

## White Paper on Trial Court Funding

### Background

- **The Trial Court Facilities Act of 2002** set out a framework and procedures for transferring responsibility for court facilities from the counties to the state through negotiated transfer agreements. The measure represented the third and final step in centralizing with the state responsibility and authority for court operations, court employees, and court-related facilities. Counties continue to believe that there are important and valid policy reasons for seeing to successful conclusion the historic trial court funding and operational reforms that were begun under the Trial Court Funding Act of 1997 (AB 233, Escutia and Pringle).
- **Senate Bill 1732 (Escutia, 2002).** When SB 1732 was enacted in 2002, it embodied the consensus recommendations of the Task Force on Court Facilities, including its overarching recommendation that responsibility for trial court facilities be transferred from the counties to the state. While provisions in SB 1732 envisioned that transfers would be concluded before June 30, 2007, an array of challenges and transactional complexities have impeded the successful execution of transfer agreements within the time frame originally anticipated.
- **2007 Legislative Reauthorization Effort.** Efforts to secure an extension to the provisions of SB 1732 during the 2007 legislative year were unsuccessful. As a result, there was no statutory authority to transfer either responsibility or title for court facilities from the counties to the state on or after July 1, 2007. Before the transfer deadline lapsed in 2010, approximately 115 court facility transfers in over 30 counties were executed. According to the latest data received, 11 counties statewide have fully completed the transfer process. There aren't any transfers anticipated at this time given the budget constraints on the Judicial budget and all construction projects are held at various stages depending upon funding authorization and available funds.
- **Assembly Bill 1491.** Beginning with the Legislature's return in January 2008, there was an effort to secure statutory authority to extend the transfer period. Assembly Member Dave Jones, chair of the Assembly Judiciary Committee at that time, volunteered to author the bill to carry out the reauthorization effort. He and his staff, along with other key legislative staff in the Assembly, met with the co-sponsors in January to develop a framework for a consensus measure. Drawing largely from estimated court facility transfer timeframes developed by the AOC and reviewed by counties in late 2007, a number of key elements emerged as the structure of the bill. These elements were incorporated in AB 1491.

The measure made its way through both houses of the Legislature on an expedited basis; it received unanimous and bipartisan support before arriving on the Governor's desk in mid-April for his review and action. The bill was signed into law on April 23, 2008; given that it was an urgency measure, its provisions were enacted immediately. AB 1491 did all of the following:

- Extended the ultimate court facility transfer deadline to December 31, 2009;

- Established “tiers” to incentivize expeditious transfers, as follows:

Time Period	Description
Before 9/30/08	County Facility Payment (CFP, which, effectively, is an ongoing Maintenance of Effort paid to the state) is calculated pursuant to provisions of SB 1732 (2002) – “standard” CFP
10/1/08 to 3/31/09 (Tier 1)	Standard CFP + inflationary “price” factor (2.4%)*
4/1/09 to 12/31/09 (Tier 2)	Standard CFP + State Appropriations Limit (SAL, ~5%)
On or after 1/1/10	No further transfer agreements can be executed

- Established a process to suspend the Tier 1 inflator structure if certain conditions exist, a joint county/AOC certification is signed, and the transfer agreement is executed on or before 12/31/08.
- Provided that a single agreement (rather than one agreement per facility) may be used to execute a “global” transfer for all court facilities within a county.

The state Task Force had recommended the following policy guidelines in an effort to achieve the most success.

- Responsibility to the State** – Restates several of the principal recommendations of Task Force on Court Facilities, including its overarching recommendation that responsibility for trial court facilities should be transferred from the counties to the state.
- Facilities for New Judges** – States that a county is responsible for the facility needs for judges and court support positions created prior to July 1996 and thus recognizes that the state shall continue to assume responsibility for the facility needs for new judges and support staff indefinitely.
- Dispute Resolution Process** – Creates a three-person Court Facility Dispute Resolution Committee (CFDRC) composed of one person selected by each of the following entities: CSAC, the Judicial Council, and the Director of Finance. The committee is to review and recommend resolutions for disputes between a county and the Judicial Council regarding: (1) rejection of a transfer of responsibility building because of a deficiency; (2) failure to reach agreement on transfer of responsibility for a building; (3) the appropriateness of expenditures from a local courthouse construction fund and (4) the amount of a county facility payment. The Department of Finance, however, shall make final determination in these matters.
- Relief of Ongoing County Responsibility** – Provides that once responsibility for a facility is transferred from a county to the Judicial Council, a county will be relieved of its deferred and ongoing maintenance responsibilities.
- Timeline for Transfer** – Provides that negotiations for transfer of responsibility shall take place between July 1, 2003 and June 30, 2007, but states that transfers may not take place earlier than July 1, 2004.

