

# SUBCOMMITTEE NO. 5

# Agenda

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Senator Maria Elena Durazo, Chair  
Senator Shannon Grove  
Senator Dave Cortese  
Senator Josh Newman



**Thursday, February 18, 2021**  
**Upon adjournment of Senate's Full Budget Hearing**  
**State Capitol - Room 3191**

Consultant: Christopher Francis, Ph.D.

<u>Item</u>	<u>Department</u>	<u>Page</u>
<b>Discussion Items</b>		
<b>0250</b>	<b>Judicial Branch</b>	
Issue 1	Trial Court Operations Update	2
Issue 2	Continuation of Self-Help Centers in Trial Courts	4
Issue 3	Ability to Pay Expansion BCP and Trailer Bill Language	8
Issue 4	Various Maintenance and Facility Modification Proposals	11
Issue 5	Construction Fund Consolidation Trailer Bill Language	14
Issue 6	Various Capital Outlay Proposals	17
Issue 7	Design Build Authority Trailer Bill Language	21

## **Public Comment**

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## DISCUSSION ITEMS

### 0250 JUDICIAL BRANCH

#### Issue 1: Trial Court Operations Update

**Budget Overview:** The Governor’s 2021-22 budget proposes about \$4.2 billion from all state funds (General Fund and special funds) to support the operations of the judicial branch. Of this amount, \$3.1 billion (or 74 percent) will support the trial courts—an increase of \$57 million (or 1.9 percent) above the revised amount for 2020-21. Of this amount, roughly half is from the General Fund and the other half from various state special funds with revenues from various sources (such as civil filing fees, criminal penalties and fines, and county maintenance-of-effort payments).

#### 3-YEAR EXPENDITURES AND POSITIONS

		Positions			Expenditures		
		2019-20	2020-21	2021-22	2019-20*	2020-21*	2021-22*
0130	Supreme Court	148.6	153.2	153.2	\$47,960	\$49,986	\$50,026
0135	Courts of Appeal	784.1	785.3	785.3	250,762	245,231	252,784
0140	Judicial Council	699.0	701.6	714.6	670,082	677,067	784,221
0150	State Trial Court Funding	-	-	-	3,231,159	3,069,145	3,125,931
0155	Habeas Corpus Resource Center	78.3	78.1	78.1	16,080	16,699	16,992
0170	Offset from Local Property Tax Revenue	-	-	-	-93,339	-103,874	-103,874
<b>TOTALS, POSITIONS AND EXPENDITURES (All Programs)</b>		<b>1,710.0</b>	<b>1,718.2</b>	<b>1,731.2</b>	<b>\$4,122,704</b>	<b>\$3,954,254</b>	<b>\$4,126,080</b>

\*Dollars in thousands

The Judicial Branch is responsible for the interpretation of law, the protection of individual rights, the orderly settlement of all legal disputes, and the adjudication of accusations of legal violations. The branch consists of statewide courts (the Supreme Court and Courts of Appeal), trial courts in each of the state’s 58 counties, and statewide entities of the branch (the Judicial Council, Judicial Branch Facility Program, and the Habeas Corpus Resource Center). The branch receives revenue from several funding sources, including the state General Fund, civil filing fees, criminal penalties and fines, county maintenance-of-effort payments, and federal grants.

**Typical funding for Trial Court Operations.** The state’s annual budget typically designates the total amount of funding appropriated for trial court operations. While a portion of this funding must be used for specific programs or purposes (such as court interpreters), a significant portion of the funding is provided with little to no restrictions. The Judicial Council is then responsible for allocating funding to individual trial courts. Upon receiving its allocation, each individual trial court has significant flexibility in determining how to use its share of funding. This can result in significant differences in the programs or services offered and the levels of service provided across trial courts.

Funding increases for trial court operations have generally been provided through the approval of (1) discretionary (or unallocated) funding increases, (2) budget requests for specific purposes (such as increased funding for a new program), and (3) funding for increased trial court health benefit and retirement costs.

***COVID-19 Impacts to Trial Court Operations.*** The Judicial Branch has had to radically change its actions to protect the health of court staff, stakeholders, and members of the public, as well as to address the impact of the COVID-19 pandemic on court operations. For example, the Governor issued an executive order suspending any state laws that restrict the ability of the Judicial Council to authorize or issue emergency orders or emergency Rules of Court in order to modify court processes and procedures in light of the pandemic. The Judicial Council adopted various statewide emergency orders and Rules of Court, such as authorizing trial courts to generally require remote judicial hearings and temporarily suspend certain time requirements in civil cases so that such cases could be delayed.

Actions taken in the current year to (1) operate safely during the pandemic (such as delaying cases) and (2) accommodate a net \$126.9 million ongoing General Fund reduction included in the 2020-21 budget (such as furloughs) have impacted trial court operations, costs, and service levels in different ways. Some (such as steps to delay cases) have resulted in case backlogs and reduced service levels, while others (such as use of video-conferencing) have allowed services to be provided remotely.

The pandemic will continue to result in reduced trial court service levels (such as backlogs) beyond the budget year, despite various actions taken to minimize the pandemic's impact. At the same time, certain operational improvements have been implemented to increase efficiency or public access to court services.

***General Fund support for trial court operations in Governor's Budget.*** To maintain timely access to justice in the trial courts and to help courts address impacts of the disruptions caused by the pandemic, the Budget includes:

- 1) \$72.2 million ongoing General Fund, which represents an overall increase of 3.7 percent compared to the 2020 Budget Act. This funding will assist courts in continuing to provide fair and timely access to justice, including taking actions to continue making modifications to improve court processes.
- 2) \$39.1 million ongoing General Fund for trial court employee health benefit and retirement costs.
- 3) \$11.7 million one-time General Fund in 2020-21 for the trial courts to process the anticipated increase in unlawful detainer and small claims filings resulting from AB 3088, (Chiu) Chapter 37, Statutes of 2020. AB 3088 provided relief to tenants and landlords by, among other things, delaying the date trial courts could process unlawful detainers to February 1, 2021, and allowing landlords to recover unpaid rental debt through small claims court until February 1, 2025. This will result in a significant increase in workload for the trial courts beginning in 2020-21 and additional resources are necessary to address this workload. However, this proposal was withdrawn by the Administration for re-evaluation due to recent developments.

