

**COMMISSION ON UNIFORM STATE LAWS—Continued**

appropriate for implementation are then presented to the Legislature for consideration.

The California commission consists of seven members, four appointed by the Governor, two selected by the respective houses of the Legislature, and the Legislative Counsel, a nonvoting, ex officio member. All seven members must belong to the California State Bar.

**ANALYSIS AND RECOMMENDATIONS**

*We recommend approval.*

The amount requested consists of California's contribution (\$33,000) for the support of the National Conference of Commissioners on Uniform State Laws, plus travel expenses (\$6,095) for the state's commissioners.

Last year the National Conference proposed the adoption of uniform acts relating to condominium housing, comparative fault and land transactions, and recommended revisions to the Uniform Commercial Code. These matters will be studied by the California commissioners for possible submission to the Legislature.

The California commission recently has concluded studies of, and will submit recommendations on, uniform acts which have been adopted by the national body in recent years concerning class actions, wills and property exemptions in bankruptcy proceedings. A uniform privacy act is presently under consideration by the national body.

**JUDICIAL**

Items 17, 18 and 20 from the General Fund and Item 19 from the Motor Vehicle Account, State Transportation Fund

Budget p. 8

Requested 1978-79 .....	\$21,037,135
Estimated 1977-78.....	19,338,681
Actual 1976-77 .....	17,598,480
Requested increase \$1,698,454 (8.8 percent)	
Total recommended reduction .....	\$300,000

**1978-79 FUNDING BY ITEM AND SOURCE**

Item	Description	Fund	Amount
17	Judicial	General	\$20,435,560
18	Assignment of Municipal Court Judges to Superior Court	General	300,000
19	Judicial	State Transportation	39,029
20	Legislative Mandates	General	262,546
			<u>\$21,037,135</u>

**SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS**

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**GENERAL PROGRAM STATEMENT****Court Structure**

Section 1, Article VI, of the California Constitution vests the state judicial power in the Supreme Court, the courts of appeal and the superior, municipal and justice courts. The Supreme Court and the five courts of appeal are wholly state supported. The remaining courts are supported by the counties except for the major portion of the superior court judges' salaries, an annual \$60,000 block grant for each superior court judgeship created after January 1, 1973, and the employer contributions to the Judges' Retirement Fund for superior and municipal judges, which are state obligations. Fines, fees, and forfeitures collected by the courts are paid into each county general fund to be distributed to the cities, counties, districts and state special funds as required by law.

The Supreme Court and courts of appeal hear appeals from the trial courts and have original jurisdiction over certain writs such as habeas corpus, mandamus, and prohibition.

**Judicial Council**

The Judicial Council consists of the Chief Justice, one other Supreme Court justice, three courts of appeal, five superior, three municipal, and two justice court judges, four members of the State Bar and one member of each house of the Legislature. The council's purpose is to improve the administration of justice by surveying the judicial business and making recommendations to the courts, the Governor and the Legislature relative to the judicial functions, and by adopting rules for the orderly administra-

**JUDICIAL—Continued**

tion of the courts.

The Judicial Council also receives federal grants directly from the federal government and through the Office of Criminal Justice Planning to fund studies and demonstration projects designed to improve judicial administration.

**Commission on Judicial Performance**

The Commission on Judicial Performance receives, investigates, holds hearings on, and makes recommendations to the Supreme Court on complaints relating to the qualifications, competency and conduct of the judiciary. It may recommend to the Supreme Court the retirement for disability, the censure or removal of a judge for any of the causes set forth in Section 18, Article VI, of the State Constitution.

**ANALYSIS AND RECOMMENDATIONS**

As shown in Table 1, the budget provides a total expenditure program for the several judicial functions totaling \$21,579,028. This amount consists of \$20,998,106 from the General Fund, \$39,029 from the State Transportation Fund and reimbursements (primarily federal grants) totaling \$542,793.

