

Senate Bill No. _____ ; Assembly Bill No. _____

An Act to Repeal Section 2 of SBX 2 11 (Cal. Govt. Code Section 68220), to Maintain Sections 3 and 4 of SBX 2 11 (Cal. Govt. Code Sections 68221 and 68222), to Amend Section 5 of SBX 2 11, to Amend Section 6 of SBX 2 11 and to Maintain Section 7 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009

Legislative Digest

SBX 2 11 was enacted in response to the decision of *Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 640, (4th Appellate District, Div. One, October, 2008) Rev. Denied 12/23/2008 (Sturgeon I). Sturgeon I held that the county payments to Superior Court judges were “compensation” and violated Article 6, Section 19 of the California Constitution which states that the Legislature shall “prescribe” the compensation of the judges.

SBX 2 11 was passed in the State Assembly with 69 ayes, 3 noes and 8 abstentions. SBX 2 11 was passed in the State Senate with 32 ayes, 6 noes and 1 abstention, i.e., over 2/3 in each chamber.

The “Act” recognizes the vote passing SBX 2 11 and in particular Section 5 of SBX 2 11 by 69 ayes, 3 noes and 8 abstentions in the State Assembly and 32 ayes, 6 noes and 1 abstention in the State Senate.

The “Act” fulfills the overwhelmingly 2/3 vote demonstrating the will of the State Assembly to impeach and the will State Senate to effectively convict and enter judgment by implementing the effective results of the impeachment, conviction and entry of judgment as the consideration of the retroactive immunity from criminal prosecution set forth in Section 5 of SBX 2 11.

The “Act” recognizes that “retroactive immunity” from criminal prosecution cannot be “legislated” without in turn “legislating” the same results which would occur under California Constitution Article 4, Section 18 (a) and (b), resultant criminal prosecutions, California Constitution Article 6, Section 20, and Government Code Sections 75103.2 and 75526.

SBX 2 11 Sections 1 and 2 stated:

“SECTION 1.

The Legislature finds and declares all of the following:

(a)

It is the intent of the Legislature to address the decision of the Court of Appeal in *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, regarding county-provided benefits for judges.

(b)

These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the county’s maintenance of effort obligations if counties elected to provide

benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

(c)

Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding supplemental benefits provided by the counties or the court.

SEC. 2.

Section 68220 is added to the Government Code, to read:

68220.

(a)

Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b)

A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice.

The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.”

Sections 1 and 2 provided that county payments to “judges of a court” sitting as of July 1, 2008 could receive county payments existing as July 1, 2008 during their “current” term. It also authorized but did not mandate that counties may pay all judges in the county.

Sections 1 and 2 of SBX 2 11, enacted as California Government Code Section 68220 were held to be only a “temporary solution” to the problem of the illegality of the county payments in the decision of *Sturgeon v. County of Los Angeles*, 191 Cal.App.4th 344 (4th Appellate District, Div. One, December 10, 2010), Rev. Denied 3/16/11 (Sturgeon II).

Pursuant to California Constitution Article 6, Section 16 (b), Superior Court judges are elected for six year terms at general elections. As of the present time, terms of almost all judges, if not all, who were “current” as of May 21, 2009, the effective date of SBX 2 11, have expired. Thus under the specific language of Sections 1 and 2 of SBX 2 11 enacted as California Govt. Code Section 68220, literally no judge is presently required to receive county payments, rendering the mandatory wording of paying “benefits” to “current” judges under Sections 1 and 2 of SBX 2 11(Cal. Govt. Code Section 68220) presently moot and leaving only the county’s discretion to make payments which have been adjudged to be illegal in the decision of *Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 640, (4th Appellate District, Div. One, October, 2008) Rev. Denied 12/23/2008 (Sturgeon I).

To remove any issue of whether Sections 1 and 2 were intended to “prescribe” county payments to any judges sitting as “current” judges elected after July 1, 2008, and whether counties are

“prescribed” to pay “judicial benefits” to judges elected after July 1, 2008, Section 2 of SBX 2 11, now Cal. Govt. Code Section 68220 must be repealed.

Sturgeon I did not address the criminality of the county payments. However, Section 5 of SBX 2 11 did address the criminality of the county payments by giving immunity from criminal prosecution.

Section 5 stated:

“Section 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or shall be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.”

Section 5 of SBX 2 11 recognized violations of criminal law and gave retroactive immunity from criminal prosecution to a “governmental entity, or officer or employee of a governmental entity”, in particular judges. The overwhelming majority of votes passing SBX 2 11 in both the Assembly and the Senate, SBX 2 11 effectively impeached, convicted and entered judgment for “misconduct in office” under California Constitution Article 4, Section 18 (a) and (b) against all judges who received retroactive immunity from criminal prosecution under Section 5 of SBX 2 11, but removed the penalty of being “subject to criminal punishment according to law.”