***Other January 2021 Developments.*** Most recently, SB 91 (Committee on Budget), Chapter 2, Statutes of 2021 was signed into law. The bill extends the moratorium on evictions for non-payment of rent due to COVID-19 financial hardship, subject to numerous conditions from January 31, 2021, to June 30, 2021. This bill also contains an appropriation of federal funds and statutory changes necessary to implement a rental assistance program as part of the 2020 Budget Act. It also makes conforming date extensions to rental protections provisions included throughout AB 3088. Most importantly, it maintains the protection against eviction for tenants who pay at least 25 percent of their owed rent, either in the form of 25 percent of monthly rent paid each month; or a lump sum payment by June 30, 2021, that brings the total paid to 25 percent of what is due, over the period covered. It also extends preemptions

that prevent locals from changing local eviction rules beyond what was in place on August 19, 2020. This bill establishes the State Rental Assistance Program to allocate the state share of federal rental assistance funds. This bill imposes a moratorium on actions seeking to recover COVID-19 rental debt until July 1, 2021. It requires a landlord seeking to recover COVID-19 rental debt to provide documentation that the landlord has made a good faith effort to cooperate with a tenant in obtaining rental assistance. It also allows a court to limit attorney's fees in COVID-19 rental debt cases, and prohibits a housing provider from using COVID-19 rental debt as a negative factor in evaluating a tenant's suitability.

#### **LAO Assessment.**

***Workload Needs May Differ for Evictions Moratorium.*** The Governor's budget proposal was introduced before the enactment of SB 91. The administration indicates that due to the enactment of SB 91, it no longer plans to pursue early action from the Legislature. The extension of the state's eviction moratorium and establishment of the state's rental assistance program could meaningfully affect the Judicial Branch's anticipated workload in 2021-22. The Legislature may want to direct the Judicial Branch to report during the May Revision on its revised workload and budget needs.

**Staff Recommendation.** Hold Open.

### **Issue 2: Continuation of Self-Help Centers in Trial Courts**

**Governor's Budget.** The Governor's budget includes \$19.1 million ongoing General Fund to allow California's trial courts to maintain vital self-help services to address the needs of and access for litigants who do not have an attorney to help them with critical housing, domestic violence, family law, child support, consumer debt and similar issues—all of which are exacerbated by the impact of the pandemic.

**Background.** Prior to the COVID-19 pandemic, hundreds of Californians used to form lines outside their county trial courts in order to research or seek information that will enable them to resolve a legal issue on their own, without the cost of an attorney. The majority of these people seek a divorce, separation, or resolution of a child-related dispute, such as custody or child support. As documented by the National Center for State Courts, more than 76 percent of civil cases now involve at least one self-represented litigant.<sup>1</sup> Additionally, in the recent Justice Gap study prepared by the State Bar of California, the most common categories of civil legal issues affect Californians at all income levels: health, finance, and employment.<sup>2</sup> Given their lack of familiarity with statutory requirements and court procedures (such as what forms must be filled out or their legal obligations in the potential case), self-represented individuals can be at a legal disadvantage. In addition, trial court staff tend to spend significantly more time processing a self-represented filing than one with legal representation. For example, incomplete or inaccurate paperwork can lead to having to file paperwork repeatedly, to continue or delay cases, or to generate additional hearings. To help self-represented individuals access

<sup>1</sup> Report to the Chief Justice by the Commission on the Future of California's Court System (2017) p.29, citing Call to Action: Achieving Civil Justice for All, 4-5 recommendations by the Civil Justice Improvements Committee to the Conference of Chief Justices, citing The Landscape of Civil Litigation in State Courts, National Center for State Courts, 2015.

<sup>2</sup> The California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians, the State Bar of California, November 2019.

the court system, the Judicial Branch offers or partners with other legal stakeholders (such as county law libraries or the State Bar) to provide various programs or services, including self-help centers.

***Purposes of Self-Help Centers in CA and History.*** Each of California's trial courts operates a self-help center, which serves as a central location for self-represented individuals to educate themselves and seek assistance with navigating court procedures. Attorneys and other trained personnel who staff the centers provide services in a variety of ways (such as through one-on-one discussions, courtroom assistance, workshops, and referrals to other legal resources) for a wide range of issue areas.

In 2004, the Judicial Council approved the Statewide Action Plan for Serving Self-Represented Litigants (plan). Based upon the growth in the number of self-represented litigants coming to California's courts, the plan recommended that court-based, staffed, self-help centers should be developed throughout the state. This was based on evaluations of the family law facilitator program and individual projects as well as a legislatively mandated evaluation of three Family Law Information Centers.

In 2005, an independent report evaluated the five pilot self-help centers that were designed to develop and test best practices in five specific areas of concern. These included coordinating self-help services in small rural courts, services to a Spanish-speaking population, services to a population speaking a range of languages, use of technology to assist self-represented litigants, and coordination and support for services in a large urban community. The evaluation concluded that self-help centers are a valuable method for providing services to people who need access to legal education and information and for improving the quality of justice for litigants.

Self-help centers have expanded services to help litigants settle their cases or narrow the issues for trial, which avoids spending time in court on issues that can be resolved without the need for a judge's decision, allowing the judge to spend enough time to make more informed decisions on the remaining issues. Courts use attorneys, paralegals, and other support staff who can assist in a wide variety of matters, in order to provide comprehensive assistance at a lower cost. By 2019, self-help centers served over one million self-represented litigants.

***Previous Budget actions.*** The 2001 Budget Act included \$832,000 annually to support pilot projects in five courts that were designed to develop and test best practices in providing comprehensive self-help services in small rural courts, services to a Spanish-speaking population, services to a population speaking a range of languages, use of technology to assist self-represented litigants, and coordination and support for services in a large urban community.

As a result of the 2005 evaluation of self-help pilots, the 2005 Budget Act included \$5 million from the State Trial Court Improvement and Modernization Fund (IMF) for self-help assistance. As a first step, the Judicial Council allocated over \$2.5 million in 2005-06 funds for self-help programs. The next year, it allocated an additional \$8.7 million from the Judicial Branch budget for ongoing funding for courts to start or expand self-help services.

The 2007 Budget Act included \$11.2 million in funding to support self-help services (\$5 million IMF and \$6.2 million Trial Court Trust Fund). All 58 courts are provided a baseline of \$34,000 per year and the remainder is distributed based on population in the county." The baseline was established in response to the research conducted by the California Commission on Access to Justice for their report on Improving Civil Justice in Rural California. The research demonstrated that there is a great disparity in

funding per capita for legal services for low-income persons in rural communities throughout California, creating significant inequities in the state.

The Budget Act of 2018 included an increase of \$19.1 million General Fund annually for three years to expand self-help services in trial courts. According to the Judicial Council, these funds have enabled all courts to expand the types of legal cases served and the number of litigants served from 444,000 to over 1,011,000 per year.

