

# Legal Programs Fare Well in State Budget

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SACRAMENTO — The state's public safety and legal programs — especially a bulging prison system — received major budgetary infusions in Gov. George Deukmejian's proposed \$44.3-billion 1988-89 state budget.

The budget, unveiled Thursday, contains proposals that would more than double the funds available for state correctional agencies since Deukmejian took office in 1982.

It includes several Judicial Council recommended increases, including \$20 million for the Trial Court Improvement Fund to improve court efficiency and \$4.5 million for 11 new appellate court judgeships. Judicial Council recommendations don't necessarily reflect the governor's budget priorities.

The 1988-89 budget — which now goes to the Legislature for the annual months-long budget battles — also as-

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**GEORGE DEUKMEJIAN:** The governor's budget contains proposals that would more than double the funds available for state correctional agencies when he took office in 1982.

sumes the net cost to the state of the trial court system, providing \$370 million for that purpose.

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# Budget Would Double Funds For Corrections

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Continuing its "vigorous prison expansion program," which has seen construction to accommodate nearly 17,000 new prison inmates since 1984, the administration proposed the addition of another 10,000 new prison beds for completion by 1991. The 1988-89 state corrections budget totals \$1.66 billion, including an additional \$145.8 million for 2,245 new prison personnel and \$25.7 million for 154 new parole staff.

Even with the new construction, however, the overcrowded state prison system — currently housing nearly 67,000 inmates at more than 1½ times its capacity — will continue to be overcrowded. The inmate population, which was 26,768 in 1981 — just before Deukmejian took office — is expected to increase to 80,975 in 1989.

The attorney general's office, which Deukmejian headed before being elected governor, received several budgetary additions, including \$7.5 million for 29 additional attorneys and 19 legal analysts to handle the increased workload in the civil, criminal and public rights law programs.

Other highlights of the proposed budget for public safety and justice-related programs include:

- The California Youth Authority, which is expected to house 9,116 youthful offenders by June, 30, 1988 and 9,902 in 1991-92, will be at 1½ times its capacity by June 30, 1989. It received \$385.7 million in the Governor's budget, including \$3.7 million to improve security at all institutions. The proposed budget is an increase of \$20.8 million over 1987-88.

• The attorney general's office received a total proposed appropriation for 1988-89 of \$236.6 million to fund 3,589 staff, "to implement new programs, expand existing programs and meet workload increases," for an increase of \$6.1 million over 1987-88 and a \$114 million increase over 1982-83, when both the Republican governor and Democratic Attorney General John Van de Kamp took office.

The proposed figure includes \$130.5 million for law enforcement programs and \$106.1 million for legal programs in the attorney general's office.

• The attorney general's proposed budget includes \$1 million and eight staff for the California Criminalistics Institute, which was established by Van de Kamp in 1986 to provide training in current forensics techniques and to evaluate new technological breakthroughs in criminal identification, including so-called DNA "typing."

• An additional \$979,000 and 16 new staff were included in the attorney general's budget to continue support of the Nursing Home Patient Abuse Program established last year in the Bureau of Medi-Cal Fraud to investigate and prosecute complaints of abuse, neglect and discriminatory treatment of patients in health care facilities that receive state Medi-Cal payments.

• \$2.9 billion is proposed for continuing upgrades of the highly successful computerized fingerprint program, called CAL-ID (California Automated Identification System), which maintains computerized state fingerprint files for access by local law enforcement. An additional \$420,000 is proposed for the CAL-ID/Remote Access Network terminals which allow each county or region to access the Justice Department's central fingerprint data base.

• \$20 million for the Trial Court Improvement Fund to be disbursed by the Judicial Council for grants aimed at improving court management, case processing and speedy trials. Local trial courts may use these funds for equipment, personnel, education, demonstration projects and other programs to improve trial court operations.

• \$4.5 million and 48 positions to establish 11 new appellate court judgeships.

