



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 25–26, 2016

Title

Court Facilities: Recommendation on the
Active Senate Bill 1407 Courthouse Capital
Projects

Agenda Item Type

Action Required

Effective Date

August 26, 2016

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

August 19, 2016

Recommended by

Court Facilities Advisory Committee

Hon. Brad R. Hill, Chair

Hon. Patricia M. Lucas, Vice-Chair

Hon. Jeffrey W. Johnson, Chair of the

Courthouse Cost Reduction Subcommittee

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Executive Summary

The Court Facilities Advisory Committee (CFAC) recommends that, until proper funding of the Immediate and Critical Needs Account (ICNA) is restored and with exception of the capital projects currently under construction, the schedules of the active Senate Bill 1407 projects be modified or put on hold. The CFAC advocates that funding should be restored for these important and desperately-needed courthouse capital projects.

Recommendation

The Court Facilities Advisory Committee recommends that the Judicial Council, effective August 26, 2016, direct the active SB 1407 courthouse capital projects proceed as identified in the *Court Facilities Advisory Committee: Recommendation to Judicial Council on Active SB 1407 Courthouse Capital Projects*.

The chart is attached at page 6.

Previous Council Action

Concerning funding delays of the SB 1407 courthouse construction program and related past council actions, these are captured under **Judicial Branch Oversight** on pages 4–5 of the fact sheet titled, *Senate Bill 1407—Impacts of Delay, Judicial Branch Court Construction Program*, which is available at www.courts.ca.gov/documents/SB1407-TrialCourtFacilities_07-26-2016.pdf.

Rationale for Recommendation

The passage of Senate Bill 1407 (Perata; Stats. 2008, ch. 311) established special revenues—based on the collection of fees, penalties, and assessments from court users—to support up to \$5 billion in lease-revenue bonds for trial court facility improvements and enabled the branch to make great strides toward improving the trial courts across the state. However, since 2009, approximately \$1.4 billion in SB 1407 funds¹ have been loaned or redirected from the ICNA to offset trial court funding cuts, or swept to offset the state General Fund deficit. Consequently, the judicial branch no longer has sufficient funding to do everything that the Judicial Council has directed since SB 1407 was enacted.

Owing to these one-time and ongoing redirections of SB 1407 construction funds, and over the years, the council has adopted the CFAC's recommendations to manage the SB 1407 courthouse construction program. These recommendations have included the delay of design and construction starts for many projects, the cancellation of two courthouse projects, the reduction of budgets on all others, and the indefinite delay of 11 projects. Furthermore, a decrease in court filings and a decrease in fines and fees—as well as the ongoing traffic amnesty program—have led to a dramatic decline in revenue throughout the state. Many local and state programs—not just trial court operations and the SB 1407 construction fund—are dependent on the fines and fees revenue stream.

To review the condition of the ICNA, the CFAC held public meetings in December 2014, March 2015, and June 2016. At its public meeting in March 2015, the CFAC heard a report from council staff, including the following comments:

1. Based on actual collections as of December 2014, council staff developed a revenue projection for FY 2014–2015 of \$250 million–\$255 million annually, forecasting that value flat for approximately 30 years or the life of the ICNA.
2. Council staff must do long term forecasting (of approximately 30 years) because of the need to debt-finance the majority of the projects in the courthouse construction program.
3. Revenue projections were uncertain, the forecasting of the flat value (referenced above) was problematic and optimistic, and revenue increases were needed to avoid further project delays.

¹ This total capital-outlay deficit continues to increase each year owing to the ICNA's ongoing payouts of \$25 million to facility modifications, \$50 million to trial court operations, and \$54 million to the service fee for the Governor George Deukmejian Courthouse.

In its February 2016 analysis of the Governor’s criminal justice proposals on the 2016 Budget Act (FY 2016–2017), the Legislative Analyst’s Office raised concern with legislators: “According to judicial branch estimates, if all projects that are not currently canceled or indefinitely delayed completed construction as planned (including the above projects proposed by the Governor), the ICNA operating deficit would increase further, reaching nearly \$100 million by 2037–38. Under this scenario, ICNA would become insolvent even earlier—by 2023–24.”² This report (see Link B) was released before the complete establishment of the traffic amnesty program, which further affected the revenue coming into the ICNA and into other state funds.