**Justification.** The Judicial Council reports that, with the first year of the 2018 Budget Act augmentation, 97 percent of the funds were spent or encumbered in expansion of self-help services. They reported the following results:

- 45 courts added self-help staff, including 69 new bilingual staff,
- 33 courts extended the number or type of workshops,
- 32 courts extended service hours,
- 38 added new locations or increased accessibility through technology such as videoconferencing,
- 36 added support for new case types,
- 28 added remote assistance so that litigants did not have to come to the court for help,
- 39 offered self-serve online functions,
- 29 expanded services in languages other than English,
- 42 expanded their use of technology tools, including online document assembly programs, to expand efficiency and serve even more litigants effectively.

As well, they reported that in the first year of expanded funding, self-help centers were able to expand the number of litigants assisted, expand settlement services, and provide assistance with courtroom processes.

The Judicial Branch states that the additional 583,000 people served each year with the funds would not be assisted without funding in the budget year. More than 150 attorneys, paralegals and other staff that were hired with these funds are likely to be laid off. According to a CA State Bar Report, currently, 16% of low-income people in California who receive legal assistance receive it from court-based self-help centers.<sup>3</sup> Courts will have to reduce or stop providing assistance with critical civil cases such as landlord/tenant and consumer debt matters. They will have to cut back on services in family law, domestic violence and guardianship cases. Court staff and judges report that having a centralized location for litigants to ask questions and obtain legal information for their cases not only provides much more helpful information for the public, as time does not permit judges and court staff to provide the detailed information that self-represented litigants often need to handle their cases.

**Pandemic Impacts.** While self-help centers have rapidly adapted to providing many informational services remotely and are providing videoconferencing, phone, text, email, live chat and other services, remote courtroom services are still developing. The number of cases being heard in courtrooms remains impacted by concerns from the pandemic. Courts are developing methods to have litigants consult with self-help center staff remotely, including providing settlement assistance before the hearing commences.

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<sup>3</sup> The California Justice Gap: Measuring the Unmet Civil Legal Needs of Californians, the State Bar of California, November 2019.

As courts gain more experience in remote methods of providing services, the numbers served is expected to increase to pre-pandemic levels.

### LAO Assessment

***Funding Increased Service Levels and Helps Promote Equity.*** The Judicial Branch reports that the additional funding provided beginning in 2018-19 substantially increased the services provided by self-help centers. Specifically, the numbers of individuals served increased from 444,000 to just over 1 million. The funding was used to nearly double the number of self-help staff, invest in technology, increase self-help locations and hours of operation, and increase services to individuals with limited English proficiency. It was also used to allow more individuals to be served in certain case types (such as eviction and other civil case types) and to provide services in new or expanded ways (such as adding workshops, increasing use of document assembly programs, and expanding remote access to services). We note that a number of courts have shifted to providing self-help services remotely in light of restrictions on public access to court facilities due to the COVID-19 pandemic.

Self-help centers generally provide services to lower-income individuals who are unable to afford legal representation. Such individuals generally are seeking the assistance of self-help centers to address issues affecting their basic needs, such as avoiding eviction or seeking child custody orders. Absent such assistance, it can be difficult for self-represented individuals to successfully seek resolution through the courts. For example, it can be difficult for self-represented litigants to successfully obtain modifications to child custody orders without assistance. However, with the assistance provided by self-help centers, such individuals have a greater opportunity to successfully resolve their cases. As such, funding self-help services can promote greater equity.

***Cost-Benefit Analysis Incomplete.*** As noted above, the 2018-19 budget required the Judicial Council to conduct a cost-benefit analysis of self-help services. This analysis was required by the Legislature to objectively assess all costs and benefits of such services, as well as determine which methods of delivering self-help (such as one-on-one services or workshops) are most cost-effective and in which case types. For example, such a study could determine that one-on-one services are most cost-effective in guardianship or probate cases while workshops are most cost-effective in marital dissolution cases. This information would then allow the Legislature to determine what level of funding is merited, where the funding should be targeted to maximize state benefit, and whether funding allocations need to be adjusted elsewhere to account for savings created by self-help services.

The Judicial Branch submitted a report at the beginning of January 2021 to comply with this requirement, but the report is incomplete as it does not constitute a cost-benefit analysis. The report includes helpful information and reflects extensive staff efforts to collect outcome data across delivery methods, solicit input from stakeholders (such as court users and court staff), and identify benefits and challenges. However, the final pieces of a cost-benefit analysis—specifically (1) calculating the monetary value of identified benefits, (2) identifying the corresponding costs, and (3) identifying the net benefit of the various self-help delivery methods by case type—are not included in the report. Without this important information, it is difficult for the Legislature to determine what level of funding is warranted and how such funding should be used to maximize its impact.

## LAO Recommendations

***Direct Judicial Council to Use External Researcher to Complete Cost-Benefit Analysis.*** The LAO recommends the Legislature adopt budget trailer legislation directing the Judicial Council to contract with an external researcher to complete a cost-benefit analysis of self-help services, as well as to provide recommendations on how funding can be allocated by delivery method and case type to maximize the benefit to members of the public and to the court. This report should be due to the Legislature no later than November 30, 2022 in order to inform legislative decisions on self-help funding for the 2023-24 budget. (This complements the recommendation below that funding only be provided through 2022-23.) The LAO anticipates that the external researcher will be able to make use of the data and information collected by the Judicial Branch to prepare its submitted report, but may need to supplement this information. As such, the LAO anticipates that costs should not exceed a couple hundred thousand dollars. The LAO finds that this cost could be absorbed by the Judicial Branch within its existing resources.

***Provide Funding for Two Years.*** In order to prevent a reduction in self-help services pending the completion of the above cost-benefit analysis and help maintain the equity-related benefits of the previously provided funding, the LAO recommends the Legislature approve the Governor's proposed funding for self-help centers, but only on a two-year, limited-term basis. Moreover, the LAO notes that such services are arguably more important during the COVID-19 pandemic. For example, more individuals may no longer be able to afford legal representation or assistance.

***Consider Provisional Language Prioritizing Use of Funding.*** The Legislature may want to consider adopting provisional language to specify its priorities for the use of self-help center funding. As mentioned above, a number of self-help centers have pivoted in response to the pandemic to provide more services remotely rather than in person in court facilities. The Legislature could specify that a minimum portion of the funding must be used to provide services remotely (such as by using video conferencing or screen-sharing technologies) in order to increase the ways members of the public can access the courts. While this is particularly important during the pandemic while in-person public access to the court may be limited, it could also be beneficial to maintain on an ongoing basis for certain court users—such as those who would need to travel far distances to visit the court—under normal circumstances.

