the town of Mammoth Lakes and Mono County. The complex will be constructed on land acquired from the U.S. Forest Service. Site acquisition was approved at the February 2008 State Public Works Board meeting. The Legislature has appropriated \$2.8 million from the State Court Facilities Construction Fund for this project since 2006-07. The total estimated project cost is \$21.5 million.

Madera County – New Madera Courthouse

This proposal includes \$3.7 million from the State Court Facilities Construction Fund for the preliminary plans phase to build a new 10-court courthouse in or near the City of Madera. This project had been an 11-court courthouse, but because of revised judicial need estimates it has been reduced by once courtroom.

The Legislature appropriated \$3.4 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$97 million.

San Bernardino County – New San Bernardino Courthouse

This proposal includes \$13 million from the State Court Facilities Construction Fund for the preliminary plans phase to build a new 36-court courthouse in the City of San Bernardino.

A site across the street from the Historic San Bernardino Courthouse has been selected for the new courthouse project and was approved by the Public Works Board in December 2007. The Legislature appropriated \$4.8 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$338.4 million.

San Joaquin County – New Stockton Courthouse

This proposal includes \$9.9 million from the State Court Facilities Construction Fund for the preliminary plans phase to build a new 30-court courthouse in downtown Stockton.

A site adjacent to the existing courthouse has been offered as a site for this project by the County of San Joaquin. However, the site has not been officially selected or approved by the Public Works Board. The acquisition phase is expected to be completed by June 2008. The Legislature appropriated \$6.6 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$259.9 million.

Riverside County – New Riverside Mid-County Region Courthouse

This proposal includes \$2.3 million from the State Court Facilities Construction Fund for the preliminary plans phase to build a new 6-court courthouse in or near the City of Banning in Riverside County.

The AOC expects the acquisition phase will be completed by March 2009. The existing courthouse that will be replaced was transferred to the state in June 2007. The AOC will offer to sell the existing space to the county, but no final arrangements have been made to dispose of the existing facility. The Legislature appropriated \$3.3 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$63 million.

Tulare County – New Porterville Courthouse

This proposal includes \$3.3 million from the State Court Facilities Construction Fund for the preliminary plans phase to build a new 9-court courthouse in the City of Porterville.

This project will replace two court facilities with five courtrooms. The existing Porterville Courthouse was transferred to the state in May 2007. The AOC will offer to sell the existing space to the county, but no final arrangements have been made to dispose of

the existing facility. The Legislature appropriated \$4.4 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$91 million.

County – New Hollister Courthouse

This proposal includes \$3.3 million from the State Court Facilities Construction Fund for preliminary plans and working drawings to build a new 3-court courthouse in the City of Hollister.

The county has committed to donating land (valued at \$5.5 million) for the new courthouse in exchange for the equity buyout of court facilities in the existing Civic Center Building in the City of Hollister. Site selection was approved at the March 2008 Public Works Board meeting and the AOC expects to complete the acquisition phase by July 2008. This project will replace the existing court facilities in the existing Civic Center building in the City of Hollister. These court facilities were transferred to the state in July 2007. The Legislature appropriated \$541,000 from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$36.2 million.

Calaveras County – New San Andreas Courthouse

This proposal includes \$4.1 million from the State Court Facilities Construction Fund for preliminary plans and working drawings to build a new 4-court courthouse in the City of San Andreas.

Site selection was approved at the March 2008 Public Works Board meeting and the AOC expects to complete the acquisition phase by June 2008. This project will replace the court facilities in an existing shared-use facility and a leased modular building. Both of these facilities transferred to the state in June 2007. The county will buyout the court equity in the existing building and the lease for the modular space will be terminated. The Legislature appropriated \$845,000 from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$43.6 million.

Lassen County – New Susanville Courthouse

This proposal includes \$3.5 million from the State Court Facilities Construction Fund for acquisition to build a new 3-court courthouse in the City of Susanville.