California Constitution Article 4, Section 18 (a) and (b) states:

“SEC. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.
(b) State officers elected on a statewide basis, members of the State Board of Equalization, and **judges of state courts are subject to impeachment for misconduct in office.** Judgment may extend only to removal from office and disqualification to hold any office under the State, **but the person convicted or acquitted remains subject to criminal punishment according to law.**” (Emphasis added.)

Section 5 did not extend to protecting the public interest, the due administration of justice and the integrity of the judiciary and county government by setting forth the protections that the public would receive if the prosecution occurred and the convictions resulted.

The result was that county officers and employees who authorized and gave criminal payments to the judges, and the judges who received the county criminal payments, were given retroactive immunity from criminal prosecution with no consideration to the existing law which would have resulted in conviction and removal from office and prohibition from holding any other office

under Cal. Penal Code Section 98 and the District Attorney being required to prosecute the judge to recover all illegal payments plus 20% under Cal. Govt. Code Section 26525.

The Section 5 immunity did not extend to the disqualification of the judges and justices who received the illegal payments from presiding over cases in which the counties who paid them were parties or witnesses before them, or their disqualification for their violation of Cal. Penal Code Sections 7(6), 92, 93, 94, 96.5, and 182(a) (5) amongst others, U.S.C. Sections 4, 241, 1513, 1846, and 1960 et seq., amongst others, California Code of Civil Procedure, Section 170.1(a)(6)(A)(iii) and California Code of Judicial Ethics, Canons 2A, 3E(1) and (2), 4D(1) and 6A.

This resulted in judges and justices sitting on cases in which the county which gave them a criminal payment: (1) appears before them as a party; (2) appears as a witness; or (3) has an interest in child custody and family law cases, class action cases, conservator and elder cases, constitutional cases, contract cases, criminal cases, death, estate, and probate cases, eminent domain cases, environmental cases, personal injury cases, property cases, regulation cases, tax cases, traffic cases, zoning cases, amongst others.

Due to judges and justices presiding over cases in which counties which gave them criminal payments were parties before the judge or justice and the resulting violations of: (1) U.S. and California Constitutions and laws; (2) the due administration of justice; and (3) the integrity of the judiciary, the public trust has been breached, requiring legislative action to amend Section 5 of SBX 2 11 relating to the immunity granted therein and the lack of immunity for judges elected after November, 2006, the last general election prior to July 1, 2008 and the 2008 Sturgeon decision.

By violating the U.S. and California Constitutions and laws, each of the judges and justices who received county payments was subject to impeachment and conviction under Article 4, Section 18 (a) and (b) of the California Constitution for “misconduct in office” resulting in their “removal from office and disqualification to hold any office under the State”. Such impeachment, conviction, entry of judgment and removal from office also disqualified them from receiving any retirement benefits other than their own contributions under the California Constitution Article 6, Section 20 and Government Code Sections 75103.2 and 75526.

California Constitution Article 6, Section 20 and Government Code Sections 75103.2 and 75526 state as follows:

“CALIFORNIA CONSTITUTION
ARTICLE 6 JUDICIAL

SEC. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability.”

“California Government Code

75103.2. The Legislature reserves the right to reduce any benefits applicable to any person who becomes a judge on and after January 1,

1980.

75526. A judge who pleads guilty or no contest **or is found guilty of a crime committed while holding judicial office that is punishable as a felony under California or federal law and** which either involves moral turpitude under that law **or was committed in the course and scope of performing the judge's duties, and the conviction becomes final shall not receive any benefits from the system, except that the amount of his or her contributions to the system shall be paid to him or her by the system.**

Section 5 of SBX 2 11 legislated the “guilt” and the “finality of the conviction” of the judges through the overwhelming passage in both houses and granted them retroactive immunity from “criminal prosecution” despite California Constitution Article 4 Section 18 (b) which does not provide such immunity in the situation of “misconduct in office”.

Section 6 of SBX 2 11 required the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies. Such report showed that approximately 90% of the judges received illegal payments from approximately thirty counties and courts as of 2008. No subsequent study occurred. It is necessary to annually update the 2009 report to such committees and the public on the integrity of the California judicial system and judiciary.

Section 7 of SBX 2 11 was a standard severability clause and is not amended or repealed.