**Staff Recommendation.** Hold open.

### Issue 3: Ability-to-Pay Expansion BCP and Trailer Bill Language

**Governor's Budget.** The budget requests 8.0 positions and \$12.3 million General Fund in 2021-22, \$25.1 million in 2022-23, \$47.0 million in 2023-24, and \$58.4 million annually thereafter to support statewide court operations to allow individuals the ability to adjudicate all infractions online, including processing ability to pay determinations.

**Background.** The 2018 Budget Act included \$3.4 million General Fund and 7.0 positions for 2018-19 (\$1.36 million ongoing) and trailer bill language in SB 847 (Committee on Budget), Chapter 45, Statutes of 2018 to design, deploy and maintain software to adjudicate traffic violations online, including ability to pay determinations, in eight pilot courts. The language requires that the tool recommend a reduction of at least 50 percent of the total amount owed for individuals who receive specified public benefits or



live at a monthly income of 125 percent or less of the current poverty guidelines, as updated periodically in the Federal Register by the United States Department of Health and Human Services pursuant to Section 9902 of Title 42 of the United States Code. Additionally, individuals are provided information in multiple languages and typically receive the decision of the court within 30 days.

It also included requirements to develop an array of online services for the public including hearing date requests, continuance, online trials and chat bot guidance. By the end of 2019-20, eight courts were to have implemented online ability to pay determinations with a two-way court case management system data exchange. By the first quarter of 2021, the additional online functions noted above will be developed and implemented in the pilot courts.

As of November 2020, Shasta, Tulare, Ventura, San Francisco, Santa Clara and Fresno pilot courts are all live with online ability to pay determination processing. Monterey will be live with online ability to pay determinations by January 2021. In these counties, users access a website, enter their citation number and are guided through a process to provide relevant financial information for a judge to review and consider an adjusted fine or fee. The judicial determination is made and a final court order is emailed back to the user with instructions about a payment or community service plan as appropriate.

**Purpose of 2021-22 proposal. *Expand Online Adjudication Tool Statewide.*** The Governor's budget requires the Judicial Council to (1) develop an online adjudication tool for all infraction violations (not just traffic infractions) that would include an ability-to-pay component and (2) make the tool available statewide by July 1, 2024. While trial courts could choose whether to make use of the full online tool, all courts would be required to offer the ability-to-pay component of the tool by July 1, 2024. Specifically, the Judicial Council estimates implementation costs of \$4.4 million in 2021-22, \$6.2 million in 2022-23, \$6.4 million in 2023-24, and \$2.7 million annually thereafter to work with courts by cohort to adopt new technology. Each cohort is organized by case management system, cloud hosted verses locally hosted, and court size. The Judicial Council will establish eleven cohorts to be deployed over three fiscal years.

***Backfill Expected Reduction in Fine and Fee Revenue.*** Given that the online adjudication tool allows individuals to more easily seek reductions in the total amount of criminal fines and fees that they are assessed, the amount of criminal fine and fee revenue collected is expected to decline on an ongoing basis. To address this decline, the Governor's budget proposes an ongoing backfill for reductions in revenues. Specifically, the Governor's budget estimates that this backfill will be \$7.9 million in 2021-22, \$18.9 million in 2022-23, \$40.7 million in 2023-24, and \$55.8 million annually thereafter to backfill the estimated loss in revenue to Judicial Branch funds, as a result of the penalty reductions. In 2021-22, \$7.9 million will be available for the existing seven pilot courts plus ten new courts (in two cohorts), to backfill the estimated loss in revenue to support the Judicial Branch, as a result of the penalty reductions.

Budget bill language is proposed with respect to the backfill process detailing that funds appropriated in this item may be transferred to the State Trial Court Improvement and Modernization Fund (0159), Trial Court Trust Fund (0932), State Court Facilities Construction Fund (3037), and the Court Facilities Trust Fund (3066) to backfill revenue reductions resulting from the expansion of ability-to-pay determinations. The amount to be transferred to each fund will be determined by the Department of Finance using information provided by the trial courts and the Judicial Council.

***Trailer Bill Language.*** The Governor's proposal also includes trailer bill language eliminating the pilot program established in the 2018-19 budget and making certain components of the pilot program permanent, such as requirements related to the ability-to-pay determinations and to online trials for those

trial courts that choose to offer them. Under the language, an evaluation of the pilot program activities would no longer be required.

***Governor Also Proposes Remote Adjudication of Infraction Proceedings.*** The Governor proposes budget trailer language authorizing the trial courts to conduct all infraction proceedings remotely (including arraignments and trials), upon consent of the defendant. The authorization means courts would not be limited to offering the remote adjudication of infractions through the online tool developed by the Judicial Council alone. Instead, courts could conduct infraction proceedings using other remote adjudication methods, such as video conferencing. While some courts could be conducting some proceedings remotely on an emergency basis due to the pandemic, the proposal would extend this authorization beyond the end of the pandemic.

### LAO Assessment

***Ability-to-Pay Component Provides Meaningful Assistance to Lower-Income Individuals and Promotes Equity.*** As of November 2020, six courts offered the online ability-to-pay component of the pilot tool. A seventh court began offering this component in January 2021. The Judicial Branch reports that a total of nearly 11,000 requests were submitted (with nearly 77 percent approved) by 6,865 litigants between April 2019 and October 2020 across five out of six courts. (Data from the sixth court was not reported.) Around half of these litigants reported that they received public benefits and 87 percent reported incomes below the federal poverty level. These submitted requests resulted in a few million dollars in reduced fines and fees, with the average amount owed per request being cut nearly in half. The high approval rate, and associated reduction in the level of criminal fines and fees owed, demonstrates that the ability-to-pay component provides meaningful financial assistance to lower-income individuals who may struggle to meet basic needs. Accordingly, this component also promotes equity as it seeks to minimize the disproportionate impact existing criminal fine and fee levels can have upon lower-income individuals.

***Full Impacts of Tool Still Uncertain, Which Could Increase Costs.*** Various components of the tool are still in the process of being finalized and implemented. For example, online trials will not begin to be tested and implemented in any of the courts until spring 2021. The impacts of these additional components are currently unknown and could increase the total costs associated with the proposal. For example, the option for online trials could increase the number of individuals who make use of the tool to contest violations (and seek reductions in the total amount owed) by making access to the courts easier. This, in turn, could increase the amount of General Fund backfill required.

Additionally, we note that the total net impact of this tool on court operations and costs is unknown. For example, the tool could increase overall court workload and costs if its convenience results in more people contesting violations or seeking fine and fee reductions. However, the tool also could reduce overall workload and costs if it is a more efficient way for the court to deal with these requests than otherwise would have occurred in person.