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"Basically, bond issues have dropped from \$200 billion in 1986 to less than \$100 billion," he says, "and a lot of underwriters are chasing the same deals. We're going to see some bond attorneys, particularly the younger ones, let go or reassigned."

Over the last 20 years, there has been an explosion in the work of bond counsel. The Chicago-based National Association of Bond Lawyers was formed in 1979, and it now has nearly 3,000 members and a representative in Washington, D.C. More than 6,000 lawyers are listed in the "Bond Buyer's Directory of Municipal Bond Dealers," also known as the "Red Book," the industry bible from which states and municipalities select bond professionals.

State Assembly Speaker Willie Brown, D-San Francisco, is now listed in the Red Book, prompting some observers to speculate that he may be planning to snare a chunk of state and local bond business if and when he walks away from the Legislature.

Brown's firm has been listed in the Red Book since 1985.

The speaker's press secretary, Susan Jetton, rejects criticism of Brown's potential role as a bond counsel.

"He has done bond counsel work, but never for a public sale," she says. "He was asked recently if he handled bonds for the state, and he responded that he did not feel he was competent to do that."

The deputy attorney general indicates a turning point in the field. "The real proliferation occurred when they started issuing bonds for different activities than state work" — the conduit bonds, Wiesner says. That was made possible by a 1970 amendment to the state Constitution that paved the way for the use of tax-exempt municipal bonds to finance public-use facilities operated by private firms.

The expanded power of the state treasurer stems partly from the plethora of state financing authorities — from the Pollution Control Financing Authority to the Health Facilities Authority — that sprang up in the last two decades to arrange the conduit revenue bonds.

The treasurer either sits on or designates an appointee to those authorities, which wield enormous power over the professionals who win the business.

To be included in the Red Book and thus to qualify to be selected, a firm must only have issued a single bond counsel opinion in the previous two years.

A bill by Senate Majority Leader Barry Keene, D-Benicia, to require competitive bidding is languishing while the Lungren nomination is debated.

Introduced before the Lungren nomination was announced, the measure, SB 1731, nonetheless is regarded in some circles as an effort by the Democratic majority to restrict the power of the new treasurer, who presumably will be a Republican.

"Frankly, it's poor public policy," says Assistant State Treasurer Cramer. "It takes away the flexibility to go competitive or negotiated. It would have us at a disadvantage. It sounds good. We bid for pencils and we bid for typewriters, so why don't we bid for bonds? But you can't bid for bonds the way you bid for pencils. It's not in the best interest of the people of California."

A comment on the bill by investment banker Kidder-Peabody & Co. Inc. says "few easy rules exist with respect to deciding whether to issue a bond through competitive or negotiated sale."

The investment banker says it generally is appropriate to use competitive bidding for general obligation bond issues that are not part of a continuing financing program. Negotiated underwritings are more appropriate with revenue bonds or a large borrowing program.

"It is important, however, that issuers and their financial advisers have the flexibility to determine which means they wish to utilize," the analysis says.

Keene, a critic of the Lungren nomination, clearly is not pushing the measure. It appears to some that the bill is merely a Democratic bargaining tool in the

# NEW TREASURER IS KEY TO BOND FIRMS' PLANS

## MUNICIPAL BOND ATTORNEYS IN CALIFORNIA

Alexander, Millner & McGee  
Oakland, Los Angeles, San Francisco

James Warren Beebe, Law Corp.  
Los Angeles

Behrens & Viau  
Fresno

Best, Best & Krieger  
Riverside

Bowie, Arneson, Kadi & Dixon  
Newport Beach

Brabeck, Phleger & Harrison  
Los Angeles, Palo Alto, San Francisco

Brown & Wood  
Los Angeles, San Francisco

Brown & Diven  
San Diego

Willie L. Brown Jr., A Professional Corp.  
San Francisco

Buchhalter, Nemer, Fields & Younger  
Los Angeles, Newport Beach, San Francisco, San Jose

