

SUBCOMMITTEE NO. 5

Agenda

Senator Loni Hancock, Chair
Senator Joel Anderson
Senator Curren D. Price, Jr.



Thursday, March 14, 2013
9:30 am or Upon Adjournment of Session
Room 113

Consultant: Joe Stephenshaw

Item Number and Title

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Vote Only

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Vote Only

Issue 1 – Courthouse Projects: Reversions

Governor’s Proposal. The Governor’s Budget proposes the reversion of \$30.5 million to the Immediate and Critical Needs Account (ICNA) from the unencumbered balances of acquisition phase appropriations of nine courthouse projects.

Background. The table below lists the projects and the amount reverting for each project. Shasta, Santa Barbara and Siskiyou are reverting due to the completion of acquisition. The remaining projects are reverting due to Judicial Council direction, pursuant to action taken to mitigate funding transfers from ICNA.

(dollars in thousands)

Project	Amount
1. Kern: New Delano Courthouse	\$749
2. Kern: New Mojave Courthouse	\$113
3. Los Angeles: New Santa Clarita Courthouse	\$1,166
4. Los Angeles: New Glendale Courthouse	\$14,308
5. Placer: New Tahoe Area Courthouse	\$2,800
6. Plumas: New Quincy Courthouse	\$738
7. Santa Barbara: New Santa Barbara Criminal Courthouse	\$8,602
8. Shasta: New Redding Courthouse	\$1,589
9. Siskiyou: New Yreka Courthouse	\$406

Recommendation. Approve as proposed.

Issue 2 – Supreme Court: Operating Budget Realignment and Augmentation

Governor’s Proposal. The Governor’s budget proposes a permanent realignment of \$1.3 million GF from the Supreme Court of California Court Appointed Counsel program

to the court's operating budget and an ongoing augmentation of \$212,000 from the Appellate Court Trust Fund.

Background. The combined funding realignment and augmentation will partially mitigate the impacts of GF reductions to the Supreme Court's budget and help enable the court to discharge its duties, including, but not limited to: determining legal questions of statewide importance, resolving conflicts among the intermediate appellate courts, deciding thousands of petitions for review and writ petitions annually, and resolving all death penalty appeals and related habeas corpus proceedings.

The Supreme Court projects an operating deficit of \$4.1 million in the budget year. This proposal will assist in offsetting the budget shortfall. The realignment of Court Appointed Counsel program funds proposed because of a growing fund balance for the program that has resulted from difficulties in recruiting counsel. In both 2010-11 and 2011-12, the budget for this program exceeded expenditures by \$1.8 million. The augmentation from the Appellate Court Trust Fund is consistent with prior increases in appellate court filing fees.

Recommendation. Approve as proposed.

Issue 3 – Courts of Appeal: Increased Appellate Court Trust Fund Appropriation Authority

Governor's Proposal. The Governor's budget proposes an ongoing augmentation of \$1.97 million (\$2.2 million on one-time basis in the current year) from the Appellate Court Trust Fund to reflect new and increased appellate court filing fee revenues authorized pursuant to AB 110 (Stats. 2012, Chapter 193) and SB 1021 (Stats. 2012, Chapter 41).

Background. AB 110 authorized a new appellate response fee of \$325 and SB 1021 authorized a 20 percent increase to existing appellate filing fees. This proposal adjusts the Appellate Court Trust Fund appropriation authority to reflect the revenue generated by these actions.

Recommendation. Approve as proposed.

Items to be Heard

Judicial Branch (0250)

Article VI of the California Constitution creates the Supreme Court of California and the Courts of Appeal to exercise the judicial power of the state at the appellate level. Article VI also creates the Judicial Council of California to administer the state's judicial system. Chapter 869, Statutes of 1997, created the California Habeas Corpus Resource Center to represent any person financially unable to employ appellate counsel in capital cases.

Chapter 850, Statutes of 1997, enacted the Lockyer-Isenberg Trial Court Funding Act of 1997 to provide a stable and consistent funding source for the trial courts. Beginning in 1997-98, consolidation of the costs of operation of the trial courts was implemented at the state level, with the exception of facility, revenue collection, and local judicial benefit costs. This implementation capped the counties' general-purpose revenue contributions to trial court costs at a revised 1994-95 level. The county contributions become part of the Trial Court Trust Fund, which supports all trial court operations. Fine and penalty revenue collected by each county is retained or distributed in accordance with statute.

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. This Chapter also established several new revenue sources, which went into effect on January 1, 2003. These revenues are deposited into the State Court Facilities Construction Fund for the purpose of funding the construction and maintenance of court facilities throughout the state. As facilities transferred to the state, counties also contributed revenues for operation and maintenance of court facilities based upon historical expenditures.