***Premature to Expand Statewide.*** As indicated above, existing state law requires the Judicial Branch to complete an evaluation of the pilot program by June 30, 2022. The purpose of the pilot is to determine the overall costs, effectiveness, and impacts of the specified pilot activities. Such information is intended to inform future policy and funding decisions by the Legislature regarding online adjudication and ability-to-pay determinations, including the trade-offs of certain choices. For example, the Legislature may want to consider whether a higher criminal fine and fee reduction for low-income individuals (as compared to the 50 percent minimum under the pilot program) would be more appropriate or whether to specify minimum reductions for additional categories of individuals (such as those who may not

currently meet the low-income definition). Without the results of the pilot, the Legislature would be unable to fully understand the costs and benefits of such choices. As such, it is premature to cancel the pilot and expand the online adjudication tool statewide as proposed by the Governor.

### LAO Recommendations

**Reject Budget Trailer Legislation.** The LAO recommends the Legislature reject the proposed budget trailer legislation that would cancel the pilot and expand the existing online adjudication tool statewide. More complete data is necessary to accurately determine the impact of the various activities being tested in the pilot program that is currently in progress. The forthcoming evaluation of the pilot would allow the Legislature to assess the effectiveness and impacts of specific pilot activities, which will better inform future legislative policy and funding decisions.

**Only Approve Funding Requested for 2021-22.** To the extent the Legislature is interested in providing more lower-income individuals with access to the tool and its ability-to-pay component, the LAO recommends the Legislature only provide \$12.3 million (the amount requested for 2021-22) in order to support the proposed expansion of the tool to ten additional courts in the budget year. This action would avoid delay in providing more lower-income individuals with financial relief and promoting increased equity while the currently required evaluation is being completed. Moreover, providing funding only for the budget year would prevent the program from automatically continuing to expand in subsequent years before the Legislature has the opportunity to determine what changes, if any, need to be made after receiving the evaluation.

**Approve Provisional Language.** The LAO recommends the Legislature approve the proposed provisional language authorizing DOF to determine the distribution of the General Fund backfill revenues among the various judicial branch special funds impacted by this proposal. This is a technical adjustment that ensures that the revenue deposited into each special fund is commensurate with the revenue loss due to this proposal.

**Staff Recommendation.** Hold open.

### Issue 4: Various Maintenance and Facility Modification Proposals

**Governor's Budget.** The Governor's budget includes multiple infrastructure upgrade proposals for the Judicial Branch:

**Background.** Historically, the Judicial Council of California (JCC) serviced only the facility needs of the Supreme Court and Courts of Appeal. The 1997 Trial Court Funding Act (Chapter 850, Statutes of 1997, (AB 233)) began the process of shifting financial responsibility for support of trial courts from the counties to the state. The Trial Court Funding Act established the Task Force on Court Facilities to identify needs, options, and recommendations for funding court facility maintenance and improvements. In 2007, ten years after the passage of the Trial Court Funding Act, trial court facilities completed the process of transfer from counties to the JCC.

The JCC's Office of Facilities Services administers a portfolio of 470 facilities which house the Supreme Court, Courts of Appeal, Superior Courts, the Habeas Corpus Resource Center, and the JCC itself.

Roughly 44 percent of these facilities (208) are fully managed by the JCC, 30 percent (139) are managed by the county; 19 percent (91) are leased; and seven percent (32) are delegated by the JCC to either the county or the court. The portfolio includes a variety of building types: courthouses, jails, offices, parking structures and parking lots. The JCC assumed all county leases (other than storage leases) for trial court space as part of the property transfers outlined in the Trial Court Funding Act of 2002.

BCP/PROJECT NAME	PROPOSED AMOUNT	DESCRIPTION
One-time Deferred Maintenance	<p>\$30 million one-time General Fund in 2021-22</p> <p>This funding is also available for encumbrance or expenditure until June 30, 2024.</p>	<p>Address the most vital deferred maintenance in trial courts and appellate courts. These funds will support the modernization of building management systems, HVAC, elevators, and roof replacements for the projects on the attached 2021-22 deferred maintenance list.</p>
Trial Court Facility Modifications	<p>\$18.9 million General Fund in 2021–22 and \$48.8 million in 2022-23</p>	<p>For the JCC’s estimated share of the total cost of trial court facility modification projects that resolve deficiencies by expanding the fire and life safety (FLS) systems at the Central Justice Center (CJC) in Orange County and correcting FLS-egress deficiencies at the East County Regional Center (ECRC) in San Diego County.</p> <p>Funds would be used for these facility modification (FM) projects as follows: \$52.8 million for the JCC’s estimated share of the total project cost at the CJC in Orange County, and \$14.9 million (for the JCC’s estimated share of the total project cost at the ECRC in San Diego County. As these are shared-use facilities between the JCC and local counties, the JCC and the counties of Orange and San Diego would be responsible for its share of the total project costs based on its percentages of occupancy. Both trial court FM projects have been developed in response to emergency corrections required by the Office of the State Fire Marshal.</p> <p>FLS systems provide the essential first alarm on a fire and life safety event to building occupants and first responders, so that evacuation through compliant FLS egress can be completed in an appropriate amount of time.</p> <p>At CJC, the FLS systems upgrade is incomplete--having begun on the 11th floor but the work stopped at the 4th floor, prior to the transfer of the facility to the JCC in 2012. At ECRC, Before its ownership transferred from the county to the state in 2011, jail</p>

		<p>operations were moved out but egress from the former jail-occupied spaces was never modified and deficiencies corrected. The JCC has been addressing this long-standing issue by responding to the emergency correction and noncompliance notices issued in 2015 and 2016 by the OSFM, and, to date, has spent approximately \$450,000.</p>
<p>Trial Courts and Courts of Appeal Facilities, Maintenance, and Leases</p>	<p>5.0 positions and \$53.5 million ongoing General Fund</p>	<p>To support facilities services costs for trial courts and Courts of Appeal. This total amount includes \$52.4 million for trial court facilities program costs that provide for operations and maintenance at an industry standard level, unfunded leased trial court space, and additional staff to oversee the program, and \$1.1 million for Court of Appeal facilities program costs to fund operations and maintenance at an industry standard level.</p> <p>The JCC states that there are three problems with the current portfolio: 1) that trial court facility projects are being underfunded on a per square foot basis compared to industry standard levels, 2) the JCC is tasked with providing court facilities throughout the state but has no funding to cover additional leased space required for trial courts. The trial courts are covering these costs because the JCC cannot and about 60 percent of the leases are covered by the trial courts. The practice of trial courts covering lease costs from their operating budgets is in conflict with the Trial Court Funding Act. And, 3) the Courts of Appeal do not have funding specifically identified for facilities operations and maintenance, minor repairs, or deferred maintenance for their buildings. As a result, the only source for funding facilities work is the Court of Appeals’ general operational budgets which are already strained with competing program costs.</p> <p>This proposal requests 5.0 additional positions to provide oversight of the trial court facilities services maintenance. The JCC portfolio spans the state’s breadth, with courthouses in 57 of the 58 counties totaling 28 million gross square feet. The size of the state makes access to all the facilities in the portfolio time-intensive due to the extensive travel that is required. Currently 43.0 JCC positions are dedicated to facility operations.</p>