The amendment solves this problem: (1) by repealing Section 2 of SBX 2 11 enacted as California Govt. Code Section 68200; (2) by not amending Sections 3 and 4; (3) by adding language reflecting existing law to the Section 5 immunity and removing any judge, justice, county supervisor, or other government official or employee who received immunity under Section 5, on the effective date of the amendment and removing any State or County paid retirement contributions under the Judges Retirement Law and the Judges Retirement System II to any retired judge collecting such benefits under either such fund; (4) by clarifying that immunity does not exist for any judge who presently receives payments from counties or courts; and (5) by amending Section 6 to require the Judicial Council to make annual reports to the State Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary

Fiscal Impact:

The Fiscal Impact of the amendment will be to save the General Fund approximately \$20 million per year assuming a State contribution of approximately \$100,000.00 per judge per year on average for approximately 2,000 active and retired judges who received retroactive immunity under Section 5 of SBX 2 11, and approximately \$450 million over the ensuing twenty five years over which these judges and their families would be collecting retirement funds from the Judges Retirement Systems I and II.

The people of the State of California do enact as follows:

Section 1:

- a. Sections 1 and 2 of SBX 2 11, enacted as California Government Code Section 68220 provided that county payments to current judges sitting as of July 1, 2008 could receive county payments existing as July 1, 2008 during their current term. It also authorized but did not mandate that counties may pay all judges in the county;
- b. Sections 1 and 2 of SBX 2 11, enacted as Government Code Section 68220 were held to be only a “temporary solution” to the problem of the illegality of the county payments in the decision of *Sturgeon v. County of Los Angeles*, 191 Cal.App.4th 344 (4th Appellate District, Div. One, December 10, 2010), Rev. Denied 3/16/11 (Sturgeon II);
- c. Pursuant to California Constitution Article 6, Section 16 (b), Superior Court judges are elected for six year terms at a general election. As of the present time, the terms of all Superior Court judges who received county payments as of July 1, 2008, and who were “current” as of May 21, 2009, the effective date of SBX 2 11, have expired. Thus under the specific language of Sections 1 and 2 of SBX 2 11 enacted as California Govt. Code Section 68220, literally no judge is presently required to receive county payments, rendering the mandatory wording of paying “benefits” to “current” judges under Sections 1 and 2 of SBX 2 11 enacted as California Govt. Code Section 68220, presently moot and leaving only the county’s discretion to make payments which have been adjudged to be illegal in *Sturgeon I*;
- d. Sections 3 and 4 of SBX 2 11 do not need to be amended. Such Sections state:

“SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity state wide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a)

“Benefits” and “benefit” shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b)

“Salary” and “compensation” shall have the meaning as set forth in Section 1241.”

“SEC. 4. Section 68222 is added to the Government Code. , to read:

68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.”

- e. Section 5 of SBX 2 11 addressed the criminality of the county payments by giving immunity from criminal prosecution.

Section 5 stated:

“Section 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or shall be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.”

- f. However Section 5 of SBX 2 11 did not extend to protecting the public interest, the due administration of justice and the integrity of the judiciary and county government by setting forth the protections that the public would receive if the prosecution occurred and the convictions resulted.
- g. The result was that county officers and employees who authorized and gave criminal payments to the judges, and the judges who received the county criminal payments, were given retroactive immunity from criminal prosecution with no consideration to the existing law which would have resulted in conviction and removal from office, loss of State contributions to their Retirement Funds and prohibition from holding any other office under Cal. Penal Code Section 98 and the District Attorney being required to prosecute the judge to recover all illegal payments plus 20% under Cal. Govt. Code Section 26525;
- h. The Section 5 immunity did not extend to the disqualification of the judges and justices who received the illegal payments from presiding over cases in which the counties who paid them were: (1) a party or parties in the case before them; (2) a witness or witnesses in the case before them; (3) were interested parties in outcome of the case before them;
- i. The Section 5 immunity did not extend to the disqualification of the judges and justices for their violation of Cal. Penal Code Sections 7(6), 92, 93, 94, 96.5, and 182(a) (5) amongst others, U.S.C. Sections 4, 241, 1513, 1846, and 1960 et seq., amongst others, California Code of Civil Procedure, Section 170.1(a)(6)(A)(iii) and California Code of Judicial Ethics, Canons 2A, 3E(1) and (2), 4D(1) and 6A;
- j. This resulted in judges and justices sitting on cases in which the county which gave them a criminal payment: (1) appearing before them as a party; (2) appearing before them as a witness; or (3) having an interest in: (a) administrative law cases; (b) child custody and family law cases; (c) class action cases; (d) conservatorship and elder cases; (e) constitutional law cases; (f) contract cases; (g) criminal cases; (h) death, estate, guardianship and probate cases; (i) eminent domain cases; (j) environmental cases; (k) government abuse of power cases; (l) personal injury cases; (m) property cases; (n) regulation cases; (o) tax cases; (p) traffic cases, and (q) zoning cases, amongst others;
- k. Due to judges and justices presiding over cases in which counties which gave them criminal payments were parties before the judge or justice and the resulting violations of: (1) U.S. and California Constitutions and laws; (2) the due administration of justice; and (3) the integrity of the judiciary, the public trust has been breached, requiring legislative action to amend Section 5 of SBX 2 11 relating to the immunity granted therein and the lack of immunity for judges elected after November, 2007.