This project will replace three county court facilities. The court will vacate the Historic Lassen County Courthouse and the county will continue to occupy and maintain this facility. The Courthouse Annex and Self-Help Center leased space were transferred to the state in June 2007. The AOC will offer to sell the Courthouse Annex to the county, but no final arrangements have been made to dispose of the existing facility. The lease for the Self-Help Center will be terminated. The Legislature appropriated \$1.5 million from the State Court Facilities Construction Fund for this project last year. The total cost of this project is expected to be \$38.8 million.

**ISSUE 18: FINANCE LETTER CAPITAL OUTLAY – MONO COUNTY – NEW
MAMMOTH LAKES COURTHOUSE**

This proposal, a Finance Letter dated April 1, 2008, proposes an additional \$5.6 million for construction and \$219,000 for working drawings from the State Facilities Construction Fund the new courthouse in Mammoth Lakes, Mono County.

BACKGROUND

The increased costs are primarily due to adjustments needed to address active seismic activity in the area and heavy snow loads. The increased costs also reflect a revised construction schedule because extreme weather construction can only occur between May and October.

COMMENTS

This Finance Letter augments the \$13.1 million included in the Governor's Budget.

ITEM 0820 DEPARTMENT OF JUSTICE

The Department of Justice (DOJ) is under the direction of the Attorney General. The Attorney General is elected by the public and is required by the California Constitution, as the chief law officer of the state, to ensure that California's laws are uniformly and adequately enforced. The DOJ also serves as the state's primary legal representative and provides various services to assist local law enforcement agencies. The DOJ is organized into the following seven programmatic functions:

- **Civil Law**—Represents the state in civil matters and is organized in the following sections: Business and Tax; Correctional Law; Employment, Regulation and Administration; Government Law; Health, Education and Welfare; Health Quality Enforcement; Licensing; and Tort and Condemnation.
- **Criminal Law**—Represents the state in all criminal matters before the Appellate and Supreme Courts. The Criminal Law Program also assists district attorneys and conducts criminal investigations and prosecutions where local resources are inadequate.
- **Public Rights**—Provides legal services to all state agencies and constitutional officers and is organized in the following issue areas: Civil Rights and Enforcement; Charitable Trusts; Natural Resources; False Claims; Energy and Corporate Responsibility; Indian and Gaming Law; Environmental Law; Land Law; Consumer Law; Antitrust Law; and Tobacco Litigation Enforcement.
- **Law Enforcement**—Provides various services to local law enforcement and is organized into the following five elements: (1) the Bureau of Investigation conducts criminal investigations of statewide importance; (2) the Bureau of Narcotic Enforcement provides leadership, coordination, and support to law enforcement to combat the state's narcotic problem; (3) the Bureau of Forensic Services provides evaluation and analysis of physical crime evidence for state and local law enforcement; (4) the Western States Information Network provides an automated database of suspected criminal elements to law enforcement in neighboring states; and (5) the Criminal Intelligence Bureau shares criminal intelligence regarding organized crime, street gangs, and terrorist activity to other law enforcement agencies.
- **California Justice Information Systems**—Provides criminal justice information and identification services to law enforcement, regulatory agencies, and the public.
- **Gambling Control**—Regulates legal gambling activities and ensures that gambling on tribal lands is conducted in conformity with a gaming compact.
- **Firearms**—Provides oversight and regulation of firearms in California.

The Governor's budget proposal includes \$791 million to support DOJ in 2008-09. General Fund support for the department is about \$380.8 million, which is about \$36 million less than what is estimated for expenditure in the current year. The reduction in General Fund support is due to the Governor's across-the board 10 percent reduction proposed for agencies supported by the General Fund.

ISSUE 1: RESTRUCTURE OF ADMINISTRATIVE PROGRAMS

The Governor's Budget proposes to consolidate DOJ's administrative functions into one division. This proposal has a net zero fiscal impact.

BACKGROUND

This proposal would consolidate the existing Division of Administrative Support, the Division of Legal Support and Technology and the majority of the Division of Executive Programs into a single Administrative function. The proposal also would transfer the three non administrative programs from the Division of Executive Programs to the Criminal Law Division.

According to the DOJ, this proposal will allow the Attorney General to improve the administrative and facilities related customer service with the regional offices throughout the state. The departments' goal is to create one division that will manage the needs for one department and concurrently provide uniform administrative presence in each regional office.