At its public meeting in June 2016, the CFAC heard a report from council staff including the following comments:

1. ICNA obligations include cash-funded and debt-service payments from FY 2014–2015 through FY 2019–2020 and only debt-service payments beyond FY 2019–2020.
2. Total annual ICNA expenditures range from the current obligation of approximately \$224 million to the future obligation of approximately \$323 million—this future obligation figure factoring in the debt-service payments of all capital projects whose construction phase is not yet underway.
3. Given its annual expenditures compared to its actual, declining revenues, the ICNA is in deficit spending and relying on its fund-balance reserves to meet current and future annual obligations.
4. Given its annual expenditures compared to annual revenue projections now adjusted closer to \$200 million for fiscal years beyond FY 2015–2016—based on the decrease in actual ICNA revenue collected through FY 2014–2015—the ICNA will experience an estimated negative fund balance as early as FY 2021–2022.

Facing the projected insolvency of the ICNA as early as FY 2021–2022, and to avoid this occurrence while an effort to restore construction funding is planned, the CFAC recommends that the council not stop the SB 1407 courthouse construction program but allow its active capital projects to proceed with the careful consideration outlined in the attached chart. As captured by this chart, which groups projects in states of similar progress, in essence, the CFAC’s recommendation is to allow projects under construction to finish while placing all others on hold after they complete either their current design phase or site acquisition due diligence. This recommendation is intended to be mindful of the existing funding and, if at all possible, not to worsen the financial situation.

The active SB 1407 courthouse capital projects are necessary to replace or improve courthouses with the most severe problems—safety and security, structural deterioration, and

² Legislative Analyst’s Office, *2016–17 Budget: Governor’s Criminal Justice Proposals* (Feb. 2016), pp. 5–9 (criminal fine and fee revenue) and pp. 35–38 (judicial branch capital projects), <http://lao.ca.gov/reports/2016/3359/criminal-justice-proposals-022216.pdf>.

overcrowding—for the protection of the public, court staff, and judicial officers, and to improve access to justice in California. The CFAC advocates that their funding should be restored.

Comments, Alternatives Considered, and Policy Implications

As noted above, and to review the condition of the ICNA, the CFAC held public meetings in December 2014,³ March 2015,⁴ and June 2016.⁵ For the public meeting in June 2016, a news release summarizing the meeting’s discussion and outcome is available at <http://newsroom.courts.ca.gov/news/court-construction-funding:-code-red-condition>.

The CFAC also held a public meeting on August 11, 2016, to receive comments from the superior courts and the public and to document those comments by way of video and submitted materials concerning the impacts of funding delays to the capital projects. In advance of this meeting, and to encourage participation, communications including the fact sheet (Link A) were sent to all superior court presiding judges and court executive officers, informing them of the latest impacts on the ICNA, the continuing risks to security and physical conditions of court facilities, and the escalating costs of the SB 1407 courthouse construction program.

At the August 2016 CFAC meeting, comments were made from 16 superior courts—each of the 15 courts with active SB 1407 projects not currently under construction listed in the attached chart and 1 court (Superior Court of Monterey County) with an indefinitely-delayed project—and 6 members of the public representing local and statewide political interests. Numerous e-mails and letters of support for the capital projects were received and archived as part of the meeting’s materials in addition to the presentation materials generated by the 16 superior courts. The archived webcast video of the CFAC’s August 2016 meeting is available at http://jcc.granicus.com/MediaPlayer.php?clip_id=219 and its archived materials available at www.courts.ca.gov/documents/cfac-20160811-materials.pdf. In addition, a news release capturing that meeting’s details and outcome is available at <http://newsroom.courts.ca.gov/news/facilities-committee-seeks-to-preserve-safe-and-secure-courthouse-projects>.

Implementation Requirements, Costs, and Operational Impacts

No costs are involved in implementing the recommended council action, because it is performed on behalf of the council by its staff.

In terms of the impacts to the SB 1407 courthouse construction program, and as stated in brief from the fact sheet (see Link A):

³ Minutes and materials from the December 2014 CFAC meeting are available at www.courts.ca.gov/documents/cfac-20141203-meeting-minutes.pdf and www.courts.ca.gov/documents/cfac-20141203-materials.pdf.

⁴ Minutes and materials from the March 2015 CFAC meeting are available at www.courts.ca.gov/documents/cfac-20150324-meeting-minutes.pdf and www.courts.ca.gov/documents/cfac-20150324-materials.pdf.

⁵ Minutes and materials from the June 2016 CFAC meeting are available at www.courts.ca.gov/documents/cfac-20160628-minutes.pdf and www.courts.ca.gov/documents/cfac-20160628-materials.pdf.