1. By violating the U.S. and California Constitutions and laws, each of the judges and justices who received county payments was subject to impeachment, conviction and entry of judgment under Article 4, Section 18 (a) and (b) of the California Constitution for “misconduct in office” resulting in their “removal from office and disqualification to hold any office under the State” and loss of the State’s contribution to their Retirement Fund;
- m. Section 6 of SBX 2 11 required the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies. Such report showed that approximately 90% of the judges received illegal payments from approximately thirty counties and courts as of 2008. No subsequent study occurred. It is necessary to annually update the 2009 report to the such committees and the public on the integrity of the California judicial system and judiciary;
- n. Section 7 of SBX 2 11 was a standard severability clause and does not need to be amended;
- o. Despite the fact that the county and court payments to judges were illegal and not subject to immunity after the effective date of SBX 2 11, approximately twenty five counties and courts continue such criminal payments with over \$350 million of criminal payments having been made to California judges during the last twenty five years;
- p. These illegal and criminal payments resulted in the largest judicial scandal in history and made the California judicial system and the California judiciary one of the most corrupt in history, particularly as the illegality and corruption were recognized and approved by the granting of retroactive immunity from liability, prosecution and disciplinary action in Section 5 of SBX 2 11 with the State Assembly effectively impeaching the judges and the Senate effectively convicting them and entering judgment after enacting Section 5 of SBX 2 11;
- q. A further result of the illegal and criminal payments was and is, that all decisions, orders and judgments made by the judges and justices in cases before such judge or justice, in which the county or court which made such payment to the judge or justice, are void and null for the reason of the actions of the judicial officer and the county and or court being a “fraud upon the court”;
- r. Since: (1) Sections 1 and 2 of SBX 2 11(Cal. Govt. Code Section 68220) are expired and moot; (2) the Legislature recognized the misconduct of the judges in Section 5 of SBX 2 11 by granting retroactive immunity and effectively impeached, convicted and entered judgment against the judges who received retroactive immunity; and (3) the criminal payments from counties and courts continue as of the present day resulting in the continued corruption of the Judicial branch of the California Government, it is imperative that the legislation be enacted immediately.

Section 2

To remove any issue of whether Sections 1 and 2 were intended to “prescribe” county payments to any judges sitting as current judges elected after July 1, 2008, and the issue of whether

counties were “prescribed” to pay “judicial benefits” to judges elected after July 1, 2008, Section 2 of SBX 2 11, now Cal. Govt. Code Section 68220 is repealed in its entirety.

Section 3

Section 3 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009 codified as Government Code Section 68221 is not amended or repealed.

Section 4

Section 4 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009 codified as Government Code Section 68222 is not amended or repealed.

Section 5

Section 5 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009 is amended to now read as follows:

Section 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or shall be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law. Any elected official, including but not limited to judges and county supervisors, who is an officer or employee of a governmental entity who receives retroactive immunity from liability, prosecution, or disciplinary action pursuant to this paragraph is precluded from serving in such capacity for which the immunity is granted, or any other state or county elected, appointed or pro tem office and is precluded from receiving any State contributions to their Retirement Fund established under the Judges Retirement Law (Government Code Section 75000 et seq. or the Judges Retirement System II (Government Code Section 75500 et seq.) or any county retirement system administered by PERS or CALPERS from the effective date of this amendment. Any governmental entity, or officer or employee of a governmental entity, including but not limited to judges and county supervisors, is subject to liability, prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity as of July 1, 2008, must disclose such benefits and disqualify itself and/or themselves from any action or litigation in which the government entity is involved or engaged, from the effective date of this amendment, subject to the U.S. and California Constitutional rights against self-incrimination, at which point such rights must be asserted and the officer or employee must remove himself/herself from their position with the governmental entity until completion of their criminal trial on the payment of the benefits.

Section 6

Section 6 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009 is amended to now read as follows:

Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, and every year thereafter commencing December 31, 2013, analyzing the statewide benefits inconsistencies

Section 7

Section 7 of SBX 2 11 enacted February 20, 2009, effective May 21, 2009 is not amended or repealed.