In enacting these changes, the Legislature sought to create a trial court system that was more uniform in terms of standards, procedures, and performance. The Legislature also wanted to maintain a more efficient trial court system through the implementation of cost management and control systems.

The Judicial Council is the policymaking body of the California courts, which is the largest court system in the nation. Under the leadership of the Chief Justice, and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts (AOC) implements the council's policies.

Currently, the state maintains 58 trial court systems, each having jurisdiction over a single county. These courts have trial jurisdiction over all criminal cases (including felonies, misdemeanors, and traffic matters). They also have jurisdiction over all civil cases (including family law, probate, juvenile, and general civil matters).

The mission of the Judicial Branch is to resolve disputes arising under the law and to interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States, in a fair, accessible, effective, and efficient manner.

Major Trial Court Realignment Legislation

Legislation	Description
Lockyer–Isenberg Trial Court Funding Act of 1997. Chapter 850, Statutes of 1997 (AB 233, Escutia and Pringle)	Transferred financial responsibility for trial courts (above a fixed county share) from the counties to the state.
Trial Court Employment Protection and Governance Act. Chapter 1010, Statutes of 2000 (SB 2140, Burton)	Classified most individuals working in the trial courts as court employees.
Trial Court Facilities Act of 2002. Chapter 1082, Statutes of 2002 (SB 1732, Escutia)	Initiated the transfer of ownership and responsibility of trial court facilities from the counties to the state.

Budget Overview. The Governor’s Budget proposes total funding of \$3.1 billion (\$1.2 billion GF) for the Judicial Branch in 2013-14. The following table displays three-year expenditures and positions for the Judicial Branch as presented in the Governor’s Budget.

(dollars in thousands)

Program	2011-12	2012-13	2013-14
Supreme Court	\$40,706	\$43,773	\$43,500
Courts of Appeal	199,112	202,492	204,886
Judicial Council	120,601	148,862	150,795
Judicial Branch Facilities Program	173,796	224,312	263,083
State Trial Court Funding	2,680,140	2,267,631	2,430,566
Habeas Corpus Resource Center	12,425	13,576	13,576
Local Property Tax Revenue Offset	-126,681	-	-
Total	\$3,100,099	\$2,900,646	\$3,106,406
Positions	1,832.0	1,980.2	1,979.9

Issue 1 – Trial Court Funding

Governor's Proposal. The Governor's budget proposes \$2.4 billion for the state's trial courts in 2013-14. This includes a \$200 million augmentation that is offset by a corresponding transfer from court construction funds (the Immediate and Critical Needs Account). In addition, the Administration is proposing trailer bill language to address trial court operational issues caused by the trial court reserve limit of one percent that goes into effect on July 1, 2014.

Background. During the mid-1990s there were significant reforms in the Judicial Branch, court unification and the state assumption of funding responsibility for trial courts. Prior to state funding, many small courts were in financial crisis and needed emergency state funding to keep their doors open. One of the goals of state funding was to promote equal access to justice so that a citizen's access to court services was not dependent on the financial health of an individual county. Upon realignment of funding responsibility to the state, trial courts benefitted financially, as the state was initially able to stabilize and increase funding.

Since 2008-09, state General Fund support for the Judicial Branch has been reduced by \$724 million on an ongoing basis. However, the Administration, the Legislature and the Judicial Council have mitigated these reductions through a mix of permanent and one-time offsets, including transfers from special funds, fee increases, and use of trial court reserves. Overall expenditures for the trial courts have remained relatively flat due to these offsets. However, many of the one-time solutions have been exhausted and, according to the Legislative Analyst's Office (LAO), trial courts are currently faced with the need to operationalize \$234 million in ongoing reductions by 2014-15.

In addition, even though the total level of trial court expenditures has remained relatively flat, impacts of the funding reductions have varied by court, with many courts forced to take actions that have resulted in significant impacts on trial court services. These actions have included courtroom and courthouse closures, reductions in clerk services, reductions in self-help and family law assistance and domestic violence services, and reductions in trial court staffing.

Another significant change to trial court funding limited the amount of reserve funds that a trial court is allowed to maintain to one percent of its prior year budget, beginning in 2014-15, and was included in a trailer bill associated with the current year's budget. Trial courts have raised numerous concerns with this change, particularly around cash flow issues.