- **Transfer of Title** – Provides that in most cases title to buildings used solely for court functions shall transfer to the state. Title to historic buildings, shared use buildings, and buildings subject to bond indebtedness may or may not transfer.
- **Transfer of Responsibility without Transfer of Title** – Responsibility for court facility may transfer whether or not title transfers to the state.
- **Buildings Subject to Bond Indebtedness** – Provides a process to deal with the transfer of responsibility for buildings subject to bond indebtedness but also recognizes that a county shall retain the revenue used to pay the bond indebtedness.
- **Historic Facilities** – Provides that no historic facility should be transferred to the state without the express approval of the county’s Board of Supervisors. Historically significant facilities may or may not transfer, but must be made available to the state for court use. However, the county may, with the agreement of the local court, opt to provide suitable and adequate court facilities in an alternative facility. Facilities considered historic shall either be registered or eligible for inclusion on the state or federal historic register. Under current law the court facility MOE is in perpetuity with historic court houses.
- **Judicial Council to Represent State** – Generally recognizes that the Judicial Council shall represent the state in regard to various aspects of negotiations for transfer of responsibility as well as the administration, maintenance, and construction of court facilities after transfer.
- **Building-by-Building Agreement for Transfer** – Requires that the Judicial Council and a county enter into an agreement for transfer before a transfer of responsibility will occur. These agreements shall be made on a building-by-building basis.
- **No Payment for Deferred Maintenance** – States that transfer agreements may not require a county payment for a deficiency caused by deferred maintenance. However, agreements may provide that a county corrects other types of deficiencies prior to transfer.
- **Deficient Buildings** – Provides that a building shall be deemed deficient (and thus rejected for a transfer of responsibility to the state) if a deficiency or deficiencies: (1) constitute a significant threat to life, safety, or health, (2) include seismically hazardous conditions with unacceptable seismic safety ratings, (3) in their totality are significant to the functionality of the facility.
- **Seismic Inspections and Evaluations** – Requires that the state provide for a licensed structural engineer to conduct a seismic safety inspect and evaluation.
- **Pending Court Facility Projects** – Provides that the Judicial Council may, as part of a transfer agreement, require completion of a pending court facility project or phase of such a project “to the extent that county funds or property have been allocated, approved, appropriated, or committed to those phases of the project by resolution or ordinance.” The Santa Barbara Court Construction project is on the most recent list as of December 13, 2012, the status is to recommend proceeding with a study and establish the renovation and expansion program then to begin the design once the funds are authorized. After the last Judicial Council meeting they stated that the legislature has borrowed over \$1.5 billion from their funds so many of the funding opportunities are on hold for now until additional funds are made available.

- **Joint Responsibility for Implementation Procedures** – Requires that the Judicial Council and CSAC (in consultation with the Department of Finance (DOF), counties, and trial courts) develop procedures for implementing the transfer of responsibility, including forms and instructions regarding the county facility payments.
- **Rights and Protections for Occupants of Shared Buildings** – Provides that occupants of a shared use building shall retain certain rights and protection for the continued use of the building.
- **Rights, Authorities, and Responsibilities of Parties** – Lists several and varied ongoing rights, authorities, and responsibilities of the Judicial Council, the Administrative Office of the Courts, and counties in regard to transfer buildings.
- **County Facility Payment** – Requires counties to pay a county facility payment to the state based on the amount the county historically expended for operation, repair, and maintenance of court facilities. Also delineates the process for establishing the county facility payments. However, in no case shall the payment be required until a transfer of responsibility takes place.
- **New Fees and Penalties** – Provides for a new surcharge (in addition to any other state or local criminal and traffic penalty) and increased civil filing fees to help offset the state's responsibility for transferred facilities.
- **Local Courthouse Construction Funds** – Requires for the transfer of local county courthouse construction funds to a new State Court Facility Construction Fund when responsibility is transferred or when the bond indebtedness paid from the local fund is retired.
- **Use of Local Courthouse Construction Funds** – Requires each county to report receipts and expenditures from local courthouse construction funds to the Directors of the AOC and DOF. Counties may be required to repay the state for the improper expenditure of local courthouse construction funds.

Unfortunately, the state was not able to complete this process given their budget constraints. Furthermore, the 2013-14 Governor's budget continues to cut into court facilities and the Judicial Counsel budget, this year there is an estimated \$200 million in additional cuts expected. Given that the county was part of the next eight counties to be bought out, we may want to pursue a number of different avenues:

- Work with the other counties in an effort to achieve success in moving our court house to the state as originally intended.
- Go it alone and hope for the best.
- Attempt to obtain relief over a longer period of time.
- Work with the other counties but seek a reduced amount.

One key point that should be addressed regardless of which direction the Board decides to go, we need to begin to educate our current delegation. With the exception of Senator Jackson, our delegation was not elected and may not be familiar with our current situation. I think this would be the first step to ensure that they are looking for opportunities to discuss this during the legislative cycle. In terms of how do we move forward, we need to talk with our delegation and strategize over what the next steps should be and what is possible given the fiscal constraints of the state, whether that is a legislative fix is still unknown at this time.