**Table 1**  
**Budget Summary**

	<i>Estimated</i> 1977-78	<i>Proposed</i> 1978-79	<i>Increase</i>	
			<i>Amount</i>	<i>Percent</i>
<i>Funding</i>				
General Fund .....	\$19,301,793	\$20,998,106	\$1,696,313	8.8%
State Transportation Fund .....	36,888	39,029	2,141	5.8
Reimbursements .....	405,247	542,793	137,546	33.9
Total .....	\$19,743,928	\$21,579,928	\$1,836,000	9.3%
<i>Program</i>				
Supreme Court .....	\$3,138,464	\$3,260,625	\$122,161	3.9%
Courts of Appeal .....	11,899,130	12,282,845	383,715	3.2
Judicial Council .....	4,469,706	5,668,884	1,199,178	26.8
Commission on Judicial Performance	100,628	105,028	4,400	4.4
Legislative Mandates .....	136,000	262,546	126,546	93.1
Total .....	\$19,743,928	\$21,579,928	\$1,836,000	9.3 %
Personnel-years .....	450.3	452.3	2	0.4

**I. SUPREME COURT**

The amount proposed for the Supreme Court represents a \$122,161, or 3.9 percent, increase over estimated expenditures in 1977-78. The increase results from staff merit salary adjustments, the full-year cost of one new position established during the current year, staff benefit increases, and normal adjustments in operating expenses, partly offset by a reduction of one position and lower costs in the appointed counsel expenditure category.

## II. COURTS OF APPEAL

The budget request for the five courts of appeal totals \$12,282,845, an increase of \$383,715 or 3.2 percent over 1977-78. The increase reflects (1) staff merit salary and benefit increases, (2) a reduction in salary savings, (3) 7.5 proposed positions at a salary cost of \$114,200, (4) price adjustments, (5) a \$3,200 increase in out-of-state travel and (6) \$9,500 for space alterations. These increases are partially offset by a \$114,400 reduction for the appointment of counsel in criminal appeals. This reduction results from the assumption by the State Public Defender of an increasing proportion of the indigent criminal appeals workload.

### Graduate Legal Assistant Positions

*We recommend that the Judicial Council maintain appropriate data to permit evaluation of the cost effectiveness of utilizing graduate legal assistant positions.*

The 7.5 requested new positions for the various courts of appeal are justified on the basis of workload increases. Included are six graduate legal assistants whose terms would expire on June 30, 1980. These six positions are requested in lieu of additional research staff attorneys and would be used on an experimental basis to improve the productivity of individual courts of appeal justices. The salary range for these new positions is \$1,323-\$1,450 per month compared with \$1,450-\$1,831 for research staff attorneys. Because of the more rapid turnover expected of the legal assistant positions compared with research attorneys, a number of the positions will remain at the entry salary level, thereby producing additional savings.

The central research attorneys of the courts of appeal are productive, and in some divisions they write as many appellate opinions as do the justices. Consequently, the legal assistants will have to increase significantly the productivity of the justices to whom assigned for them to be cost effective. If the increased productivity of the justices is not proportionate to the production that would have been achieved by an equal expenditure for research staff, the new positions would not be cost effective.

## III. JUDICIAL COUNCIL

The proposed budget of \$5,668,884 (including reimbursements) for the Judicial Council represents an increase of \$1,199,178 or 26.8 percent over current-year estimated expenditures. As in other programs of the judicial budget, a part of the net increase is for merit salary adjustments and staff benefits. Also included are two proposed accounting technicians, one approved on a temporary basis for the current year. One position is needed for workload increases relating to the data collection and reporting requirements of the Determinate Sentencing Law and ongoing workload increases. The other position, requested for experimental court projects, would expire June 30, 1980. Also included is a \$350,000 increase in the regular assigned judges program, a \$387,000 increase in the arbitration program and \$300,000 for reimbursement of county salary costs related to assignment of municipal court judges to the superior court.

## JUDICIAL—Continued

## Court Workload

The workload of the appellate and trial courts continues to increase due to increased filings of civil and criminal matters. For example, civil case filings in the superior courts totaled 667,122 in the 1975-76 fiscal year compared with 435,895 ten years earlier. This represents an increase of 231,227 filings or 53 percent. During the same period, superior court dispositions (excluding civil cases dismissed for lack of prosecution) increased from 351,880 to 552,162, an increase of 200,282 or 56.9 percent.

While the percentage increase in dispositions has exceeded the percentage increase in case filings, the number of civil cases awaiting trial in the twenty largest superior courts has increased from 78,296 on June 30, 1975, to 91,978 on June 30, 1976, an increase of 13,682 cases or 17.5 percent. The number of jury trials (generally more time consuming) within those totals increased from 45,617 to 54,501, an increase of 8,884 cases or 19.5 percent.

