



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 11, 2015

Title

Judicial Council–Sponsored Legislation: Two Percent Reserve Held in the Trial Court Trust Fund.

Agenda Item Type

Action Required

Effective Date

December 11, 2015

Rules, Forms, Standards, or Statutes Affected

Gov. Code, § 68502.5(c)(2)(B)

Date of Report

November 12, 2015

Recommended by

Policy Coordination and Liaison Committee
Hon. Kenneth K. So
Trial Court Budget Advisory Committee
Hon. Jonathan B. Conklin, Chair

Contact

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Executive Summary

The Policy Coordination and Liaison Committee and the Trial Court Budget Advisory Committee recommend the Judicial Council sponsor legislation to amend Government Code section 68502.5, the statute that establishes the 2 percent reserve held in the Trial Court Trust Fund.

Recommendation

The Policy Coordination and Liaison Committee and the Trial Court Budget Advisory Committee recommend the Judicial Council sponsor legislation to amend Government Code section 68502.5, the statute that establishes the 2 percent reserve held in the Trial Court Trust Fund (TCTF) to require the Judicial Council to set aside no more than half of 1 percent (0.5

percent) of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the 2014 Budget Act¹ and to provide that these funds shall remain in the Trial Court Trust Fund.

Previous Council Action

On June 27, 2012, the Governor signed into law Senate Bill 1021, which repealed the provisions in Government Code section 77209 related to urgent needs funding from the Trial Court Improvement Fund (TCIF) and added Government Code section 68502.5, which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund (TCTF) appropriation in Program 45.10. In response to this new statute, the Judicial Council, at its August 31, 2012 meeting, approved the current policy with regard to the process, criteria, and required information for requesting supplemental funding from the reserve. This process modified what was approved by the council at its October 28, 2011 meeting as it related to requests for supplemental funding for urgent needs from the TCIF.

At the June 3, 2014 Trial Court Budget Advisory Committee (TCBAC) meeting, Judge Laurie Earl established a 2 Percent Policy Working Group with the goal of bringing options for possible changes back to the TCBAC.

The TCBAC discussed options and recommendations at its July 7, 2014 meeting, brought forward by the 2 Percent Policy Working Group to change the current Judicial Council–approved process for the allocation of the 2 percent state-level reserve in the TCTF. At the council’s business meeting on July 29, 2014, the committee recommended that the Judicial Council make changes to the 2 percent allocation process including the repeal of Government Code § 68502.5(c)(2)(B), which establishes the state-level reserve. The Judicial Council deferred the TCBAC recommendations presented for changes to the process for the allocation of the 2 percent state-level reserve until their October meeting, and requested the TCBAC work with other advisory bodies to provide further input to the council on the issues and recommendations presented in those items.

At the TCBAC meeting on September 26, 2014, the committee discussed options and recommendations for changes to the supplemental funding process from the 2 percent reserve, all of which originated from its working group, to be presented at the Judicial Council’s October 28 business meeting. The TCBAC recommended changes to expedite the distribution of the unexpended reserve funds to trial courts earlier in the fiscal year, and to establish a process for courts to apply for funding for emergencies after these funds have been distributed. For 2015–2016, the TCBAC recommended proposing amendments to the statute that establishes the 2 percent state-level reserve.

The Judicial Council approved the following recommendations at its October 28, 2014, business meeting²:

¹ 2 percent of the 2014 Budget Act appropriation was \$37.9 million and half of 1 percent (0.5 percent) would be \$9.5 million.

- 1) Starting in 2014–2015, approved the distribution in January, after the Judicial Council’s December business meeting, of 75 percent of the remaining Trial Court Trust Fund (TCTF) 2 percent reserve funds. From January 1 through March 15, the remaining 25 percent of the 2 percent reserve are available for court requests due to unforeseen emergencies or unanticipated expenses. These court requests are to be reviewed and recommended to the Judicial Council by a TCBAC working group. Any remaining funds are to be distributed back to the trial courts after March 15. The Judicial Council’s current approved supplemental funding process is to be updated by staff to reflect these changes.
- 2) Directed that court requests due to unforeseen emergencies or unanticipated expenses approved after March 15 and until June 30 be distributed to the court as a cash advance loan until the following fiscal year when the court, if necessary, could apply for supplemental funding from the TCTF 2 percent reserve at the Judicial Council’s October business meeting in order to repay the cash advance loan. These court requests are to be reviewed and recommended to the Judicial Council.
- 3) Directed the TCBAC, working with the Court Executive Advisory Committee, Trial Court Presiding Judges Advisory Committee, and the Policy Coordination and Liaison Committee, to recommend proposed amendments to Government Code section 68502.5(c)(2)(B), the statute that establishes the 2 percent reserve, to be included as trailer bill language to the 2015 Budget Act.

Rationale for Recommendation

The Trial Court Budget Advisory Committee recommends this sponsored legislation because it applies the historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund, caps the amount at the 2014–2015 TCTF appropriation level in order to eliminate annual allocation adjustments, and gives the Judicial Council discretion to determine the process and timing for courts to apply for emergency funding.