**Staff Recommendation.** Hold open.

**Issue 5: Construction Fund Consolidation Trailer Bill Language**

**Governor's Budget.** The Governor's budget includes trailer bill language that would combine the Immediate and Critical Needs Account (ICNA) and the State Court Facilities Construction Fund (SCFCF) which were facing insolvency due to steady decreases in fine and fee revenue. Consolidation allows the remaining fund to be solvent in 2021-22. The Governor's budget projects a SCFCF fund balance of \$177.5 million for 2021-22. This fund balance is from \$569.4 million in revenues, transfers from ICNA to SCFCF of \$232.1 million, and other adjustments \$391.9 million in expenditures and expenditure adjustments.

The Governor's budget does not propose any changes to the level of expenditures from the combined account. For example, it maintains spending on facility modification projects at \$65 million for 2021-22.

**Background.** The Judicial Branch's two primary court construction funds, SCFCF, established in 2002, and the ICNA, established in 2008, receive funding from fees and penalty assessments.

**State Trial Court Facilities Construction Fund (SCFCF).** AB 1732 (Escutia), Chapter 1082, Statutes of 2002, enacted the Trial Court Facilities Act of 2002, which provided a process for the responsibility for court facilities to be transferred from the counties to the state, by July 1, 2007. In addition, this legislation increased criminal fines and civil filing fees to finance \$1.5 billion in lease-revenue bonds to support 14 court facility construction projects.

**Immediate and Critical Needs Account (ICNA).** SB 1407 (Perata), Chapter 311, Statutes of 2008, authorized various fees, penalties and assessments, which were to be deposited into ICNA to support the construction, renovation and operation of court facilities. Specifically, the legislation increased criminal and civil fines and fees to finance up to \$5 billion in trial court construction projects and other facility-related expenses such as modifications of existing courthouses. The measure also specified that the Judicial Council was prohibited from approving projects that could not be fully financed with the revenue from fines and fees.

In accordance with the legislation, the Judicial Council selected 41 construction projects to be funded from ICNA that were deemed to be of "immediate" or "critical" need for replacement, generally due to the structural, safety, or capacity shortcomings of the existing facilities.

**Great Recession Funding Solutions.** During the previous recession, the Judicial Branch, like most areas of state and local government, received a series of significant General Fund reductions from 2008-09 through 2012-13. Many of these General Fund reductions were offset by increased funding from alternative sources, such as special fund transfers and fee increases. Among the solutions were a series of transfers from funds used for court construction totaling approximately \$903 million to date. For example, in 2011-12, the Legislature approved the transfer of \$143 million from ICNA and \$70 million from SCFCF to the Trial Court Trust Fund (TCTF). In addition, in 2012-13 \$240 million in ICNA funds and \$59.5 million in SCFCF funds were transferred to the TCTF and in 2013-14 an additional \$50 million from ICNA was transferred to both the TCTF. Additionally, these funds also provided \$550.3 million in

transfers to the General Fund to help address reductions in its availability during the recession. Also, both funds also loaned \$440 million to the General Fund (\$350 million SCFCF and \$90 million ICNA). The SCFCF loan has been repaid and the ICNA loan is scheduled to be repaid in 2021-22. Finally, despite the end of the recession, the state continues to transfer \$50 million in ICNA funds and \$5.5 million in SCFCF to the TCTF for trial court operations each year. The long-term impact of these recession-era funding decisions and the funds' continued support of trial court operations is that absent some sort of action, both funds will become insolvent in the near future.

Due to significant reductions in the total amount of revenue available in ICNA as a result of declining court fine and fee revenue and the recession-era transfers discussed previously, between 2011 and 2013 the Judicial Council subsequently chose to cancel four projects (replacing two with renovation projects) and indefinitely delay another ten. Even with that, the Judicial Council estimated that if all 17 remaining projects that were not canceled or indefinitely delayed completed construction as planned, the ICNA operating deficit would have increased further, reaching nearly \$100 million by 2037-38. As a result, in August 2016, the Judicial Council suspended all 17 remaining construction projects.

### **LAO Assessment for Issues 5 and 6**

#### ***Consolidation of Construction Accounts Reasonable, but No Plan to Address Insolvency***

- The Governor's proposed consolidation of SCFCF and ICNA is reasonable as it delays the need to address the SCFCF's insolvency in the budget year. Additionally, there is no rationale for maintaining two separate accounts.
- However, the Governor's proposal does not address the pending insolvency of the consolidated account by 2023-24. Absent any changes in revenues or existing ongoing expenditures, significant General Fund resources would be needed to meet financing payments for completed projects and other obligations.
- The LAO estimates additional General Fund resources would be needed through 2039-40 to meet these obligations. Specifically, \$175 million in 2023-24, declining to \$160 million annually from 2024-25 through 2032-33. Beginning in 2032-33, the amount needed would further decline as the debt service for an increasing number of projects will be completely paid off.

#### ***Construction Program Effectively Restarted, but Supported by General Fund***

- The Governor's proposal to support future trial court construction projects from the General Fund is a reasonable approach as both construction accounts are unable to support existing obligations, much less new ones.
- Additionally, supporting new projects directly from the General Fund helps ensure that the projects will be weighed in the context of the Legislature's broader General Fund priorities, including other state infrastructure needs. This will be particularly important in the coming years given the state's projected operating deficit.

#### ***Selected Projects May Not Reflect Legislative Priorities***

- The Governor’s 2021-22 construction proposals—and those planned in the coming years—generally reflect projects identified as the highest-priority need under the Judicial Branch’s 2019 reassessment.
- However, the Legislature may not agree with the Judicial Branch’s methodology, such as how certain criteria were defined and weighted, and may decide that additional factors should be considered. As such, the Legislature will want to consider its priorities when selecting which construction projects should move forward.