In 1965-66 there were 361 superior court judges authorized. By 1975-76 this number had risen to 520, an increase of 159 judges or 44 percent. The number of commissioners, referees, or days of judicial assistance rendered by or for such courts under the assigned judges program are not included in these data, but their input is considerable.

The median time period in months between the filing of a civil complaint to trial of the matter in 18 of the 20 superior courts having five or more judges increased from an average of 21.7 months in June 1968 to 26.8 months in June 1976. This increase cannot be attributed solely to delays caused by attorneys in case preparation. The median time in those same courts between the filing of the at-issue memo, indicating a readiness for trial, and the point of trial averaged 12.3 months in June 1968 and 15.3 months in June 1976.

Article VI, Section 6, of the California Constitution provides that "The Chief Justice shall seek to expedite judicial business and to equalize the work of the judges." The traditional method utilized to carry out this constitutional mandate has been through (1) the assignment of active or retired judges to the courts on a temporary basis at state expense, (2) the appointment of additional judges and (3) improvement in judicial operation procedures.

The assigned judges program provides for the assignment of judges and related staff to appellate courts as well as for extra compensation and expenses of judges (active or retired) assigned to trial courts because of vacancies, temporary absences and the need to equalize workload. In 1965-66, a total of \$158,678 or the equivalent salary cost of approximately six superior court judges was expended for these purposes. By 1975-76 the total cost of assigned judges had increased to \$767,552, equivalent to the salary cost of approximately 17 superior court judges, an increase of approximately 11 judges or 183 percent.

Assuming that the trial courts received their pro-rata share of the increase in assigned judges, it is apparent, on the basis of the foregoing data, that despite the increase in superior court judges, and the increased utilization of appointed and assigned judges, the court system has not been

able to reduce the backlog of cases or the delay in bringing cases to trial. Therefore, additional measures are necessary to help the courts meet the continuing increase in case filings.

Claiming that basic reforms are needed in the judicial system as an alternative to the creation of more judgeships, the Governor vetoed bills passed at the 1977 legislative session authorizing an additional 44 superior and 5 municipal court judges. The deletion of these judgeships will require the Chief Justice to make additional assignments of judges to handle the workload increase if, at least in the short term, further court delays and backlogs are to be avoided.

#### **Increased Arbitration of Superior Court Cases**

One method of reducing trial court caseload is to provide arbitration as a substitute for civil trials. A system of arbitration has been approved by the Legislature and became operative July 1, 1976. Arbitration of superior court cases is permitted in any case (1) upon agreement of the parties or (2) at the election of the plaintiff alone if he is agreeable to limiting recovery to no more than \$7,500.

During fiscal year 1976-77, approximately 4,400 cases, over 80 percent of them by election of the plaintiff, were placed on the arbitrators hearing list. Approximately 2,000 cases were disposed of, about equally divided between final arbitration (for which a fee is paid by the state) and dismissals or settlements. A total of \$149,131 was expended for the services of arbitrators, generally at a cost of \$150 per case. The Governor's Budget proposes \$537,000 for this program, which is \$387,000 above the \$150,000 authorized for the current year. The increase is related to workload increases (\$150,000) and program expansion (\$237,000). Other methods of meeting the increasing workload of the courts are trial court reorganization and improvement of management techniques.

#### **Need for Trial Court Reorganization and Management Improvement**

*We recommend that the Judicial Council develop a plan, including necessary statutory changes, to provide centralized, statewide administrative direction for the trial courts.*

While the constitutional provisions cited earlier appear to provide the basis for a well organized and closely administered system of courts, such a system has not been realized. The courts are structured into a Supreme Court and five courts of appeal (having one or more divisions) each assigned to an appellate district of the state. Section 4 of Article VI provides for a superior court *in each county*, and Section 5 requires the counties to be divided into districts for municipal and justice courts. Although the Constitution requires that there be a municipal court in each district of 40,000 or more population, the boards of supervisors may create a sufficient number of districts to forestall the establishment of municipal courts. The opportunity to do so is limited only by the Constitutional provision that no city, other than those in San Diego County, may be divided into more than one district.