The construction market is starting to improve, and the sooner courthouse projects are designed and bid, the lower the cost to the state. Repeated delays likely will cause cautious private sector participants to increase their bids to mitigate the perceived increased risk of uncertainty in doing business with the State of California. In addition, this program has benefited from historically low interest rates, resulting in lower long-term costs of construction, which is typically financed rather than cash funded. Financing construction now—while the financing costs are relatively low—makes the most of the historic low borrowing rates.

Judicial Council of Cal., *Senate Bill 1407—Impacts of Delay, Judicial Branch Court Construction Program* (fact sheet, July 2016)

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachment and Links

1. *Court Facilities Advisory Committee: Recommendation to Judicial Council on Active SB 1407 Courthouse Capital Projects*, attached at page 6
2. Link A: *Senate Bill 1407—Impacts of Delay, Judicial Branch Court Construction Program* fact sheet, www.courts.ca.gov/documents/SB1407-TrialCourtFacilities_07-26-2016.pdf
3. Link B: *2016–17 Budget: Governor’s Criminal Justice Proposals*, <http://lao.ca.gov/reports/2016/3359/criminal-justice-proposals-022216.pdf>

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 August 26, 2016

	County	Capital Project Name	Current Phase	Recommendation for Projects Under Construction: Complete Construction
1	Alameda	New East County Hall of Justice	Construction	Complete construction as planned in May 2017
2	Merced	New Los Banos Courthouse	Construction	Complete construction as planned in September 2016
3	San Diego	New Central San Diego Courthouse	Construction	Complete construction as planned in January 2017
4	San Joaquin ¹	New Stockton Courthouse	Construction	Complete construction as planned in June 2017
5	Santa Clara	New Santa Clara Family Justice Center	Construction	Complete construction as planned in August 2016
6	Tehama	New Red Bluff Courthouse	Construction	Complete construction as planned in August 2016
				Recommendation for Projects in Acquisition: Complete Site Due Diligence and Then Hold
7	El Dorado	New Placerville Courthouse	Site Acquisition	Complete site due diligence and then hold
8	Inyo	New Inyo County Courthouse	Site Acquisition	Complete site due diligence and then hold
9	Los Angeles	New Eastlake Juvenile Courthouse	Site Acquisition	Complete site due diligence and then hold
10	Mendocino	New Ukiah Courthouse	Site Acquisition	Continue with second half of acquisition and then hold
				Recommendation for Projects in Design: Complete Current Phase and Then Hold
11	Lake	New Lakeport Courthouse	Working Drawings	Complete study for budget review/consideration of restart by CFAC
12	Los Angeles	New Hollywood Courthouse	Design-Build	Prepare Design-Build RFQ/RFP package
13	Riverside	New Mid-County Civil Courthouse	Preliminary Plans	Complete preliminary plans and then hold
14	Sacramento	New Sacramento Criminal Courthouse	Preliminary Plans	Complete preliminary plans and then hold
15	Santa Barbara	New Santa Barbara Criminal Courthouse	Preliminary Plans	Complete study for budget review/consideration of restart by CFAC
16	Sonoma	New Santa Rosa Criminal Courthouse	Preliminary Plans	Complete preliminary plans and then hold
17	Stanislaus	New Modesto Courthouse	Preliminary Plans	Complete preliminary plans and then hold
				Recommendation for Projects with 2016/2017 Construction Starts: Complete Current Phase, Obtain All Final Approvals, and Then Hold
18	Glenn	Renovate and Addition to Willows Courthouse	Working Drawings	Complete working drawings, obtain all final approvals, and then hold
19	Imperial	New El Centro Courthouse	Working Drawings	Complete working drawings, obtain all final approvals, and then hold
20	Riverside	New Indio Juvenile and Family Courthouse	Working Drawings	Complete working drawings, obtain all final approvals, and then hold
21	Shasta	New Redding Courthouse	Working Drawings	Complete working drawings, obtain all final approvals, and then hold
22	Siskiyou	New Yreka Courthouse	Bidding	Project has all final approvals and now on hold
23	Tuolumne	New Sonora Courthouse	Working Drawings	Complete working drawings, obtain all final approvals, and then hold

Footnote:

1. Although this project's funding source is SB 1732, it has been listed among the SB 1407 courthouse capital projects in order to provide a complete list of all courthouse capital projects that are currently under construction and that are recommended to complete construction based on their respective schedules.