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1) Deletes the existing provision of law that states that the Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts and perform specified activities that best assure their ability to carry out their functions, promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost saving measures in court operations, in order to guarantee equal access to the courts.

2) Also deletes existing provisions which empower the Judicial Council to authorize a trial court to carry unexpended funds over from one fiscal year to the next, and instead provides that unexpended funds shall be the funds of that trial court, which may carry those unexpended funds over from one fiscal year to the next. Prohibits those funds from being reallocated or redirected without the consent of the management of the trial court.

3) Requires the Judicial Council, or its designee, to allocate 100% of the funds appropriated for support of trial court operations according to each court's share of statewide operational funding. Provides that all funds, once allocated, are funds of the trial court, and authorizes courts to transfer funds between functions, line items or programs as directed by management of the trial court.

4) Deletes existing provisions relating to the manner in which the Judicial Council allocates funding for trial court operations, and instead requires that the amount allocated to each trial court from the amount appropriated for trial court operations be equal to the pro rata share of the prior fiscal year's adjusted base budget, except as provided.

5) Requires the Legislature, based on the information submitted in the Governor's proposed budget, and prior to the allocation of funds to each local trial court, to specify, in each annual Budget Act, the funding amounts to be allocated for programs of statewide concern from the total funds appropriated for trial court operations by the Legislature.

6) Prohibits the Judicial Council, or its designee, from withholding or expending any portion of the total funds appropriated for trial court operations by the Legislature for any statewide information technology or administrative infrastructure program that was not identified in the annual Budget Act, unless the Judicial Council, or its designee, first obtains the written approval of 66 2/3% of a proportional representation of all local trial courts as determined by the number of judges in each court.

EXISTING LAW :

- 1) Consolidates funding for trial court operations centrally at the state level under the administration of the judicial branch's Administrative Office of the Courts (AOC).
- 2) Provides that notwithstanding any other law, the Judicial Council may regulate the budget and fiscal management of the trial courts. The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for recordkeeping and accounting by the courts.
- 3) Provides that the Judicial Council shall allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council which meets minimum funding levels as set forth in statute, and provides that the Judicial Council shall allocate funds to ensure the courts can carry out their functions, promote statewide policies, promote court efficiencies and cost savings in court operations.
- 4) Provides that the Judicial Council shall adopt rules which establish a decentralized system of trial court management, and provides that the Judicial Council shall adopt policies and procedures about moving funding between functions or line items or programs.
- 5) Grants the Judicial Council authority to use trial court funds to develop statewide information technology systems and to create regulations for trial courts' recordkeeping and accounting.

FISCAL EFFECT :

According to the Assembly Appropriations Committee, to the extent the bill's limitations **hinder the efficient allocation of resources** within the judicial branch, costs within the overall system would increase. The impact of this bill would largely depend on the extent to which the AOC's requested budgets accurately delineate the resources required for all statewide programs and the Legislature schedules each of these programs in the annual Budget Act. (Past practice has been to schedule certain statewide programs in the Budget Act, such as court appointed special advocates, but not all programs, such as information technology projects and activities.) Given the inherent uncertainty in budgeting for IT projects in particular, the budgeting restrictions in this bill could be **particularly problematic**, as the need for additional resources subsequent to budget enactment would **require concurrence** of two-thirds of the trial courts on a proportionate basis.

COMMENTS :

This measure seeks to address governance practices and budgeting authority within California's judicial branch is an outgrowth of substantial discontent that has arisen in recent years among an unknown number of superior court judges who contend that trial courts have not had their constitutionally-protected administrative and financial independence appropriately respected by the administrative arm of the judiciary, the AOC, and its governing authority, the Judicial Council of California (the "Judicial Council"). By many accounts, much of this **discontent appears** to grow out of a **perception by some** trial court judges that **under prior leadership**, the Judicial Council was not sufficiently open to, or inclusive of, dissenting views regarding important issues of internal judicial branch management.

