

• Nov. 25, 2009

Courthouse Stimulus: SB 1407

By Mary Ann O'Malley

Last year the Legislature passed and the Governor signed a critical piece of legislation to begin repairing and replacing the most dilapidated and dangerous courthouses in the state without using a single dollar of the state's general fund. Diverting the funding stream created by this legislation will prolong and increase the risk to the public, jurors, court personnel, and court operations.

No one disputes the need for these crucial state infrastructure projects - aging and unsafe facilities have suffered from years of deferred maintenance by the counties. The Legislature and the Governor also recognized that the projects would bring jobs and welcome relief to dozens of communities affected by the worst economic downturn in 70 years.

In September 2008, as the full extent of the national economic crisis was unfolding, SB 1407 was celebrated as a kind of home-grown stimulus package. "Building California's infrastructure is one of my highest priorities," said Governor Schwarzenegger when he signed the bill. "Improving our state's aging court facilities has been an integral part of my promise to Californians to rebuild our infrastructure and increase public safety. This bill not only delivers on that promise to finance desperately needed construction projects, but it will also help create thousands of jobs for California workers." Indeed, in February of this year the Legislature passed and the governor signed additional legislation authored by Senator Darrel Steinberg to fast track the approval and construction of these urgent projects.

As reported in this paper on November 12, there are calls to sidetrack this program by redirecting project funds to local court operations. I believe this approach is shortsighted and will permanently cripple our shared goals of equal access to justice for all Californians. Fifty of my fellow presiding judges agree with me, including many who do not have projects planned in their county. To understand what is at stake here, it's helpful to know how we got to this historic moment.

California's fiscal crisis has affected state government at all levels and in all areas, including the state court system. Faced with a severe \$414 million cut at the beginning of this fiscal year, the courts were forced to close one day per month. Staff salaries were cut and a majority of the state's judges voluntarily waived a portion of their salaries. Some courts have found layoffs unavoidable.

As bad as the current situation is, it would be far worse without the structural reforms that were made in the state judicial branch over the last 12 years. The transition from county to state funding begun in 1997 and voter approval for unification of the state's 220 trial courts into a single level of 58 courts a year later so far have allowed us to manage the crisis up until the current fiscal year without compromising our commitment to the bar or to the public. Smarter planning, greater flexibility in the use of resources, and the elimination of duplicative services have made us better prepared, than at any time in memory, to withstand the effects of the downturn. It is with this same creative and innovative spirit that the judiciary will work with the Legislature to successfully manage this fiscal crisis.

A last major piece of the transformation of our judicial branch came in 2002 with the Trial Court Facilities Act. The legislation directed the transfer of responsibility for court facilities from the counties to the state - a major and entirely new undertaking for the Judicial Council. The transfers are nearly completed: 511 facilities have been executed and agreements for the remaining 20 are under negotiation and should be completed by the end of the year.

The challenge then became how to rehabilitate and replace those court facilities that, because of earthquake, fire safety, and security deficiencies, pose substantial dangers not only to those who work in them, but also to persons who appear as witnesses, parties, or jurors, or enter these structures to pay traffic tickets or obtain documents or other various services. Additionally, some court facilities operate out

of leased space including former warehouses, bank and office buildings. These make-shift courthouses are inadequate and are more costly than owned courthouses.

Many judges and administrators, lawyers and county representatives devoted hours to working with the Governor's office and Legislators to find solutions to the problem. Several promising proposals emerged and then Senate President pro Tempore Don Perata introduced SB 1407.

The bill authorized up to \$5 billion to construct or renovate 41 courthouses in 34 counties, a mere portion of the most critically necessary projects. They are financed through lease revenue bonds supported by increased court fees, penalties, and assessments. These projects would replace or improve courthouses with critical problems-security, safety, physical deterioration, and overcrowding.

The recognition by each of the branches of state government of the need to address the critical condition of the state's courthouses - especially in the current economic climate-is an example of state government at its best. The bill is a responsible step forward in tackling the most needed projects and improving the safety and efficiency of our courts.

Among projects already approved in the current fiscal year are courthouses in Los Angeles, Riverside, Imperial, Sacramento, Santa Clara, and San Diego counties, among others. These projects have an estimated total project cost of \$3 billion. Efforts are already under way by the Administrative Office of the Courts, the courts, and local governments to proceed with all 41 projects identified in the bill.

Now, some question the wisdom of proceeding with courthouse construction. The suggestion to use these construction funds to operate the courts instead is, plainly and simply, a bad idea.

Significant delays in the program would be catastrophic for several reasons. First, delays in implementation would prolong security risks. The courthouse projects authorized in SB 1407 are the most immediate and critically needed throughout the state. Delaying construction could worsen many risks to public safety. A March 2009 incident in a Stockton courtroom, when a defendant was shot to death after he attacked the judge with a handmade weapon, illustrates the multifaceted nature of courtroom security challenges and its direct relationship to courthouse design and construction. In many courthouses to be replaced, in-custody defendants move through the same hallways used by the public. This has resulted in intimidation of victims, witnesses, and jurors. Inadequate security is a major concern in courthouses that deal with gang-related criminal proceedings. Many courthouses are seismically deficient as well. In fact, several have seismic ratings of category 5, which poses a substantial level of risk to life and safety due to a seismic event.

Years of neglect have resulted in additional physical risks in many courthouses, and a small portion of SB 1407 funding has been designated to remedy this through repair projects in existing buildings. Some lack adequate fire alarm systems, emergency evacuation systems, or other basic life safety systems. Roofs and windows leak, often causing severe water damage and in some cases even mold.

Delaying needed facility repairs, upgrades, and system replacements extends these hazards and could make them more expensive to repair in the future.

The reason prompting the cry for diversion of the funds, namely, the economic crisis, is one of the many reasons why we should not divert these funds. Delays would slow job creation, a key component of our economic recovery. Implementation of SB 1407 presents an unparalleled opportunity for economic stimulus at a time when the state's economy is at historic lows. It is estimated that the \$5 billion construction fund will create 105,000 jobs through direct employment and the indirect boost to local economies and help reduce the high level of unemployment in California. The negative impact of delay would be felt throughout the construction industry and related trades, including both skilled and unskilled labor.

Lastly, delays would escalate costs. Right now we have a window of opportunity for reduced pricing on land, design, and construction offered during the current recession. Assuming typical construction escalation costs, delaying for one year would undermine the state's buying power by an estimated \$300 million. If construction is delayed, cautious private sector participants will increase their bids to mitigate the perceived increased risk of uncertainty in doing business with the State of California. This risk assessment could lead to unnecessary increased costs and reduced buying power.

Chief Justice Ronald George and many, many judges around the state have worked for years to find a solution to the problem of restoring or replacing California's aging and increasingly unsafe courthouses. "Our judicial system does not need, want, or expect palaces," the Chief has frequently said. "But it does deserve facilities that are secure, well maintained, and adequate to serve the public's needs."

At last we have that opportunity. The governor, Legislature, and the judiciary should not retreat from the commitment they made just a few months ago.

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