As part of the current budget, a collaborative workgroup was established between the executive and judicial branches to conduct a comprehensive evaluation of the state's progress in achieving the goals outlined in the Trial Court Funding Act of 1997, particularly the goal of providing "equal access to justice" and trial court workload and funding. Comprised of six members appointed by the Governor and four members appointed by the Chief Justice, the Trial Court Funding Workgroup began conducting

monthly public meetings in November 2012 and is expected to provide a final report by April 2013.

LAO. The LAO has prepared a handout for the subcommittee that provides background on trial court funding issues and options that their office has proposed that the Legislature may wish to consider.

Recommendation. Hold Open. The subcommittee should continue to assess trial court funding issues throughout the budget process and take necessary action after the Administration submits its April and May budget proposals and there is a clearer picture of the state's overall fiscal position and plan for the budget year.

Issue 2 – Trial Court Efficiency Proposals

Governor's Proposal. The Governor proposes trailer bill language for a range of statutory changes to reduce trial court workload through administrative efficiencies and increase user fees to support ongoing workload at the trial courts.

Background. In May 2012, the Judicial Branch identified 17 proposals for trial court efficiencies in a report to the Legislature. The Governor is proposing to implement 11 of the 17 options. Of the 11 proposed changes, five changes would reduce trial court workload and operating costs, and six would increase user fees to support ongoing workload. These changes would provide the courts with approximately \$30 million in ongoing savings or revenues to help address prior-year budget reductions. Following is an outline of the 11 proposals, as presented by the LAO:

1. ***Court-Ordered Debt Collection.*** Courts (or sometimes counties on behalf of courts) may choose to utilize the state's Tax Intercept Program, operated by the Franchise Tax Board (FTB) with participation by the State Controller's Office (SCO), to intercept tax refunds, lottery winnings, and unclaimed property from individuals who are delinquent in paying fines, fees, assessments, surcharges, or restitution ordered by the court. Current law allows FTB and SCO to require the court to obtain and provide the social security number of a debtor prior to running the intercept. Under the proposed change, courts will no longer be required to provide such social security numbers to FTB. Instead, FTB and SCO (who issues payments from the state) would be required to use their existing legal authority to obtain social security numbers from the Department of Motor Vehicles. This change will reduce court costs associated with attempting to obtain social security numbers from debtors.
2. ***Destruction of Marijuana Records.*** Courts are currently required to destroy all records related to an individual's arrest, charge, and conviction for the possession or transportation of marijuana if there is no subsequent arrest within two years. Under the proposed change, courts would no longer be required to destroy marijuana records related to an infraction violation for the possession of up to 28.5 grams of marijuana, other than concentrated cannabis. This proposed

change would reduce staff time and costs associated with the destruction process.

3. **Preliminary Hearing Transcripts.** Courts are currently required to purchase preliminary hearing transcripts from certified court reporters and provide them to attorneys in all felony cases. In all other cases, the courts purchase transcripts upon the request of parties. Under the proposed change, courts would only be required to provide preliminary hearing transcripts to attorneys in homicide cases. Transcripts would continue to be provided upon request for all other case types. This change reduces costs as the court will no longer be required to purchase copies of all non-homicide felony cases from the court's certified court reporter, but will only need to purchase them when specifically requested.
4. **Court-Appointed Dependency Counsel.** Current law states that parents will not be required to reimburse the court for court-appointed counsel services in dependency cases if (1) such payments would negatively impact the parent's ability to support their child after the family has been reunified or (2) repayment would interfere with an ongoing family reunification process. Designated court staff currently has the authority to waive payment in the first scenario, but are required to file a petition for a court hearing to determine whether payment can be waived in the second scenario. Under the proposed change, staff would be permitted to waive payments under this second scenario, thereby eliminating the need for some court hearings.
5. **Exemplification of a Record.** Exemplification involves a triple certification attesting to the authenticity of a copy of a record by the clerk and the presiding judicial officer of the court for use as evidence by a court or other entity outside of California. The fee for this certification is proposed to increase from \$20 to \$50. The cost of a single certification is \$25. The increased fee is estimated to generate \$165,000 in additional revenue.
6. **Copies or Comparisons of Files.** The fee for copies of court records is proposed to increase from \$0.50 to \$1 per page, which is estimated to generate an additional \$5.9 million in revenue. Additionally, fees to compare copies of records with the original on file would increase from \$1 to \$2 per page.
7. **Record Searches.** Current law requires court users to pay a \$15 fee for any records request that requires more than ten minutes of court time to complete. Typically, courts interpret this to mean that the fee can only be applied when the search for any single record takes more than ten minutes to complete, regardless of the total number of requests made by the requester. Under the Governor's proposal, courts would charge a \$10 administrative fee for each name or file search request. A fee exemption is provided for an individual requesting one search for case records in which he or she is a party.
8. **Small Claims Mailings.** The fee charged for mailing a plaintiff's claim to each defendant in a small claims action would increase from \$10 to \$15 to cover the cost of postal rate increases that have occurred over the past few years.
9. **Deferred Entry of Judgment.** Courts would be permitted to charge an administrative fee—up to \$500 for a felony and \$300 for a misdemeanor—to cover the court's actual costs of processing a defendant's request for a deferred entry of judgment. This occurs when the court delays entering a judgment on a

non-violent drug charge pending the defendant's successful completion of a court-ordered treatment (or diversion) program.