The superior courts are supported by the counties, except for the major portion of the judges' \$49,166 annual salary which is paid for by the state. The county portion of their salary is \$5,500, \$7,500 or \$9,500 depending on

**JUDICIAL—Continued**

county population as prescribed by Government Code Section 68203. Thus, all increases in superior court judges' salaries, as well as the employer's retirement contribution (8 percent of salary) and health benefits costs, are provided by the state. Clerical staffing for the superior courts is provided by the county clerk and bailiffs are provided by the sheriff. The county clerks and sheriffs are separately elected county officials. Operating costs, equipment and space requirements for these courts are also provided by the counties.

This, plus the fact that the judges are elected within the county for which the court is established, may convey the impression that these are local courts. However, several court decisions have declared that superior courts are state courts.

The municipal and justice courts are entirely county funded except for the employer's contribution which is made by the state to the Judges' Retirement Fund for municipal court judges.

The lack of a clear-cut organizational structure, added to the traditional independence of the individual courts, prevents the effective and efficient administration of the judiciary as a single, cohesive system. Another obstacle is the absence of direct administrative control by superior courts over subordinate employees provided by the county clerk and the sheriff. Further, there is a large number of superior courts whose small size mitigates against their having separate court administrators on a cost effective basis. The superior courts range in size from the twenty-six one and two-judge courts to the 171-judge and 61 commissioner court of Los Angeles County. The judges from less populated counties are available for assignment by the Judicial Council to other counties where workload warrants their utilization.

The Legislature exercises some control over the superior and municipal courts because it approves new superior and municipal judgeships as well as staffing levels and salary scales for municipal court attachés. However, this control is minimal because requests for new judgeships and municipal court staff and staff salary increases are generally initiated by the respective county boards of supervisors. As a consequence, trial court operations may be influenced more by local political and financial considerations than by the need of the courts to provide trials expeditiously and efficiently.

This problem was acknowledged in the Judicial Council's 1972 annual report, which states that: "Historically California has had a trial court system consisting of a multiplicity of relatively uncoordinated tribunals, nearly autonomous in administration, with duplicate administrative and judicial support structures. This fragmented system has generally resulted in a serious lack of uniformity in the administration of the various trial courts and in local court procedures and practices. More importantly, it has prevented the maximum utilization of judicial manpower to meet the modern problems of growing judicial workloads and of increasing congestion and delay in many trial courts."

The 1977 annual report of the Judicial Council states that in the 20 superior courts having five or more judges (the 20 most populous coun-

ties) the median interval from complaint filing to trial was over 24.5 months for cases tried in June 1976. In Riverside County the median time was 40 months, in Orange and San Joaquin 37 months and in Alameda 37.5 months. Because justice delayed is largely justice denied, lengthy intervals of this sort will often lead to settlements unfair to the complainant.

The 1974 Judicial Council report indicated that significant reductions in elapsed time between complaint and trial could be achieved by modifying calendar management practices in line with procedures recommended by the Judicial Council. In fact the Superior Court of Santa Barbara County was able to reduce its civil case backlog 41 percent in one year by adopting new court rules (including calendar management practices). In addition, the elapsed time between the filing of the "at issue memo" and the trial date was reduced 42 percent from a median of 12 months to a median of seven months. The 1977 Judicial Council Report shows that the Santa Barbara Superior Court has further reduced this median time to six months. Other superior courts might achieve similar improvements in case flow by adopting comparable management techniques.

The trial courts at the local level have a valid interest in maintaining complete independence in matters relating to interpretation of law and in rendering decisions. However, we do not believe such independence is appropriate in the area of administration. Few, if any, judges are specifically trained in administrative practices.

The state has legitimate interest in the uniform and expeditious handling of judicial matters because it has such an important impact on the welfare of citizens. The state also has a legitimate interest in the operation of trial courts because of the financial support that it provides to these courts. In fiscal year 1977-78, this support consists of \$22,471,546 in superior court judges' salaries, \$3,840,000 in block grants for superior courts, approximately \$1,335,000 in superior court judges' salary increases and \$7,480,137 in contributions to the Judges' Retirement Fund for municipal and superior court judges.

#### **Trial Court Consolidation and Funding**

*We recommend that legislation be considered to consolidate the trial courts into a single, state-supported system.*

To provide for more efficient administration and more adequate staffing and funding of the trial courts, we believe the justice, municipal and superior courts should be consolidated into a single trial court system. As part of this reform, commissioners and/or referees should be authorized to handle routine matters that now come before the courts. Arbitration proceedings should be expanded. A unified system should include all necessary personnel under the direct administrative control of the courts. Overall statewide administrative direction of the courts should be strengthened and vested in the Judicial Council. State funding and operation of the courts would constitute a form of property tax relief if the court revenues from fees, fines, forfeitures and penalties were left with local government under existing law.



