

Try, Try Again on Judges' Pension Shortfall



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JUDGE CANDACE COOPER: "Obviously, it needs to be funded. The question is, 'How?'"

BY SIGRID BATHEN
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SACRAMENTO — Among many unresolved fiscal issues confronting legislators when they return to the Capitol for the start of the 1989 legislative session is the annually vexing matter of the "unfunded liability" of California's judicial retirement system.

Currently estimated at between \$600 million and \$700 million, the shortfall has been remedied each legislative session with a temporary bailout, which pension experts say fail to address the long-term lack of adequate funding. The system is unfunded to the extent that account balances cannot cover vested benefits owed to sitting and retired judges. For the 1987-88 fiscal year, the Legislature kicked in \$16.7 million.

And, the experts add, there is little likelihood that the Legislature and the governor — long unable to agree on a

solution — will reach any decisive compromise this session, although a legislative mandate requires that the system be made solvent by 2002.

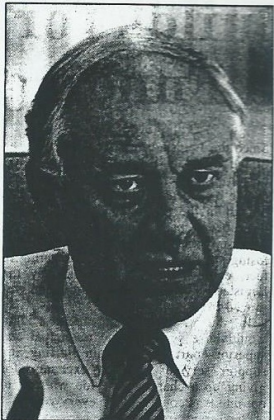
"It's a major problem that is not the fault of any judge who is sitting," says Los Angeles County Superior Court Judge Candace Cooper, president of the California Judges Association. "The system has grown beyond any original expectations.

"Obviously, it needs to be funded," she said. "The question is, 'How?'"

Loren V. Smith, a Sacramento lawyer who was counsel and later general manager for the huge California State Employees Association before becoming the judges association lobbyist in 1975, says the association repeatedly — and unsuccessfully — has pressed for a legislative solution to the shortfall.

Association efforts, combined with opposition from Gov. George Deuk-

SEE JUDGES PAGE 13



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LOBBYIST LOREN SMITH: "The solution lies with the Legislature and the governor."



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JUDGE GENE McDONALD: A two-tiered system would "make it more difficult to attract those highly qualified lawyers."

Judges Seek Solution For Pension Shortfall

CONTINUED FROM PAGE 1

mejian, blocked a proposal backed by the Republican caucus to impose a two-tiered judicial retirement system — with new judges receiving a lesser retirement package than current judges. The plan was approved by the Assembly, but killed in the last Senate session.

"We've made our own alternative proposals to the Legislature for funding the system, but they've been rejected," Smith says. "Right now it's so big and growing that it's beginning to look like the state teachers retirement system, which is \$11 billion or \$12 billion in the red. And nobody wants to talk about that sleeping giant either."

Under the current system, the judge and the state each contribute 8 percent of the judge's salary to the fund. Ideally, the contributions plus any earnings on that money would cover the pension upon retirement. But the contributions and earnings have not provided enough to fund the annuity.

The association proposed legislation in 1985 to fund the system with an annual \$20 million contribution from the state's general fund for the next 40 years, which "the actuaries think would take care of it," Smith said.

Sponsored by Sen. Wadie Deddeh, D-Chula Vista, that proposal was opposed by the Deukmejian administration, through the state Department of Finance. (Technically, in the jargon of management-labor disputes, that department is the judges' "employer.")

Smith said that without administration approval, the plan stood little chance of making it through the Legislature.

Despite its Republican-caucus backing, Deukmejian also opposed the two-tiered retirement system bill by former Assemblyman Wayne Grisham, R-Norwalk, this past session. The measure was proposed by an insurance company, Variable Annuity Life Insurance Co., which the judges association said also proposed the annuity plan for the second tier.

Alarmed by the bill's largely unopposed progress through the Assembly, the association unleashed a barrage of opposition in the Senate. Lisa Lehman, a legislative aide to Grisham, said the Assembly passed the bill 77-0, but was referred for "interim study" — a veritable death sentence — by the Senate Public Employees and Retirement Committee, in large measure due the judges associations' intense opposition.

"It was sent to interim study, and the Legislature did not study it," Smith said.

San Mateo Superior Court Judge Gene McDonald, outgoing president of the association, told the committee the plan would "make it more difficult to attract those highly qualified lawyers who sacrifice high salaries for a secure retirement." He voiced particular concern

about the dearth of judicial appointment applicants with backgrounds in civil litigation.

"The job simply does not pay enough to compete," McDonald told the committee. "But it does, through the retirement system, offer something a civil litigation practice does not — peace of mind."

Tom Beermann, a spokesman for Deukmejian, said the Grisham bill was opposed because "there were some concerns that the two-tiered retirement system would have hurt the ability to recruit a broad range of judges, [especially] the highly paid private practitioners. And, the benefits received in retirement were not clearly defined."

Current judicial appointments already are dominated by public-sector lawyers, and judges fear that recruitment from the private sector would be further jeopardized by a two-tiered retirement system.

"One thing I intend to push against at any point is treating judges differently who are doing the same work," says Cooper. "That is detrimental and I can't imagine any employee group favoring that kind of treatment."

Cooper said one of the attractive points of a judgeship is that the wage-benefit package is "decent — and by decent I don't mean luxurious." She said judicial salaries are lagging behind those of many other private- and some public-sector attorneys.

"Salaries, combined with [changes in] retirement will impair recruiting," she said. "It will certainly preclude getting the high-priced private practitioners."

The association, which also favors a boost in judicial salaries, is conducting a salary study and has appointed a retirement task force to come up with recommendations to fund the system — although Smith insists the responsibility for funding the retirement system should rest with the employer.

"Whenever have the employees of any organization — whether it be corporate or governmental — had to come up with a solution to their own retirement system?" he asks angrily. "The employees of General Motors don't have to fund their own retirement system."

"The solution lies with the Legislature and the governor," he says. "There has to be money from the general fund."

Although the Grisham bill was defeated in the Senate last session, association members say an alternative must be found to avoid a reprise of the two-tier proposal in the Legislature this session. In a recent issue of "California Courts Commentary," the official association publication concluded that "the pressure is increasing on judges to propose a tolerable solution, or have a less palatable one imposed upon them."