COMMENTS

The DOJ does not project immediate savings resulting from efficiencies of this proposed consolidation. However, it is conceivable that out-year savings will materialize.

ISSUE 2: GANG SUPPRESSION ENFORCEMENT TEAMS

The Governor's Budget proposes \$5.3 million General Fund to permanently establish the four Gang Suppression Teams (GSET) that were temporarily established in the 2006-07 Budget Act. These funds will support 33.6 positions at the DOJ and external consulting contracts.

BACKGROUND

GSETs were created within the Bureau of Narcotics Enforcement at DOJ for a limited term in the 2006-07 Budget Act. The goal of these teams was to provide leadership to local law enforcement in suppressing multi-jurisdictional violent crimes by using innovative investigative techniques to disrupt gang criminal activities and dismantle their membership. The main focus of the GSET is to target the leadership and organizational structure of criminal street gangs.

The department submitted a report to the Legislature in January of this year that summarizes the work of the GSET to date. The report describes two cross-jurisdictional investigations that were centered in Stockton and Atwater. The department also describes their involvement in about 60 other cases that mainly seem to be direct assistance to local law enforcement with gang suppression efforts. The department has reported that because of their joint efforts 119 arrests have been made and 148 numerous charges have been filed on the persons arrested.

COMMENTS

The GSET teams have proven successful in assisting local law enforcement in combating gang activity as evidenced by the Stockton and Atwater investigations. There is also no doubt that gangs are a serious public safety issue in our communities. However, the Legislature must decide whether to commit ongoing resource at this time to a function that is generally a local responsibility.

ISSUE 3: CLASS ACTION QUALITY IMPROVEMENT

The Governor's Budget proposes \$2.3 million General Fund to establish 13.1 positions (4 attorneys) to primarily defend the California Department of Corrections and Rehabilitation (CDCR) in various class action and civil lawsuits.

BACKGROUND

The Correctional Law Section (CLS) within the Civil Division of DOJ performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and secondly, they defend the state in civil litigation and class action cases.

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 of post settlement enforcement stage. Currently, there are 25 class action lawsuits filed against CDCR.

COMMENTS

Last year, the Legislature approved \$2.2 million from the General Fund (8 attorneys) to DOJ's efforts to defend the state in civil and class action cases. This augmentation increased the number of attorneys working on these cases by about 60 percent.

ISSUE 4: CORRECTIONAL WRITS AND APPEALS UNIT STAFFING

The Governor's Budget proposes \$4.3 million General Fund to establish 26.2 positions (13 attorneys) to support a projected increase in federal habeas corpus workload.

BACKGROUND

Currently, the Correctional Law Section within the Civil Division of DOJ performs two types of work for the California Department of Corrections and Rehabilitation (CDCR). First, they defend the state in state and federal correctional habeas corpus litigation and second, they defend the state in civil litigation and class action cases. The habeas corpus litigation can be divided into three 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; and (3) other issues such as challenges to disciplinary hearings, sentence credit calculations, and conditions of confinement. Over half of the habeas corpus workload is related to "lifer" parole denials.

Federal habeas corpus cases have increased significantly in the last several years; in part, due to a significant increase in the number of parole hearings for life inmates held by the Board of Parole Hearings. Furthermore, inmates no longer need permission from the court before filing federal habeas corpus appeals per the federal court's *Rosas* decision. This change is expected to lead to a large number of appeals of federal habeas corpus cases.

COMMENTS

The LAO finds that workload data provided by the department do not support an augmentation of the level proposed in the budget. The LAO recommends that this budget proposal be reduced by \$1.8 million General Fund and 13 positions. In addition, last year, the Legislature approved \$3.4 million from the General Fund (12 attorneys) to support the increase in federal habeas corpus workload, which was a 60 percent increase to existing resources.

**ISSUE 5: CARDROOMS – COMPLIANCE & ENFORCEMENT
INVESTIGATION WORKLOAD**

The Governor's Budget proposes \$1.7 million from the Gambling Control Fund to support 11 permanent positions to address increased compliance and enforcement workload in the State's 91 cardrooms.