**JUDICIAL—Continued****Evaluation of Court Productivity**

*We recommend that the Judicial Council provide continuing evaluation of the productivity of the individual judges of the courts of appeal, superior and municipal courts on a weighted unit or other appropriate basis.*

Additional appellate judgeships generally are authorized by the Legislature at the request of the Judicial Council based on an evaluation of court needs as reflected in the weighted values of the anticipated filings. Filings in the superior and municipal courts are also reported on a weighted unit basis, but the requests for additional judgeships are usually initiated by the county boards of supervisors and the necessary legislation is introduced by members of the Legislature representing the area concerned. The weighted unit approach recognizes that there are significant variations in the judicial requirements relating to the various types of cases filed. The weighted unit system applies different weights to various categories of filings based on the average court time required for each classification.

The Judicial Council now collects and reports the case dispositions for the superior and municipal courts by county using the same categories as used for reporting case filings. While the case *filing* data are also reported on a weighted unit basis, the *disposition* data are not so reported. We believe they should be in order to facilitate evaluation of the output of the courts. This same principle should apply to the courts of appeal. The disposition data for multi-judge courts should be separately reported by judge as a means of evaluating individual performance, which may be useful in achieving a further degree of specialization among judges based on their experience in handling particular categories of cases. Analysis of the data obtained would identify situations in which corrective action by the Judicial Council may be appropriate.

**Qualifying Judicial Candidates**

*We recommend a constitutional amendment and appropriate implementing legislation requiring candidates for election or appointment to the trial courts to pass a qualifying examination.*

Article VI, Section 15, of the California Constitution requires state bar membership for a minimum of five years prior to selection to the municipal court and ten years for the superior court. Various court decisions have held that the prescribed terms of bar membership are the exclusive qualifications, at least for superior court judges. The situation as to municipal judges is less definite because Section 4 of that article states that the Legislature "shall prescribe for each municipal court and provide for each justice court the number, qualifications, and compensation of judges, officers and employees."

The Legislature has not established any additional qualification requirements. Therefore, members of the bar for the requisite period of time may be elected or appointed to the judiciary without any significant trial or other court experience or without any specific training in law school or otherwise to perform the judicial function. The practical result is that judges are trained on the job. Inevitable errors cause hardship to litigants and add to the workload burden of the appellate courts and the legal

profession. Periodically, cases arise which bring into question the adequacy of this method of selection and training of judges. Beginning in 1974, the California Center for Judicial Education and Research (sponsored by the Judicial Council) has instituted orientation programs for newly appointed judges. The center is also continuing various judicial training institutes previously sponsored by the Judicial Council, as a method of continuing the educational process for judges.

We believe the judicial selection process would be improved if all candidates for appointment or election to the judiciary were required to pass a qualifying examination promulgated by the Judicial Council to test for a satisfactory knowledge of judicial practice, legal procedures, rules of evidence and other matters unique to court processes as determined by the Judicial Council.

As court decisions have held that the Legislature may not expand on the qualifications required in the Constitution for selection to the superior court, implementation of this recommendation with respect to superior court judges would require amendment of Article VI, Section 15.

#### **Peremptory Challenges**

*We recommend that the Judicial Council collect statewide data on the number of peremptory challenges filed against individual judges and the frequency with which such challenges are filed by individual attorneys.*

Section 170.6 of the Code of Civil Procedure permits an attorney (or party) to an action to challenge for prejudice and thereby cause the removal of his case from a judge simply by filing a sworn statement that the judge is prejudiced against him (or his client or their interests) so that he cannot or believes he cannot have a fair or impartial trial or hearing before the judge. This provision is subject to abuse for trial strategy purposes. It permits the challenger to "shop" for a judge who may be more sympathetic to his case. In some cases peremptive challenges have been filed against a given judge by the entire staff of a district attorney's office or by all attorneys of a large law firm on a blanket basis.

Abuse of the peremptory challenge burdens the courts because of the time loss and the necessity to assign a different judge. This is especially burdensome to the Judicial Council which must assign judges to replace those challenged in one-judge courts.

Analysis of the data requested will identify the magnitude of the problem and highlight problems or situations which need correction.