Comments, Alternatives Considered, and Policy Implications

Alternatives

Other alternatives that were considered include:

Option 1: Review the approved changes to the process for the allocation of the 2 percent state-level reserve by the Judicial Council at its October 28, 2014 meeting in one year, prior to proposing any amendments to Government Code section 68502.5(c)(2)(B).

Option 2: The Judicial Council would set aside one-half of 1 percent, instead of the current 2 percent, of the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This one-half of 1 percent is based on a historical percentage that was set aside for urgent needs in

² <http://www.courts.ca.gov/documents/jc-20141028-itemM.pdf>

the Trial Court Improvement Fund. (Government Code section 77209 was repealed and replaced with the current statute.)

Option 3: The Judicial Council would determine the amount of the emergency reserve to be set aside annually and the process for managing the funds. The council might consider a percentage or flat amount based on prior years' experience, or historical trends based on requests made for prior emergency set-aside process. It also gives the council the discretion to determine the process and timing for courts to apply for emergency funding, and for distributing any unexpended funds.

Option 4: The Judicial Council would establish a percentage and/or amount to be set aside for an emergency reserve from the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This emergency reserve fund would be allocated directly from the TCTF. For this reason, there would be no need to return the monies to the trial courts. If emergency monies were unspent during the fiscal year, the amount in the fund would roll over. The result would be to reduce any additional amount set aside for emergency funding in the subsequent fiscal year and therefore increase the funding available for allocations to the trial courts, This would replace the current model of allocating the funds, then reducing the allocation, and then returning the allocation to the courts

Policy implications

The recommended option would give the council discretion to determine the process and timing for courts to apply for emergency funding. The emergency reserve set-aside would be capped at no more than \$9.5 million and would remain in the TCTF. Any unspent funds by the end of each fiscal year would be rolled over to the next fiscal year.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected.

Attachments

1. Text of proposed amended Government Code section 68502.5(c)(2)(B), at page 5
2. Attachment A: Issue Paper

Government Code section 68502.5(c)(2)(B) would be amended to read:

1 “~~Prior to~~ Upon preliminary determination of the allocations to trial courts pursuant to
2 subparagraph (A), the Judicial Council shall set aside no more than 2\$9.5 million of the total
3 funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and
4 these funds shall remain in the Trial Court Trust Fund...~~Unavoidable funding shortfall requests~~
5 ~~for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council~~
6 ~~no later than October 1 of each year. The Judicial Council shall, by October 31 of each year,~~
7 ~~review and evaluate all requests submitted, select trial courts to receive funds, and notify those~~
8 ~~selected trial courts. By March 15 of each year, the Judicial Council shall distribute the~~
9 ~~remaining funds if there has been a request from a trial court for unforeseen emergencies or~~
10 ~~unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended~~
11 ~~funds shall be distributed to the trial courts on a prorated basis.”~~”

Amendments to the Statute Requiring a 2 Percent Reserve Held in the TCTF

Issue

Should Government Code section 68502.5, the statute that establishes the 2 percent reserve, be changed for 2015–2016? If so, what should the amendments be?

Background

On June 27, 2012, the Governor signed into law Senate Bill 1021, which repealed the provisions in Government Code section 77209 related to urgent needs funding from the Trial Court Improvement Fund (TCIF) and added Government Code section 68502.5, which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund (TCTF) appropriation in Program 45.10. In response to this new statute, the Judicial Council, at its August 31, 2012 meeting, approved the current policy with regard to the process, criteria, and required information for requesting supplemental funding from the reserve. This process modified what was approved by the council at its October 28, 2011 meeting as it related to requests for supplemental funding for urgent needs from the TCIF.

At the June 3, 2014 Trial Court Budget Advisory Committee (TCBAC) meeting, Judge Earl established a 2 Percent Policy Working Group Working Group with the goal of bringing options for possible changes back to the TCBAC.

The TCBAC discussed options and recommendations at its July 7, 2014 meeting, brought forward by the 2 Percent Policy Working Group to change the current Judicial Council–approved process for the allocation of the 2 percent state-level reserve in the TCTF. At the council’s business meeting on July 29, 2014, the committee recommended that the Judicial Council make changes to the 2 percent allocation process including the repeal of Government Code section 68502.5(c)(2)(B), which establishes the state-level reserve. The Judicial Council deferred the TCBAC recommendations presented for changes to the process for the allocation of the 2 percent state-level reserve until their October meeting, and requested the TCBAC work with other advisory bodies to provide further input to the council on the issues and recommendations presented in those items.