BACKGROUND

The Gambling Control Act establishes DOJ as the investigatory branch of the state's regulation of legal gambling. The Bureau of Gambling Control is responsible for investigations and inspections of gambling operations in the state. The Bureau is also responsible for conducting background checks on personnel and vendors associated with the gambling operations. The investigations done by the Bureau are the basis for suitability determinations and administrative actions by the Gambling Control Commission.

COMMENTS

The DOJ indicates that the Bureau's investigatory resources have not been able to keep up with this growth and they now have a backlog of 145 cases related to the state's cardrooms. The DOJ reports that this augmentation will provide four additional agents for investigations, four additional agents for compliance investigations, and three agents to conduct additional background investigations.

ISSUE 6: LAB FACILITIES SCHEDULED MAINTENANCE AND REPAIR

The Governor's Budget proposes \$646,000 one-time General Fund to support maintenance and repairs for the department's forensic laboratories.

BACKGROUND

The DOJ's Law Enforcement Section has a Bureau of Forensic Services that operates 13 full-service criminalistic laboratories throughout the state. These laboratories provide analysis of various types of physical evidence and controlled substances, as well as analysis of materials found at crime scenes.

While the DOJ labs provide some services to state agencies, they primarily serve local law enforcement agencies in jurisdictions without their own crime labs. These local agencies are found in 46 out of the 58 counties representing approximately 25 percent of the state's population. All of the major urban areas in California have their own crime labs or maintain contracts with other agencies for laboratory services.

All 13 of the DOJ's labs have received and maintain accreditation from the American Society of Crime Laboratory Director's Laboratory Accreditation Board.

COMMENTS

Funding to maintain and repair labs is not included in the DOJ's baseline budget and the DOJ crime labs generally do not charge for the services they provide to state and local agencies, with the exception of blood alcohol and some drug toxicology tests that have been paid for by local agencies since 1977.

ISSUE 7: UNDERWRITERS LITIGATION

The Governor's Budget proposes \$2.9 million General Fund to continue funding specialist counsel with expertise in insurance coverage litigation and to support 2.6 positions to continue the *Underwriters* litigation.

BACKGROUND

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) the state was found liable for the clean-up of the Stringfellow toxic dumpsite. An investigation by the DOJ revealed that between 1963 and 1978 the state's activities involving the Stringfellow site were covered by three dozen insurance policies. In order to get some coverage from these policies, the state sued five of its largest insurers (*Underwriters* lawsuit), which collectively provided 70 percent of the state's insurance coverage. In 2002, the state filed a related case (*Allstate* lawsuit) against its 26 remaining insurers which provided the remaining 30 percent of the state's insurance coverage. The *Underwriters* case has recovered more than \$121 million from various insurance providers.

COMMENTS

Last year, the Legislature approved \$4.2 million General Fund to continue with a class action lawsuit against insurance companies referred to as the *Underwriters* litigation. This litigation is against insurance companies that reneged on insurance coverage held by the state on the Stringfellow hazardous waste dump, thereby leaving the state with significant outstanding costs to clean up this site. The DOJ has recovered more than \$120 million from insurance companies in this lawsuit thus far.

ISSUE 8: BUREAU OF FIREARMS WORKLOAD INCREASE

The Governor's Budget also proposes \$266,000 (\$235,000 ongoing) from the Dealers' Record of Sale (DROS) Account to support three new positions to address workload increases.

BACKGROUND

The Bureau of Firearms provides oversight, enforcement and regulation of firearms in California by conducting firearms eligibility reviews, administering (1) the handgun safety certificate program, (2) a centralized list of firearms dealers, and (3) the gun show producer and assault weapon registration programs, conducting firearms dealer and manufacturer inspections and investigating violations. The Bureau also conducts investigations on armed and prohibited persons, in accordance with state and federal law, and administers the armed and prohibited person's database and the state handgun and firearms safety device programs.