#### **Assignment of Municipal Court Judges to Superior Courts**

*We recommend deletion of \$300,000 proposed to reimburse counties for the salaries of municipal judges who are temporarily assigned to the superior courts.*

When a municipal court judge is assigned to a superior court by the Chief Justice, the judge is paid at the rate established for superior court judges. To reduce the financial burden on counties, the Judicial Council has, in the past, paid about 85 percent (depending on the population size of the particular county) of the *difference* between a municipal court judge's salary (\$45,235) and a superior court judge's salary (\$49,166). The county continues to pay the regular salary of the municipal court judge.

**JUDICIAL—Continued**

Counties often elect to incur the cost of a replacement judge for the municipal court from which the judge was taken for the assignment.

The budget would allow the Judicial Council to reimburse the county for the regular salary of the municipal court judge when he is on assignment to the superior court, as well as a portion of the salary increment. No compelling reason has been advanced for the state to assume a greater portion of these judicial salary costs.

As indicated earlier relative to overall judicial costs, the county portion of superior court judges salaries has, since 1955, been limited by statute to \$5,500, \$7,500 or \$9,500, depending on county population. All salary increases for these judges are paid by the state. For example, in 1964 when the superior court judge salary was set at \$25,000 per annum the state contributed either \$19,500 (78 percent), \$17,500 (70 percent) or \$15,500 (62 percent) for each judgeship. Currently, with superior court judges receiving \$49,166 and the counties contributing the same flat amount per judge, the state is paying, depending on the county, \$43,666 (89 percent), \$41,666 (85 percent), and \$39,666 (81 percent). These state contributions will continue to increase by the amount of annual salary increases. Effective each July 1, these will be based on the percentage of increase in the California Consumer Price Index for the prior calendar year (not to exceed 5 percent).

**IV. COMMISSION ON JUDICIAL PERFORMANCE**

The \$4,400 increase in the budget request for this commission reflects merit salary adjustment, staff benefit and price increases.

**V. LEGISLATIVE MANDATES**

The budget contains \$262,546 to reimburse local government for state-mandated costs relative to various experimental court projects. Included is \$204,246 for the budget year cost of three small claims court experimental projects in three municipal courts as authorized by Chapter 1287, Statutes of 1976. The amount requested is in addition to an estimated current-year expenditure of \$81,000 for the same projects. When this legislation was being considered by the Legislature, the Department of Finance estimated that the local mandated cost would *total* \$105,000 for the entire two-year period.

**SALARIES OF SUPERIOR COURT JUDGES**

Item 21 from the General Fund

Budget p. 12

Requested 1978-79 .....	\$22,471,546
Estimated 1977-78.....	22,277,919
Actual 1976-77 .....	21,014,282
Requested increase \$193,627 (0.9 percent)	
Total recommended reduction .....	None

**ANALYSIS AND RECOMMENDATIONS***We recommend approval.*

This item pays the state's share of the superior court judges' salaries and benefits. The counties' salary contribution for each judge is limited to \$5,500, \$7,500 or \$9,500 per year, depending on the county's population. The state pays the balance of the current \$49,166 total annual salary for these judges, as established by Government Code Section 68203. This section used to provide an automatic raise in judges' salaries each July 1, based on the increase in the California Consumer Price Index for the prior calendar year. However, Chapter 1183, Statutes of 1976, prohibited a salary increase in 1977 and, beginning in 1978, limited annual increases to a maximum of 5 percent.

The amount requested also provides for the state's share of health benefit costs for superior court judges already enrolled in a state health plan.

The total amount budgeted for 1977-78 includes an Emergency Fund allocation of \$256,079 effective January 1, 1978, to pay the salaries and benefits of the nine additional superior court judgeships authorized by 1977 legislation, as well as the cost of new state health plan enrollments. An Emergency Fund allocation of \$321,743 was required to pay similar costs for the establishment of 20 new judgeships in 1976-77.

We believe it is not appropriate to continue to use the Emergency Fund for this purpose. Traditionally, legislation authorizing new judgeships has included appropriations of \$60,000 per judge as the state's share of the supporting costs of new judgeships (Item 22) but has not included appropriations for the state's share of salaries. Because this cost can be anticipated in advance, we believe that future bills authorizing new judgeships should include appropriation for this salary cost.