10. **Vehicle Code Administrative Assessment.** Courts would be required to impose a \$10 administrative assessment for every conviction of a Vehicle Code violation, not just for subsequent violations as required under current law. This new assessment is estimated to generate \$2.2 million in annual revenue.
11. **Trial by Written Declaration.** Currently, defendants charged with a Vehicle Code infraction may choose to contest the charges in writing—a trial by written declaration. Originally implemented to allow individuals living far from the court to contest the charge, courts have discovered that more and more individuals living close to the court have been using this service. If the local violator is unsatisfied with the decision rendered in the trial by declaration process, they may then personally contest the charges in court as if the trial by written declaration never took place. In recognition of the unintended increased workload, this proposal would eliminate the right to a trial in front of a judge after a defendant has chosen to proceed with a trial by written declaration.

Staff Comments. Staff notes that there have been concerns raised with some of these trial court efficiency proposals. In particular, there is concern that providing preliminary hearing transcripts in felony cases, other than homicide cases, only upon request, will create a significant burden for defense counsel. Additionally, court user fees have been a primary solution in addressing reductions to trial court funding, shifting the burden from the General Fund to users. However, with the need to operationalize trial court funding reductions as outlined in the first issue, the Legislature should strongly consider these proposals.

Recommendation. Hold open. While these proposals merit strong consideration, staff recommends that action be withheld until all budget proposals and trailer bill language related to trial courts have been presented to the Legislature.

Issue 3 – Informational Item: Notification of Firearms Possession Prohibition
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Background: When a person is convicted of a felony, certain other firearms-related crimes or is identified as being addicted to narcotics, that person is prohibited by law from owning, purchasing, receiving, possessing, or controlling a firearm. Violation of that prohibition is a felony or an alternative felony/misdemeanor (wobbler), depending on the original offense. Existing law requires the court to provide, at the time judgment is imposed, a form notifying a defendant convicted of an offense causing the person to fall into a prohibited class of the fact that he or she may not possess a firearm. The form is to be supplied by the Department of Justice and is to also include a form to facilitate the transfer of firearms from the defendant to a non-prohibited person or persons.

At the March 4, 2013 hearing of the Senate Budget and Fiscal Review Committee on SB 140 (Leno), the Committee discussed whether offenders who become prohibited from possessing a firearm are consistently and adequately made aware of the prohibition at the time of their conviction.

Staff Comments. Members may wish to ask the AOC, as the administrative arm of the Judicial Council, what the Judicial Council does to ensure the courts are meeting their legal obligation to notify prohibited persons of the loss of their right to possess a firearm.

Issue 4 – New Long Beach Courthouse

Governor’s Proposal. The Governor’s Budget proposes \$34.8 million (\$54.2 million in 2014-15) from the Immediate and Critical Needs Account (ICNA) for the initial annual service fee for the New Long Beach Court Building.

Background. The 2007-08 Budget Act directed the Administrative Office of the Courts (AOC), to gather information regarding the possible use of a public private partnership (P3) for the construction of a new facility to replace the existing courthouse in Long Beach. In December 2010, the AOC entered into a P3 contract that required a private developer to finance, design, and build a new Long Beach courthouse, as well as to operate and maintain the facility over a 35-year period. At the end of this period, the judicial branch will own the facility. In exchange, the contract requires the AOC to make annual service payments totaling \$2.3 billion over the period. Occupancy of the new Long Beach courthouse will begin in September 2013.

The type of P3 used for this project is when a single contract is entered into with a private partner (often a consortium of several companies) for the design, construction, finance, operation, and maintenance of an infrastructure facility. In order for a private partner to be willing to finance these costs, the contract must specify a mechanism for repaying the partner. In many cases, this involves a revenue source created by the project (such as a toll or user fee on the infrastructure facility), with the private partner taking on the risk that the projected revenues will materialize at the level anticipated. Alternatively, the state can commit to making annual payments to the partner from an identified funding source. In this case, the Governor is proposing that the annual payments for the new Long Beach courthouse be made from ICNA.