The Bureau also maintains the Automated Firearms System (AFS). The AFS was developed by DOJ in the 1970s to house records containing handgun information, as required by Penal Code section 11106. There are two types of handgun records within the database: law enforcement records, which contain a description of a handgun and its status (e.g., lost, stolen, etc.) and historical records that contain information on handguns and the individuals who are recorded as having possession of them. The AFS is linked directly to a corollary gun file in the FBI National Crime Information Center (NCIC). Over the years the AFS has become neglected as DOJ became more reliant on the Bureau of Alcohol, Tobacco, and Firearms, and Explosives (ATF) gun tracing capabilities.

COMMENTS

This request is to address workload increases related to the following three activities:

- Firearms eligibility reviews for peace officers, security guards, carry concealed weapon applicants, and dangerous weapon licensees;
- Firearms prohibition reporting; and
- Database updates/maintenance and timely dissemination of firearms information used by law enforcement agencies for criminal investigations and prosecutions.

ISSUE 9: ANTI-GANG VIOLENCE PARENTING CURRICULUM

The Governor's budget proposes \$102,000 General Fund to support the development of curriculum directed by recent legislation.

BACKGROUND

Legislation enacted in 2007 (Chapter 457, Statutes of 2007 [AB 1291, Mendoza]) requires the DOJ to develop curriculum for anti-gang violence parenting classes. This legislation would allow the court to order the parent of a minor found guilty of commission of a gang related offense to attend anti-gang violence parenting classes.

COMMENTS

The DOJ should be able to absorb the one-time costs of developing this curriculum within existing resources.

ISSUE 10: BUDGET BALANCING REDUCTION

The Governor's Budget Balancing Reduction would result in a decrease of \$46.6 million General Fund for the DOJ.

BACKGROUND

The DOJ has not indicated how it plans to absorb this reduction.

The LAO has recommended the following alternatives:

Eliminate Vacant Positions - The LAO has identified that department wide, DOJ, has a relatively high vacancy rate (15 percent). This vacancy rate translates to 860-plus vacant positions as of January 2008. Generally, the state budgets for a 5 percent vacancy rate, which assumes a normal level of delays in hiring and turnover.

The LAO has identified nine sections and bureaus within DOJ that have an average vacancy rate of 20 percent and represent almost 60 percent of the total vacancies in the entire department. The salary and benefits of these positions represent nearly \$32 million.

The LAO recommends eliminating about 200 of the 500 positions identified in the nine sections and bureaus with high vacancy rates. Under the LAO's recommendation, there would be \$13.5 million in General Fund savings and each of the sections and bureaus would still be left with sufficient funds to support a higher than normal 10 percent vacancy rate.

Charge State and Local Agencies Lab Fees - The LAO recommends that the Legislature require state and local agencies to pay for the laboratory services provided

them by DOJ. The LAO estimates that by charging local law enforcement agencies for lab services, the Legislature could reduce General Fund support for the state's criminalistic labs by approximately \$41 million due to (1) the creation of new revenue and (2) a reduction that is likely to result in the number of cases processed by the labs. The LAO finds that in 1992-93 when DOJ started charging the true cost of processing blood alcohol tests, the number of tests declined by 29 percent the next year. The LAO finds that many agencies started contracting with other providers who charged less than the state, thereby saving the state and the local agency money.

The LAO indicates that they have consistently made this recommendation because developing physical evidence through laboratory analysis is part of local law enforcement responsibility for investigating and prosecuting crimes. Therefore, the LAO finds that these expenditures should be borne by the counties and cities regardless of the state's fiscal condition. The LAO also points out that law enforcement agencies in 12 counties already do obtain laboratory services through the operation of their own laboratories or by relying on other agencies. The LAO also notes that the Federal Bureau of Investigation offers local law enforcement, free of charge, all forensic services in criminal matters, unless the request for assistance originates in a laboratory that could handle the matter itself.

The LAO has raised several implementation issues that will need to be addressed if the Legislature were to move toward a fee-based system for financing the state's criminalistic labs.

COMMENTS

The DOJ has proposed that the Legislature transfer \$69 million on a one-time basis to the General Fund. These funds are a portion of the Williams Energy Act Settlement.