

History of SBX 211 and AB 2960

SBX 2 11

Commencing in the mid to late 1980s California Counties and State Superior Courts began paying State Superior Court judges (Trial Court judges) payments in addition to their State Compensation. These payments were called “Supplemental or Local Judicial Benefit Payments” (payments). California Constitution, Article VI, Section 19, required Judicial State Compensation could only be set by the California Legislature. The payments were held to violate the California Constitution in *Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 630 (2008), Review Denied, 2009).

In response, the California Legislature approved and Governor Schwarzenegger signed SBX 2 11 on February 20, 2009, Effective May 20, 2009: (1) allowing the payments to continue in Section 2 and adding such as Section 68220 to the California Government Code; (2) defining the payments to include salary, compensation, benefits 401K and 457K plans in Section 3 and adding such as Section 68221 to the California Government Code; (3) stating nothing in SBX 2 11 requires the Judicial Council to pay for judicial benefits or previous benefits in Section 4 and adding such as Section 68222 to the California Government Code.

At all times, the payments violated both California and federal Criminal laws as “bribes” under California Criminal law and 18 U.S.C. Section 1346- “the intangible right to honest services” under Federal law.

SBX 2 11 addressed the California violations in Section 5 with retroactive immunity as follows:

“Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, **shall incur any**

liability or 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.” (Emphasis added.)

AB 2960

AB 2960 was an Omnibus Judicial Bill drafted by the California Assembly Judicial Committee, considered and amended by the California Senate Judicial Committee, approved by the California Legislature on September 9, 2022, and signed by Governor Newsom on September 9, 2022 to clarify the workings of the California Judicial Branch.

The Omnibus Judicial Bill encompassed non-controversial matters and did not address any substantive issues.

An Omnibus Judicial Bill comes up every two years for consideration.

How Will the “Fine Legislation” Help You

The “Fine Legislation”:

(1) Amends SBX 2 11 by establishing a California State Citizens Commission (Commission) to oversee the Judicial Branch of the California government by:

(a) Compensating the victims of judicial misconduct and/or judicial abuse of power through monetary payments of \$1-10 million for specific categories of damage cumulated for a total dollar damage determined and awarded by the Commission, paid directly to the recipient by the California Controller, who reports the victim identified “judicial officer” to the Commission on Judicial Performance on a monthly and annual basis;

The categories are:

- “(aa) \$1 million tax free per year for each year from January 1, 1985 onwards for defamation (including libel) caused by judicial misconduct or judicial abuse of power which existed or continues to exist;
- (bb) \$10 million tax free per year for each year from January 1, 1985 onwards for unlawful incarceration caused by judicial misconduct or judicial abuse of power which existed or continues to exist;
- (cc) \$10 million tax free for fraud upon the court caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (dd) \$10 million tax free for fraud caused by caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (ee) \$10 million tax free for intentional interference with contract caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (ff) \$10 million tax free for negligent interference with contract caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (gg) \$10 million tax free for intentional interference with prospective business advantage caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (hh) \$10 million tax free for negligent interference with prospective business advantage caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;
- (ii) \$10 million tax free for intentional infliction of emotional distress caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;

(jj) \$10 million tax free for negligent infliction of emotional distress caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;

(kk) \$10 million tax free for bias against self-represented litigants from January 1, 1985 onwards;

(ll) \$10 million tax free for bias against litigants with physical or mental disabilities from January 1, 1985 onwards;

(mm) \$10 million tax free for abuse against litigants over 65 years old (elder abuse) from January 1, 1985 onwards;

(nn) \$10 million tax free for any other cause of action not mentioned above caused by judicial misconduct or judicial abuse of power from January 1, 1985 onwards;

(oo) \$10 million tax free for any other unmentioned misconduct or abuse of power by the “Judicial Officer” (Referees, Commissioners, Temporary Judges, Superior Court Judges, Court of Appeal Justices and/or State Supreme Court Justices) from January 1, 1985 onwards; and

(pp) additionally for attorneys who brought cases against counties or the courts of the State of California from January 1, 1985 onwards:

(1) one third (33.33%) of damages alleged or shown in any case prior to trial dismissed by a Superior Court judge who received “supplemental or local judicial benefits” or other unlawful payment;

(2) forty percent (40%) for any case settled or dismissed prior to trial; and

(3) one half (50%) of damages awarded at trial and/or then denied or overturned by the California Supreme Court, any panel of a State Court of Appeal or Appellate Division of a Superior Court upon which a justice or judge who violated or is violating paragraph (2)(a)-(c) above was or is a member;”;

(b) The Commission on Judicial Performance is required to resolve all complaints from any source within six months of the receipt of any report, complaint, or source;

(i) with a written decision containing the reasons for the decision signed by the Commissioners; and

(ii) in the event such investigation is not completed with a signed report within the six-month period of time, the Commission on Judicial Performance shall be deprived of all State Compensation and benefits until such Report is filed and with the Commission on Judicial Performance and served upon the Controller/source/complainant;

(c) The Commission on Judicial Performance is required to make semi annual reports to the California State Auditor; and

(d) The California State Auditor is required to continually audit the Commission on Judicial Performance and to make an annual report to the California State Legislature with recommendations for legislation, if needed; and

(2) Repeals SBX 2 11 Sections 2, 3 and 4 along with Government Code Sections 68220, 68221 and 68222;

(3) Amends AB 2960 by:

(a) adding a Section to establish a twenty four (24) year term limit on all Judicial Officers, in particular, the members of the judiciary who received retroactive immunity from civil liability, criminal prosecution and disciplinary action under SBX 2 11, Section 5, thereby allowing any criminal action under 18 U.S.C. Section 1346 to continue unabated with those judicial officers and allowing both state and federal criminal actions to be brought against any subsequently appointed or elected judicial officers receiving “supplemental or local judicial benefits” from counties or courts;

(b) adding a Section precluding any Judicial Officer who received or is currently receiving “supplemental or local judicial benefits from a county or court” from holding a State elective or appointed office; and

(c) adding a Section requiring any State Superior Court Judge seeking re-election in an unopposed general election, be required to be on the General Election Ballot in a Retention Election requiring 50 plus percent of the votes cast be to retain him/her to retain the State Superior Court Judge position.

The “Fine Legislation” also contains a section of “egregious examples” of judicial misconduct or judicial abuse of power with payouts under the sections and a section showing the composition of the State Commission with responsibilities, terms and original individuals.

"AB 1756, the 2023 draft of the Omnibus Judicial Legislation which has yet to be enacted by the California Legislature does not contain any of the amendments to SBX 2 11 enacted as Government Code 68220-68222 or to be added to SBX 2 11 or the amendments to be added to AB 2960 in the "Fine Legislation".

The “Fine Legislation” may be adopted for any State with changes made unique to such State.