The Emergency Fund (Item 426) contains a discussion of the problems inherent in funding authorized programs as emergencies.

**STATE BLOCK GRANTS FOR SUPERIOR COURT JUDGESHIPS**

Item 22 from the General Fund

Budget p. 12

Requested 1978-79 .....	\$3,840,000
Estimated 1977-78.....	3,840,000
Actual 1976-77 .....	3,300,000
Requested increase—None	
Total recommended reduction .....	None

**ANALYSIS AND RECOMMENDATIONS**

*We recommend approval.*

The state provides to the counties annual block grants of \$60,000 for each superior court judgeship created subsequent to January 1, 1973, to reimburse support costs related to the positions.

This item provides block grants of \$3,840,000 for 64 judgeships authorized since January 1973, including nine authorized at the 1977 Legislative Session. These grants are in addition to state contributions toward the salaries, retirement, health and death benefits of superior court judges provided by other items of the Budget Bill.

**CONTRIBUTIONS TO JUDGES' RETIREMENT FUND**

Items 23-24 from the General Fund

Budget p. 14

Requested 1978-79 .....	\$8,036,461
Estimated 1977-78.....	5,295,973
Actual 1976-77 .....	6,671,076
Requested increase \$2,740,488 (51.7 percent)	
Total recommended reduction .....	None

**1978-79 FUNDING BY ITEM AND SOURCE**

Item	Description	Fund	Amount
23	Supreme and appellate court judges	General	\$241,443
-	Government Code Section 75101	General	314,881
24	Superior and municipal court judges	General	3,246,609
-	Government Code Section 75101	General	4,233,528
			<u>\$8,036,461</u>

**SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS**

*Analysis page*

1. Full-Funding. Recommend legislation to fully fund the Judges' Retirement System. 20
2. Administration. Recommend legislation to transfer administration of Judges' System to Public Employees' Retirement System. 21
3. Comparative Review. Recommend report comparing benefits and costs of state-administered retirement systems. 21

## ANALYSIS AND RECOMMENDATIONS

The Judges' Retirement Fund provides retirement benefits for municipal, superior, appellate and supreme court judges and their survivors. Its receipts consist of (1) contributions equal to 8 percent of salary from both the judges and the state, (2) filing fees on specified civil suits and (3) annual General Fund appropriations. Because annual income from contributions and filing fees is insufficient to fund the annual disbursements from the fund, General Fund appropriations are required to cover the annual deficit. In recent years, the size of this deficit has been growing because of earlier retirements coupled with declining filing-fee revenues. The annual deficit has increased from \$1 million in 1973-74 to \$2.7 million in 1976-77, and an estimated \$3.4 million will be required to fund the deficit in 1978-79. The appropriation for the current year is not adequate to cover the anticipated deficit, and the administration has used \$591,425 in Emergency Fund money to augment the amount available.

### The Unfunded Liability Problem

*Background.* In addition to lacking sufficient cash to fund annual disbursements, the fund is also underfunded on an actuarial basis. An actuarial valuation published in 1974 placed the unfunded liability (accrued retirement benefit costs for which there are no accrued assets) at \$110 million. The actuary preparing this valuation recommended amortization of the unfunded liability through increased contributions over a 27 year funding period, pursuant to Section 75110 of the Government Code. This section expresses legislative intent that the Judges' Retirement System shall be fully funded and actuarially sound by January 1, 2002.

*Unfunded Liability Escalates.* A new actuarial valuation of the Judges' Retirement System was published in December 1977. Using updated information regarding membership, retirement trends, benefit costs, and economic assumptions for the Judges' Retirement System, this new valuation indicates significant growth in ongoing program costs and in the unfunded liability from the 1974 estimates. Program costs are estimated to have increased from about 22 percent to 42.3 percent of payroll, and the unfunded liability is estimated to have grown from \$110 million to about \$400 million.

The new valuation estimates that total annual contributions equal to 84.4 percent of judges' payroll would be required to fully fund the system by 2002. After that date, annual contributions equal to 42.3 percent of payroll would cover the ongoing program costs to maintain full funding of the system.

Thus, the new valuation estimates an ongoing program cost for judges' retirement nearly double the ongoing program costs of other state retirement systems. This high program cost and the rapidly escalating unfunded liability indicate an overly generous benefit package, when compared to the other state retirement systems.