At the TCBAC meeting on September 26, the committee discussed options and recommendations for changes to the supplemental funding process from the 2 percent reserve, all of which originated from its working group, to be presented at the Judicial Council’s October 28 business meeting. The TCBAC recommended changes to expedite the distribution of the unexpended reserve funds to trial courts earlier in the fiscal year, and to establish a process for courts to apply for funding for emergencies after these funds have been distributed. For 2015–2016, the TCBAC recommended proposing amendments to the statute that establishes the 2 percent state-level. The Judicial Council approved the following recommendations at its October 28, 2014, business meeting³:

³ <http://www.courts.ca.gov/documents/jc-20141028-itemM.pdf>

- 1) Starting in 2014–2015, approved the distribution in January, after the Judicial Council’s December business meeting, of 75 percent of the remaining Trial Court Trust Fund (TCTF) 2 percent reserve funds. From January 1 through March 15, the remaining 25 percent of the 2 percent reserve are available for court requests due to unforeseen emergencies or unanticipated expenses. These court requests are to be reviewed and recommended to the Judicial Council by a TCBAC working group. Any remaining funds are to be distributed back to the trial courts after March 15. The Judicial Council’s current approved supplemental funding process is to be updated by staff to reflect these changes.
- 2) Directed that court requests due to unforeseen emergencies or unanticipated expenses approved after March 15 and until June 30 be distributed to the court as a cash advance loan until the following fiscal year when the court, if necessary, could apply for supplemental funding from the TCTF 2 percent reserve at the Judicial Council’s October business meeting in order to repay the cash advance loan. These court requests are to be reviewed and recommended to the Judicial Council.
- 3) Directed the TCBAC, working with the Court Executive Advisory Committee, Trial Court Presiding Judges Advisory Committee, and the Policy Coordination and Liaison Committee, to recommend proposed amendments to Government Code section 68502.5(c)(2)(B), the statute that establishes the 2 percent reserve, to be included as trailer bill language to the 2015 Budget Act. These recommended amendments are to be presented at the Judicial Council’s business meeting in either January or February 2015.

The 2 Percent Policy Working Group met on November 20 and December 17, 2014, to consider options for amendments to the statute that establishes the 2 percent reserve statute. Each option reviewed, along with a description of the option, is provided below.

Options for Amendments to the Statute that Establishes the 2 Percent Reserve

Option 1: Review the approved changes to the process for the allocation of the 2 percent state-level reserve by the Judicial Council at its October 28, 2014 meeting, in one year, prior to proposing any amendments to Government Code section 68502.5(c)(2)(B), which establishes the reserve.

Option 2: The Judicial Council would set-aside one-half of one percent instead of the current two-percent, of the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This one-half of one percent is based on a historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund. (Government Code section 77209 was repealed and replaced with the current statute.)

Option 2 Amendments to Government Code section 68502.5(c)(2)(B):

“Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall set aside ~~2~~ .5 percent of the total funds

appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund...”

Option 3: The Judicial Council would determine the amount of the emergency reserve to be set aside annually and the process for managing the funds. The council might consider a percentage or flat amount based on prior years experience, or historical trends based on requests made for prior emergency set asides process. It also gives the council the discretion to determine the process and timing for courts to apply for emergency funding, and for distributing any unexpended funds.

Option 3 Amendments to Government Code section 68502.5(c)(2)(B):

“Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall establish a percentage or amount to be set aside 2 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund...~~Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis.”~~

Option 4: The Judicial Council would establish a percentage and/or amount to be set aside for an emergency reserve from the total funds appropriated in TCTF Program 45.10 of the annual Budget Act. This emergency reserve fund would be allocated directly from the TCTF. For this reason, there would be no need to return the monies to the trial courts. If emergency monies were unspent during the fiscal year, the amount in the fund would roll over. The result would be to reduce any additional amount set aside for emergency funding in the subsequent fiscal year and therefore increase the funding available for allocations to the trial courts. This would replace the current model of allocating the funds, then reducing the allocation and then returning the allocation to the courts.

Option 4 Amendments to Government Code section 68502.5(c)(2)(B):

“~~Prior to~~ ~~Upon~~ the preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall establish a percentage or amount to be set aside 2 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund...~~Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial~~

~~courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis."~~

Option 5: The Judicial Council would set-aside no more than one-half of one percent instead of the current two percent, of the total funds appropriated in TCTF Program 45.10 of Item 0250-101-0932 of the 2014 Budget Act. This option also would give the council discretion to determine the process and timing for courts to apply for emergency funding. The emergency reserve set-aside would be capped at no more than \$9.5 million and would remain in the TCTF. Any unspent funds by the end of each fiscal year would be rolled over to the next fiscal year.

Option 5 Amendments to Government Code section 68502.5(c)(2)(B):

~~"Prior to ~~Upon~~ preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall set aside no more than ~~2~~ .5 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the ~~annual~~ 2014 Budget Act and these funds shall remain in the Trial Court Trust Fund. . . . ~~Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis."~~~~

Recommendation

The working group recommends Option 5. The working group chose this option because it applies the historical percentage that was set aside for urgent needs in the Trial Court Improvement Fund, caps the amount at the 2014–2015 TCTF appropriation level in order to eliminate annual allocation adjustments, and gives the Judicial Council discretion to determine the process and timing for courts to apply for emergency funding.