This measure was introduced on February 18, 2011, approximately one month after California's new chief justice, Tani Cantil-Sakauye, was sworn in to **take the helm** of the state's judicial branch

during a difficult time of severe budget cuts, furloughed employees, and great uncertainty in the court system. The bill is supported by some trial courts as well as a group of state trial court judges known as the Alliance of California Judges, and it is opposed by the California Commission on Access to Justice, the Civil Justice Association of California (CJAC), the Consumer Attorneys of California (CAOC), the California Defense Counsel, the California Chamber of Commerce, the Judicial Council, and some other trial courts, as well as a number of appellate and trial court judges.

In support of the measure, the author has stated in part that:

The Trial Court Funding Act was enacted to ensure equitable distribution of funds to trial courts by transferring the principal funding responsibility to the state of California. The Legislature never intended to strip the trial courts of their independence to manage themselves and to meet their constitutional obligations? The Court Case Management System (CCMS) illustrates the problem.

According to the State Auditor Report, the AOC has spent \$407 million as of June 2010, averaging \$50 million a year for a software system riddled with problems. To put these figures into perspective, the Judicial Council closed court houses 1-day a month to save \$90 million instead of eliminating CCMS funding. Additionally, the audit report estimated the total cost of finishing the CCMS system at \$1.9 billion, averaging \$300 million a year for the next 5 years, which does not include the cost of implementing the system. Because trial courts lack control over their own finances, they have been unable to either prevent court closures or the use of their funds for CCMS?

In addition, the author also has stated in support that "Judicial Council has attempted a number of projects since the enactment of the Lockyer-Isenberg Trial Court Funding Act. It has created a number of court houses, it has undertaken court maintenance, it has developed a statewide case file computer system, and it has dealt with state budget cuts. It has failed to adequately deal with, develop, and execute each one of these projects." Proponents of the bill state, for example, that "Court houses were closed one day a month to deal with budget cuts. It did this to save \$90 million. At the same time, Judicial Council transferred \$72 million from the Trial Court Trust Fund (used primarily to pay for court operations) to develop CCMS. It seems that access to justice would be better served by keeping court houses open instead of funding the development of CCMS."

In further support of the measure, the bill's trial court proponents point to what they contend are a number of examples of what they perceive to be excessive interference by the AOC into the management and administration of their trial courts. Proponents argue in essence that the Judicial Council has exercised too much power over how trial courts spend what **they perceive** to be their own money. Among other issues, proponents contend that trial courts should be able to make such fundamental court decisions as whether and when to close court facilities, or choose instead to take alternative emergency measures of their own design. They especially point their collective frustration at longtime leaders within the AOC, whom they forcefully assert have been uncollaborative and uncompromising.

In support of the measure, leaders of the Alliance of California Judges state they abhor what **they call the "erosion"** of the power of trial courts in California since the passage of the Lockyer-Isenberg Trial Court Funding Act in 1997. They suggest that since enactment of the Funding Act

and subsequent laws, there has been a power imbalance within the judiciary, placing what they conceive as too much power in the hands of a flawed AOC.

Opponents of the measure vigorously contend that the bill is an unwarranted and unwise intrusion into the internal governance of the judicial branch of government. Many in the judiciary, opponents concede, are similarly troubled by the serious problems associated with the AOC's implementation of the judiciary's "CCMS" computer system. **But**, they contend, general branch governance concerns should be solved within the judiciary, under the leadership of the new chief justice, whom, they note, has already publicly stated she is open to making whatever governance changes may make sense after she has reasonable time to review these issues in detail. The new chief justice should at a minimum, they contend, be given reasonable time to try to address such concerns within her own branch before the Legislature seeks to step in.

Opponents also state that the funding and other reforms since 1997 have enabled the Legislature to partner with the judiciary to enact, with the strong leadership of the former chief justice, new statewide justice initiatives including self-help centers in all trial courts; expanded representation in dependency cases; equal access funds for legal services agencies for critical civil legal needs of low income persons; interpreters in domestic violence cases; and innovations such as expedited jury trials.