*Reasons for the Growth in Unfunded Liability.* The new valuation cites earlier retirement, increased retirement span, growing survivor benefit costs, and salary increases as the major reasons for the significant rise

**CONTRIBUTIONS TO JUDGES' RETIREMENT FUND—Continued**

in program costs and in the level of unfunded liability. An undeterminable portion of the increase may also be the result of the economic assumptions which project a faster long-term wage inflation rate (affecting liabilities) in relation to investment yield (affecting assets) than the previous valuation. However, these new assumptions are in line with recent assumptions for other state retirement systems.

**Need for Full Funding**

*We recommend legislation to fully fund the Judges' Retirement System through an equitable funding mechanism.*

We believe that a policy of full (actuarial) funding for retirement benefits is both fiscally responsible and equitable from the standpoint of the taxpayers. It is fiscally responsible, because it does not conceal from the public the full cost of providing government services, and does not confront future Legislatures with contractual obligations for which there is no funding. It is equitable, because the total cost for judges' services (including retirement costs) are paid by those benefiting from their services and are not shifted to future generations that do not benefit from them.

Accordingly, last year we recommended a \$5.7 million General Fund augmentation to the Judges' Retirement Fund as the first step of a policy to amortize the unfunded liability. This was approved by the Legislature in the Budget Bill, but was subsequently deleted by the Governor on the basis that the administration would propose an alternative funding solution in the future. Last year's recommendation was based on funding suggestions in the 1974 actuarial valuation which estimated an annual contribution requirement of 20.6 percent of payroll to amortize the unfunded liability by 2002. After that date, the valuation assumed that the 16 percent of payroll contribution (8 percent each from the state and judges) plus filing-fee revenues would keep the system fully funded. Because these contribution levels and the estimated ongoing program costs of the Judges' Retirement System appeared to be in line with the contributions and program costs of other state retirement systems, General Fund financing of the unfunded liability, in absence of other practical alternatives, appeared reasonable.

As noted above, an 84.4 percent contribution rate or \$48 million based on projected judges' payroll would be needed in 1978-79 if this goal is to be achieved. While it may not be reasonable to expect judges to contribute half of this amount, a substantial increase in the current 8 percent contribution rate is warranted, given the fact that benefits of this system are substantially higher than benefits of other state retirement systems. An increase in filing fees should also be considered as a source of funds needed for actuarial soundness.

The Governor's 1978-79 Budget indicates that legislation will be introduced in 1978 to accomplish full funding of the Judges' Retirement System.

**Consolidation with PERS**

*We recommend legislation which transfers administration of the Judges' Retirement System with budget support to the Public Employees' Retirement System (PERS).*

The Judges' Retirement System is currently administered by the Controller's Office. We believe that administration of this system by PERS would result in more efficient and effective administration, as well as in more uniform consideration of interrelated policies.

**Need for a New Comparative Review of State-Administered Retirement Systems**

*We recommend that the Department of Finance update and expand its 1975 report on comparison of benefits and costs of state-administered retirement systems to reflect available new information regarding benefits, costs and actuarial balance.*

In 1975, the Program Evaluation Unit of the Department of Finance published a report comparing the benefits and costs of state-administered retirement systems. This report proved to be a useful tool for comparative analysis of these systems, when considering benefit increase proposals affecting their actuarial condition. In order to be of continued use, the report should be updated to reflect changes in benefit levels and costs. In addition, the updated report should include information regarding long-term fund condition and program costs, gleaned from the most recent available actuarial valuations of the respective state-administered retirement systems.

**NATIONAL CENTER FOR STATE COURTS**

Item 25 from the General Fund

Budget p. 14

Requested 1978-79 .....	\$14,000
Estimated 1977-78.....	14,000
Actual 1976-77 .....	14,000
Requested increase—None	
Total recommended reduction .....	None

**ANALYSIS AND RECOMMENDATIONS**

*We recommend approval.*

This item provides the state's membership fee in the National Center for State Courts which was established in 1971 to encourage judicial reform, recommend standards for fair and expeditious judicial administration and seek solutions to state judicial problems. The fee is based on state population. California's fee represents approximately 7 percent of the total state fees collected.

The center maintains a headquarters office in Denver, Colorado, and six regional offices, one of which is located in San Francisco.

Membership entitles California to judicial research data, short-term consultative services and information on the views of various states on federal legislation and national programs affecting the judicial system.