**LAO Recommendations. *Recommend Shifting Full Responsibility for Trial Court Construction to the General Fund.***

***Approve Governor’s Approach to Fund New Projects From General Fund.*** The LAO recommends the Legislature approve the Governor’s new approach to fund new trial court construction projects from the General Fund. As they discussed, this approach helps ensure that any new construction projects are weighed against the Legislature’s other General Fund priorities.

***Shift Responsibility for Current SCFCF and ICNA Obligations to General Fund as Well, Rather Than Consolidate Accounts.*** In order to fully address the pending insolvency of the two existing construction accounts on a permanent basis, the LAO recommends the Legislature eliminate the accounts and shift their current obligations on already completed projects to the General Fund. This helps ensure that any General Fund construction-related obligations are fully accounted for and considered when evaluating the state’s overall fiscal condition and determining General Fund spending priorities. (To the extent the Legislature does not want to eliminate SCFCF and ICNA and shift their obligations to the General Fund, the LAO would recommend approving the Governor’s proposal to consolidate the two accounts.)

***Shift Nonconstruction-Related SCFCF and ICNA Expenditures to the General Fund.*** To maintain support for the nonconstruction expenditures supported by the construction accounts, the LAO recommends appropriating from the General Fund \$65 million for facility modification projects, \$40 million for facility personnel and operating costs, and \$55.5 million for trial court operations—a total of \$160.5 million annually. (They note this amount would decline to \$145.5 million in 2024-25 due to the expiration of an SCFCF facility modification budget request approved in 2014-15.)

***Shift SCFCF and ICNA Revenues to the General Fund.*** To partially offset the costs shifted to the General Fund, the LAO recommends the Legislature deposit all construction account revenue into the General Fund. (The LAO notes that, due to legal limitations on the use of revenues, the civil fee revenue might need to be deposited into a special fund supporting trial court operations with a corresponding reduction in the total amount of General Fund support for trial court operations.)

***Appropriate Funding for Trial Court Construction Based on Legislative Priorities.*** The LAO recommends the Legislature determine which specific construction projects to fund based on its priorities, which may or may not include any of the projects currently proposed by the Governor or the Judicial Branch. The Legislature’s construction priorities may also differ from the prioritization identified in the 2019 reassessment.

**Staff Recommendation.** Hold open.



**Issue 6: Various Capital Outlay Proposals**

**Governor's Budget.** The Governor's budget proposes a total of \$8.3 million General Fund and \$66.5 million in lease revenue bond authority to support four construction projects in 2021-22.

**Plans to Request 12 More Projects by 2025-26.** Based on its five-year infrastructure plan, the Administration plans to initiate 12 additional projects after 2021-22—three projects per year for the next four years. The Administration estimates that these 12 projects would require \$302 million General Fund for preconstruction activities and \$1.8 billion in lease revenue bond authority for construction during this period. (This is not the total cost for all 12 projects. For example, projects beginning construction after 2025-26 will require additional lease revenue bond authority.) While the actual debt service owed will depend on interest rates at the time bonds are sold, it is estimated that the level of lease revenue bond authority could result in annual debt service payments from the General Fund of around \$100 million. The projects identified by the administration generally reflect the priority order identified in the Judicial Branch's 2019 reassessment.

**Background.** SB 847 (Committee on Budget), Chapter 45, Statutes of 2018 required the Judicial Council to conduct a reassessment of all trial court capital-outlay projects that had not been fully funded up to and through the 2018 Budget Act and to submit the report by December 31, 2019, to two legislative committees: the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. On December 6, 2019, the Judicial Council provided a *Reassessment of Trial Court Capital-Outlay Projects* including the *Statewide List of Trial Court Capital Projects* prioritized on needs-based/cost-based scores from the application of the Judicial Council's *Revision of Prioritization Methodology for Trial Court Capital-Outlay Projects*.

SB 847 required the use of existing criteria along with the new criteria for reassessing and ranking capital-outlay projects, which necessitated the revision of the Judicial Council's current prioritization methodology, dated October 24, 2008. In addition to applying the current methodology's needs-based criteria of Security, Overcrowding, and Access to Court Services, new criteria applied include the following:

- New subcategories, Seismic Rating and Environmental Hazards, which were added to the current subcategories of Fire and Life Safety and Americans with Disabilities Act under the Physical Condition criterion;
- A Facility Condition Index as part of needs-based scoring;
- A Seismic Risk Factor, to receive additional consideration as part of needs-based scoring. Specifically, additional points would be assigned to projects proposed to replace or renovate courtrooms in existing High Risk or Very High Risk buildings;
- Cost-based criteria as follows: cost avoidance or savings realized through operational or organizational efficiencies; minimization of increases in ongoing security, operations, and maintenance costs; cost of project per court user; and total costs spent on a project as of the date of the reassessment (which for accounting purposes is March 31, 2019);
- A comparison of the costs to repair/renovate existing facilities versus replacement, which was not scored within the cost-based evaluation. Instead, this comparison has been addressed in the

court facility plans and reflected in the attached statewide list of projects by proposed project type (e.g., new construction versus renovation).

The projects in this reassessment received a needs score that helped organize the projects into Immediate, Critical, High, Medium and Low categories. Additionally, each project received a cost score.

BCP/ PROJECT NAME	PROPOSED AMOUNT AND PHASE	DESCRIPTION
<p>Lake County – New Lakeport Courthouse</p>	<p>\$1.6 million General Fund for the Performance Criteria and \$66.5 million in lease revenue bond authority for the Design Build</p>	<p>The requested funding is for the Lake County — New Lakeport Courthouse. It ranks first in the “Immediate” need projects reassessed per SB 847.</p> <p>The project includes the design and construction of a new 4-courtroom courthouse of approximately 46,000 square feet (SF) in the city of Lakeport. The project includes secured parking for judicial officers and approximately 100 surface parking spaces with solar power generation capability. The project will be located on a previously acquired site located in the city of Lakeport. The project will use a design-build delivery method. The project will replace the existing Lakeport Courthouse which has infrastructure concerns and is found to be in poor condition.</p> <p>Lakeport is the county seat and location of most of the county justice agencies. The jail is located several miles north of the city. The Lakeport Court Facility functions as the main courthouse and houses the court administration and four courtrooms that handle most case types. The South Civic Center in Clearlake functions as a branch court and houses one courtroom that handles child support, traffic and small claims case types. Due to lack of space in the Lakeport Court Facility, the self-help center is in the South Civic Center in Clearlake and some active records are stored in a leased facility in Lakeport. Based on the 2019 Judicial Needs Assessment the Lake Court has a 1.2 increase in judgeship need.</p> <p>The Judicial Council is requesting reactivation of this project. Due to insufficient resource sin the Immediate and Critical Needs Account, the Judicial Council, at its August 26, 2016 meeting, made a policy decision to place some projects on hold until proper funding could be restored. The impact of the Judicial Council direction to this project was to suspend the working drawings phase then hold until funding can be restored.</p> <p>The Judicial Council is requesting reactivation of this project. Due to insufficient resources in the Immediate and Critical Needs Account, the Judicial Council, at its August 26, 2016 meeting, made a policy decision to place some projects on hold until proper funding could be restored.</p>