Burke, Robinson & Pearson  
Los Angeles

Camfield & Christopher  
Los Angeles

Carismith, Wichman, Case, Mukai & Ichiki  
Los Angeles

Donovan, Leisure, Newton & Irvine  
Los Angeles

Feldman, Waldman & Kline  
Los Angeles, San Francisco, Stockton

Gaston & Snow  
San Francisco

Robert M. Haight  
Scotts Valley

Richard H. Hargrove, Attorney at Law  
Fresno

Harrison, Taylor & Bazile  
Oakland

Heiler, Ehrman, White & McAuliffe  
Palo Alto, San Francisco

Jennings, Engstrand & Henriksen  
Los Angeles, San Diego

Jones, Day, Reavis & Pogue  
Irvine, Los Angeles

Jones, Hall, Hill & White  
San Francisco

Kindel & Anderson  
Los Angeles

G.A. Laster, Attorney at Law  
San Mateo

Latham & Watkins  
Los Angeles, Newport Beach, San Diego

LaBoeuf, Lamb, Leiby & MacRae  
Los Angeles, San Francisco

Lewis, White, Clay, Mallory, Brown-Curtis & Mallory  
Los Angeles

Manatt, Phelps, Rothenberg, Tunney & Phillips  
Los Angeles

Mayer, Brown & Platt  
Los Angeles

Morgan, Lewis & Bockius  
Los Angeles

Morrison & Foerster  
Los Angeles, San Francisco

Mudge, Rose, Guthrie, Alexander & Ferdon  
Los Angeles

Law Office of Eugene A. Nazarek  
Irvine

Neumiller & Beardlee  
Stockton

Nossaman, Guthner, Knox & Elliott  
Los Angeles

Law Offices of Ronald E. Null  
Rancho Santa Fe

O'Malley & Myers  
Los Angeles, Newport Beach

Orrick, Herrington & Sulcliffe  
Los Angeles, Sacramento, San Francisco

Pepper, Hamilton & Scheetz  
Los Angeles

Pelti & Martin  
Los Angeles, San Francisco

Pillsbury, Madison & Sutro  
Los Angeles, San Francisco

Richards, Watson & Gershon  
Los Angeles

Law Offices of Harold E. Rogers Jr.  
San Mateo

Rogers & Wells  
Los Angeles

Rosen, Wachtell & Gilbert  
Los Angeles, San Francisco

Rutan & Tucker  
Costa Mesa

Sabo & Deitsch, A Professional Corp.  
Palo Alto, Woodland Hills

Seyfarth, Shaw, Fairweather & Geraldson  
Los Angeles

Sidley & Austin  
Los Angeles

Stradling, Yocca, Carlson & Rauth  
Newport Beach

Stroock & Stroock & Lavan  
Los Angeles

Sturges, Mess, Brunzell & Sperry  
Emeryville

Weintraub, Genshela, Hardy, Erich & Brown  
Sacramento

White & Case  
Los Angeles

Wilson, Morton & Adams  
San Mateo

Wood, Lucksinger & Epstein  
Los Angeles

SOURCE: BOND BUYER'S DIRECTORY OF MUNICIPAL BOND DEALERS

denies.

"It was intended as a good government bill to clear up the problem of favoritism in choosing bond underwriters," says

Richard Damm, the Senate Office of Research consultant working on the bill for Keene. Although bond counsel is not affected in the bill as it is currently worded, Damm says an amendment is expected to be added to include counsel in the competitive bidding requirements.

"There are two types of people in the bond community — those who have gotten a lot of business from the treasurer's office, and those who have been totally shut out, for reasons ranging from political to personal," Damm says. "Those people who have been shut out in the past would favor it."

Investor comfort is a major factor in the bond law business — and in fact the *raison d'être* for the involvement of private bond counsel in the government-funded process.

"They want absolute certainty," says Deputy Attorney General Wiesner, "and that's the role of bond counsel and the attorney general. For general obligation bonds, the attorney general could do it, but he and the state are better served by

otherwise have little control over the process. On state revenue bonds, it's probably a fair arrangement in most cases."