The Judicial Council, in strong opposition to the bill, states that enactment of this measure would also be a significant retreat from the restructuring of the judicial branch that has occurred in the last fifteen years.

The Judicial Council writes that:

The goal of a statewide administration of justice was to bring uniformity in administrative rules and processes, avoid waste, create transparency in financial accountability, establish uniform performance and education and training standards, and ensure equal access to justice for all Californians, while at the same time recognizing the authority and responsibility of superior courts to manage their day-to-day operations and provide for a decentralized system of trial court management.

AB 1208 moves in the opposite direction. In fact, AB 1208 deletes provisions of the Government Code which spell out the responsibility of the Judicial Council to adopt a budget and allocate funding in a manner that best assures the courts' ability to carry out their functions, promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost saving measures in court operations, in order to guarantee equal access to the courts? **Finally, by striking references** to the goals that are to inform council decisions on allocating funding, the bill **appears to seek to dismantle** the goals of a statewide judicial branch, instead **making the paramount consideration each court's individual needs** and interests, **without regard to uniformity and consistency** for the users of the court system, and **seeking to ensure equal access to justice statewide.**

This is **exacerbated** by the amendments which eliminate the ability of the Judicial Council to direct increased allocations to, or mitigate the impact of budget reductions to under-resourced courts or courts with fiscal emergencies (accomplished by the bill requiring that the amount allocated to each trial court be equal to the pro rata share of the adjusted base budget of the prior fiscal year).

CCMS :

As noted above, a major fuel for concern among some trial courts and many judicial officers across the state **regarding prior governance** practices by the AOC and Judicial Council unquestionably has involved serious problems surrounding the Judicial Branch's implementation of the Court Case Management System (CCMS). According to AOC records, when the state assumed responsibility for funding the trial courts in 1998, more than 130 variations of 70 independently operated systems were used in California's trial courts, having been developed by counties, courts, and private commercial vendors. Thus the goal of the CCMS system was to replace the many incompatible existing systems trial courts currently have in use with a single statewide computer system.

In the recent **painful climate of employee furloughs and severe budget cutbacks** across trial courts in California, proponents of the bill repeatedly have pointed to what **they call** the "boondoggle" of \$1.9 to \$3 billion now anticipated to be spent developing CCMS. On February 8, 2011, the California State Auditor released an **unusually scathing audit report** of CCMS.

Amongst the key findings in the Auditor's report: 1) The AOC inadequately planned the project since 2003, including over the course of seven years, the AOC entered into 102 contract amendments and increased the cost of the contract from \$33 million to \$310 million; 2) The AOC has consistently failed to develop accurate cost estimates or timelines on the project, and annual reports to the Legislature did not provide complete cost information. The estimated date for complete deployment has been pushed back by seven years; 3) The majority of the courts believe their current case management systems will serve them for the foreseeable future and users of interim systems expressed reservations about using CCMS; and, 4) The AOC's attempt at independent oversight came late in the life of the project, and the AOC did not adequately address significant concerns raised by the consultant providing the oversight and thus, **the project may have** future quality issues.

The Auditor made extensive and broad recommendations to the AOC, including that it take steps to fully understand and address the trial courts' concerns as implementation moves forward and retain an independent consultant to **review CCMS before deployment to determine if there are quality issues and problems**. The **AOC belatedly agreed to implement all** of the Auditor's recommendations, though the bill's proponents repeatedly criticize what they contend was an unreasonable length of time for top AOC management to accept responsibility for missteps and to take needed remedial actions.

Proponents of this measure agree that as currently drafted, the bill would effectively **give a very small combination of trial courts in California a "veto"** over the further development of a statewide court computer system, or any interconnected financial accounting system generally, if the goal of the system is a statewide approach ultimately connecting all 58 state trial courts.

Opponents point to the analysis of the Appropriations Committee, which states in this regard that "Given the inherent uncertainty in budgeting for IT projects in particular, the **budgeting restrictions in this bill could be particularly problematic, as the need for additional resources subsequent to budget enactment would require concurrence of two-thirds of the trial courts on a proportionate basis.**"