		<p>The estimated total project cost is \$73.1 million.</p>
<p>Mendocino County – New Ukiah Courthouse</p>	<p>\$3,334,000 General Fund</p>	<p>The requested funding is for the Performance Criteria phase of the Mendocino County — New Ukiah Courthouse. The project will provide construction of a new 7-courtroom courthouse of approximately 82,000 square feet (SF) in the city of Ukiah. The project includes secured parking for judicial officers and approximately 160 surface parking spaces with solar power generation capability. The project will be located on a Judicial Council owned site located in the city of Ukiah. The project will use a design-build delivery method. The project will replace an existing aging building owned by the county that has no secure in-custody access or circulation and two entire floors without elevators or Americans with Disabilities Act (ADA) accessibility. It ranks second in the “Immediate” need projects reassessed per SB 847.</p> <p>Caseload in Mendocino County is primarily assigned to the centrally located County courthouse in Ukiah and a branch courthouse in Fort Bragg. Given the large geographic size of the county, a branch location is important for providing access to justice for its population. The County courthouse in Ukiah hears all case types. Fort Bragg is a branch courthouse and services the western region of the county. It hears all case types except for family law, juvenile, and long jury trials which are referred to Ukiah.</p> <p>The project will replace the seven-courtroom County courthouse. The New Ukiah Courthouse is proposed because the current facility is substantially out of compliance with regulatory safety, seismic, accessibility codes and Judicial Council space standards. The existing County Courthouse has two entire floors without elevators or ADA accessibility.</p> <p>The Judicial Council is requesting reactivation of this project. Due to insufficient resources in the Immediate and Critical Needs Account, the Judicial Council, at its August 26, 2016 meeting,</p> <p>The estimated total project cost is \$118.1 million.</p>
<p>Nevada County – New Nevada City Courthouse</p>	<p>\$972,000 General Fund</p>	<p>This funding is to initiate a Planning Study for the Nevada County – New Nevada City Courthouse. The proposed study will compare the merits and disadvantages of options for the Nevada Court in Nevada City. At a minimum three options will be studied. One option will analyze the feasibility of renovating the historic Nevada City Courthouse; the second option will analyze replacing all or part of the courthouse on the existing site; and, the third option will analyze building a new courthouse. It ranks third in the “Immediate” need projects reassessed per SB 847.</p> <p>Nevada County Superior Court currently uses a decentralized service model. Administration is located at the Nevada City location. The Nevada City Courthouse serves as the primary</p>

		<p>court location for most court filings and public service offerings. There is one branch court facility in the county, the Joseph Center, located in Truckee and serving the eastern portion of the county.</p> <p>The 80-year-old Nevada City Courthouse and Annex is the primary courthouse for most civil and criminal trials, serving approximately two thirds of the county’s population. For criminal trials, this facility requires secure in-custody movement of defendants and separate paths of travel for in-custody parties, jurors, judges, court staff, and the public.</p> <p>The courthouse is comprised of three stories. The court’s current space is considered unsafe, undersized, substandard, overcrowded, and functionally deficient. Challenges to court operations include severe safety concerns associated with seismic deficiencies, non-compliance with Americans with Disabilities Act standards, and no sprinkler system. The lack of secure circulation and separate paths of travel risks the safety of judges, court staff, and the public, and in-custody defendants.</p> <p>The Judicial Council is requesting reactivation of this project. Due to cumulative and ongoing redirection of SB 1407 funds to the General Fund and trial court operations as well as to the Long Beach courthouse project (Governor George Deukmejian Courthouse), projects were indefinitely delayed by the Judicial Council at its October 26, 2012 and January 17, 2013 meetings.</p> <p>The total project cost to date is \$1.6 million.</p>
<p>Los Angeles County – Los Angeles Master Plan</p>	<p>\$2,347,000      General Fund</p>	<p>This funding is to complete a study for the Superior Court – County of Los Angeles. The proposed long-range planning study will analyze and develop a plan for improving and modernizing Los Angeles County court facilities. The SB 847 reassessment identified 17 capital outlay projects for the Los Angeles Superior Court; 11 of the 17 are in the immediate or critical need groups. The study will define and validate the project scopes, sequencing, and budget information. The study will holistically assess the identified projects’ feasibility, validate the number of courtrooms needed, recommend site search areas and provide a sequencing plan for the next 20-30 years that is in alignment with court operational priorities.</p> <p>The combined estimated cost is more than \$6.0 billion. The two largest courthouses in California, Stanley Mosk and Clara Shortridge Foltz Courthouses are in need of replacement or renovation.</p> <p>The Superior Court of Los Angeles County occupies 43 buildings with a total of approximately 8 million square feet of space in 30 cities. Many of the facilities are at or nearing the end of useful life. The purpose of the long-range planning study is to define and validate the project scopes, sequencing, and budget information.</p>

		The study is estimated to cost \$2.3 million and be completed in approximately two years.
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**Staff Recommendation.** Hold all proposals open.

**Issue 7: Design-Build Authority Trailer Bill Language**

**Governor’s Budget and Background.** Existing law designates the Judicial Council as the entity having full responsibility, jurisdiction, control, and authority over trial court facilities for which title is held by the state, including the acquisition and development of facilities. Additionally, existing law authorizes the Judicial Council to use a pilot design-build procurement process in contracting and procuring a limited number of projects, as approved by the Department of Finance. Existing law authorizes the Judicial Council to base the procurement award on best value or best value for the lowest price for projects with an approved budget of \$10 million or more. Existing law requires the use of lowest responsible bid to award pilot design-build contracts for projects with an approved budget of \$250,000 to \$10,000,000. Existing law requires a bidder participating in the process to provide written declarations, subject to misdemeanor penalties.

The budget includes trailer bill language that would, instead, authorize the Judicial Council to use a design-build procurement process in contracting and procuring public works projects and would authorize the Judicial Council to award contracts using either the best value or low bid selection method for all projects. The bill would require a bidder participating in the modified process to provide written declarations, subject to misdemeanor penalties, and would thereby impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

**Staff Recommendation.** Hold open.