The use of private bond counsel by government agencies originated in the 19th century, says Orrick's Feyer. "Many investors found themselves unpaid when they attempted to collect on their debt, and courts found that the issuer had violated some rules," he says. "Investors took a loss, and as a result the investment community began to demand" an independent analysis by a private bond counsel.

"They key aspect is that they are independent, and they render an opinion," Feyer says. "It has to be a firm that is acceptable to the investment community, which is part of what the Red Book is all about."

Mistakes are greeted with little tolerance.

The standard for bond opinions is unique. The opinion must say without qualification that the bond issue meets all legal requirements.

"We have to feel absolutely certain," Feyer says. "The standard of that opinion is so high that you are under a great deal of pressure."

"We have to base our opinion on existing language and case law, and sometimes we are proven wrong," Feyer says. "But there have not been very many [mistakes], and I think that's a credit to the standards that the bond counsel community adheres to."

The case that sends shivers up the collective spine of the bond community is the notorious default — the largest municipal bond default in the nation's history — of Washington (State) Public Power Supply System (WPPSS) bonds, in which the system defaulted on \$2.25 billion in bonds in 1983. Suits were filed against virtually every participant in the bond sale, including the bond counsel, and litigation is expected to continue for years. Some 78,000 individual and institutional investors were affected by the default.

Feyer says the only major default in California in recent history involved the construction of a tramway in Palm Springs in the late 1960s. Approved on the basis of projected tram revenues that never materialized, Feyer says the bond failed on the basis of economic, not legal, conditions.

And bond lawyers say the infamous WPPSS (aply referred to as "Whoops" in the bond community) default was unique in that it occurred after a Washington State Supreme Court ruling that the power plant "participation" contracts involving many smaller companies were invalid.

"Bond lawyers are paid to anticipate the worst scenario," one bond lawyer, who asked not to be named, says about the WPPSS case. "And they are being sued because they didn't."

If the governor and the Legislature can agree on how much bond indebtedness Californians should accept in 1988, bond counsel and others in the bond community can expect to play a major role.

The arcane, high-stakes bond world reluctantly has come into public view in the battle over Lungren's confirmation and in the governor's plans to issue at least \$4.7 billion in bonds for the June and November ballots — a record for a single year's new bond debt.

The proposal is an abrupt turnaround for the Republican governor, who in 1984 vetoed bond issues for school construction and veterans' housing loans. At the time, Deukmejian said there were too many bond issues on the ballot. Now, he says California's healthy fiscal condition and AAA bond rating — combined with a low debt level — make bonds more attractive for financing long-term facilities.

Critics say he is simply trying to avoid an initiative-imposed spending limitation and to avoid increasing taxes. Bond issues are not affected by the spending limitation because they require separate voter approval.

The governor's proposed budget includes \$3.9 billion in bonds — including \$1 billion for highways and \$1.6 billion for schools. He also suggests that bonds be used to build more prisons, at a price tag of at least \$850 million. Legislators have introduced at least 33 bills to place bonds totaling more than \$13.7 billion on the ballot in June or November. In addition, an initiative already on the June ballot would issue \$776 million in bonds to purchase state and local park land.

Strongest objections have arisen to the proposal to use bonds to finance roads. "If we want to own up to the gridlock problem, we should face it and pay for it," an angry Sen. Alfred Alquist, D-San Jose, said at a Joint Legislative Budget Committee hearing last month. "I don't want my grandchildren to be saddled with this debt."

Alquist and other legislators express concern that California would be burdening its taxpayers, present and future.

A report by the state legislative analyst concludes that California's debt is not excessive in comparison to other states, and that the state can handle additional debt. And, as a result of Unruh's policies as treasurer, investment bankers and state officials say California paper is popular on Wall Street.

"There is a real demand for quality paper," says investment banker and former Democratic legislator Richard Robinson. "Because of uncertainty in the equity market and the devalued dollar, there is a lot of cash out there to buy California paper."