The Judicial Branch has two primary court construction funds, the State Court Facilities Construction Fund, which receives approximately \$130 million annually from fees and penalty assessments to support trial court construction projects, and ICNA, which receives approximately \$320 million annually from various civil and criminal fines and fees originally intended to support 41 trial court construction projects that were deemed to be immediate and critical by the Judicial Council.

The Long Beach courthouse project was not originally on the list of projects the judicial branch planned to be funded from ICNA. Instead, the branch had assumed that the

project would be funded from the General Fund. Therefore, the plan to use ICNA funds for these service payments, combined with other reductions to ICNA's fund balances, resulted in a Judicial Council decision to indefinitely delay four court construction projects (the Fresno County, Southeast Los Angeles, Nevada City, and Sacramento Criminal courthouses).

Staff Comments. Given the substantial commitment of resources required to support this project (\$2.3 billion over 35 years) and the continuing pressures on the GF, ICNA seems to be a reasonable funding source for this project. However, the Legislature should examine not only this project's impact on ICNA, but, also other budget actions that have diverted resources from the fund. These actions have included significant transfers to the GF to offset trial court funding reductions (including an ongoing \$50 million annual transfer to the Trial Court Trust Fund) and a \$90 million loan to the GF that was originally scheduled to be repaid in the budget year (the Governor's Budget does not include this repayment). In order to effectively move forward with a court construction plan utilizing ICNA resources, the fund must be stabilized to a degree that provides certainty that scheduled projects can proceed.

Staff notes that the LAO released a report in November of 2012, *Maximizing State Benefit from Public Private-Partnerships*, in which they analyzed recent state P3 projects including the new Long Beach Courthouse. The LAO found that the P3 practices used by the state entities carrying out the projects they reviewed are not necessarily aligned with the P3 best practices identified in research. For example, the departments did not use clear P3 processes and appear to have selected projects not well suited for a P3 procurement. In addition, the LAO found that the analyses done to compare project costs under different procurement options were based on several assumptions that are subject to significant uncertainty and interpretation, and tended to favor the selection of a P3 approach.

Based on the LAO's review and findings, they identified several opportunities for the state to further maximize its benefits when deciding to procure a state infrastructure project as a P3. Specifically, they recommend that the Legislature:

- Specify P3 project selection criteria in state law in order to provide for greater consistency across departments in terms of how P3s are selected.
- Require a comparative analysis of a range of procurement options (including design-bid-build, design-build, and P3) for all potential P3 infrastructure projects in order to better determine which procurement option would most effectively benefit the state, as well as allow the state to better balance the potential benefits of increased private sector involvement with the potential risks unique to each project.
- Require the existing Public Infrastructure Advisory Commission (PIAC) to approve state P3 projects in order to improve the consistency of the state's P3 approval process.
- Require PIAC to 1) have a broad mix of expertise related to P3 and state finance and procurement, 2) develop additional best practices for the state's use of P3s,

and (3) evaluate other state departments to determine if they would benefit by having P3 authority.

Recommendation. 1) Approve the proposal to fund the service payment for the new Long Beach courthouse from ICNA. The new Long Beach courthouse will be ready for occupancy in the budget year and the state is obligated to meet the annual service agreement. While funding the annual service payment from ICNA will impact other planned projects, this is an appropriate use of ICNA funds and relieves the GF of a significant long-term obligation.

2) Adopt place holder trailer bill language to maximize the benefit of P3 projects to the state, as recommended by the LAO in their November 2012 report.

Issue 5 – Third District Court of Appeals – Rent

Governor’s Proposal. The Governor’s Budget proposes \$4.6 million GF for increased rent related to debt services, administration fees, insurance, and operational/maintenance costs for the newly-renovated State Library and Courts building in Sacramento.

Background. The Department of General Services (DGS) is scheduled to complete renovations to the historic State Library and Courts Building on Capitol Mall in the current fiscal year. The renovations consist of fire, life, safety, infrastructure improvements and rehabilitation of historically significant elements of the circa 1928 building, which is a registered federal and state landmark.

The building’s major tenants will be the State Library and the Courts of Appeal, Third District Court of Appeal. DGS will maintain a small office for their Building and Property Management personnel that will maintain the facility.

The state sold lease-revenue bonds to finance the cost of the renovations and the monthly rental rate is increasing from \$.85 to \$8.26 per square foot to cover the cost of debt service, administration fees, insurance, and operations/maintenance. The new annual rental costs will be \$5.6 million. The amount requested in this proposal reflects an offset of base rental funds.

Recommendation. Approve as budgeted.