



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 20, 2015

Title	Agenda Item Type
Court Facilities: Budget Allocations for Statewide Trial Court Facility Modifications and Planning in Fiscal Year 2015–2016 and Related Matters	Action Required
	Effective Date
	August 20, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	July 31, 2015
Recommended by	Contact
Trial Court Facility Modification Advisory Committee	Patrick McGrath, 916-643-8051
Hon. David Edwin Power, Chair	patrick.mcgrath@jud.ca.gov

Executive Summary

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends allocations of the \$65 million appropriated by the Legislature for trial court facility modifications in the fiscal year (FY) 2015–2016 State Budget. The recommended allocations support facility modification planning and facility modifications for emergency and critical needs, but continue to defer funding of almost all planned facility modifications.

TCFMAC also recommends that vigorous efforts be made to obtain additional General Fund money in FY 2016–2017 for Fund 3066, the Court Facilities Trust Fund, which pays for utilities, leases, insurance, and routine/preventive maintenance of courthouses. As of June 30, 2016, there will be reserves in this fund carried over for use in FY 2016–2017; however, the total resources in the fund will be insufficient to fund the level of preventive maintenance that is currently being completed in trial court facilities. The existing pattern of “run to failure” response to known problems will become worse if no additional funds are located for Fund 3066.

Recommendation

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends that the Judicial Council, effective August 21, 2015, approve allocations of the \$65 million authorized by the Legislature for statewide court facility modifications and planning (FM) in FY 2015–2016 as follows:

1. Priority 1 facility modifications allocation of \$10 million (15% of total allocations);
2. Priority 2–6 facility modifications allocation of \$48.1 million (74% of total allocations);
3. Planned facility modifications allocation of \$2.9 million (5% of total allocations); and
4. Statewide facility modifications planning allocation of \$4 million (6% of total allocations).

Previous Council Action

The Trial Court Facility Modification Working Group was established by Judicial Council policy in 2005. The working group first met in April 2006 and operated under the *Trial Court Facility Modifications Policy*,¹ adopted by the Judicial Council in 2005 and revised on July 27, 2012 and again on December 12, 2014. The primary oversight responsibilities included reviewing statewide facility modification requests and approving facility modification funding.

The working group's charge was formalized by the Judicial Council on December 14, 2012, and the working group was assigned additional oversight responsibility for the operations and maintenance of existing facilities, noncapital-related real estate transactions, energy management, and environmental management and sustainability. On April 25, 2013, the working group's status was elevated to that of advisory committee.

The Judicial Council allocated the FY 2014–2015 FM budget of \$65 million at the July 29, 2014 Judicial Council meeting.

The TCFMAC reports previously approved by the Judicial Council are available at www.courts.ca.gov/2567.htm under Research and Reports: Conditions in Our Courts.

Rationale for Recommendation

The TCFMAC developed the FM budget proposal in alignment with the *Trial Court Facilities Modifications Policy*. The charge tasks the TCFMAC with providing recommendations and advice directly to the Chief Justice, Judicial Council, and the Administrative Director.

Allocation strategy

The FM allocation strategy that underlies the recommendations presented in this report is designed to address planned facility modification projects that have been identified as critical needs for the trial courts. For the FY 2014–2015 FM budget the Judicial Council proposed a 10-year increase in authority from the State Court Facilities Construction Fund (SCFCF)—in the

¹ As adopted in 2005, the policy was known as the *Prioritization Methodology for Modifications to Court Facilities*. When it was revised in 2012, the name also changed. See www.courts.ca.gov/documents/jc-20120727-itemG.pdf.

amount of \$15 million per year—and four positions, and an ongoing increase of \$12 million per year and three positions from the General Fund for transfer to the Immediate and Critical Needs Account (ICNA) to fund trial court facility modification projects. While the funding of \$15 million was approved, the Department of Finance (DOF) declined to provide any additional general funding. DOF acknowledged the need for additional staffing to execute the funding, but again did not provide any General Fund money to support the positions.

Based on the minimum industry standard for capital infrastructure reinvestment of 2 percent, there is a total reinvestment need of \$77 million annually. This reflects a current funding shortfall of \$12 million. Currently, there is a backlog of identified projects. The requested funding will address major repairs, system life-cycle replacements, and renovation projects in existing courthouses to provide safe and secure facilities for the benefit of all court users. Beginning in FY 2014–2015 and in compliance with new DOF requirements, this deferred maintenance backlog will be submitted to DOF within the Capital Outlay Five-Year Infrastructure Plan.

The judicial branch submitted a budget change proposal (BCP) for the additional \$12 million and four positions to support planned facility modifications project requirements for the 2015–2016 fiscal year, but the DOF declined the request. The council also submitted a General Fund request for \$27 million and four positions to support operations and maintenance services throughout the courts. This request would have brought the current operations and maintenance funding to the Building Owners and Managers Association (BOMA) industry standard level of funding. It was also denied.

The existing budget of \$65 million included in the Budget Act of 2015 and allocated for facility modification projects will be consumed by the continuous emergency and critical needs projects that arise every day in our court facilities.

The strategy proposed by the TCFMAC will allow the branch to address emergency and critical needs FM projects as they arise within the real estate portfolio, at a time when program funding does not meet the overall needs of the trial courts. If this funding were allocated to noncritical work, the result would be increased failure of crucial building support systems. These failures would have an operational impact on the trial courts, including the possible closure of courtrooms and, potentially, entire facilities.

Some of the program's FM priorities are determined by external forces, such as Air Quality Management District requirements that polluting boilers be replaced even if they are otherwise functional. Most recently, the State Fire Marshal has made a more concerted effort (which is greatly appreciated) to provide thorough inspection of state-owned courthouses. These same buildings were previously inspected by the counties, which owned them before transfer to the state. Not surprisingly, as the State Fire Marshal begins to take a close look at the branch's existing buildings, various problems are being found. See Attachment A, the List of Planned Facility Modifications for FY 2015–2016, for two examples of expensive code-correction projects required by the State Fire Marshal. Similar expenses are expected to arise until such time as all state-owned judicial facilities get a careful assessment by fire-safety professionals.

Pervasive risk of seismic failure

Half of the square footage of existing courthouses remains Level 5 in terms of seismic risk, meaning that there is a “substantial” risk of loss of life. Owing to the lack of funds, there are no plans to address these vulnerabilities in the foreseeable future. The various counties have agreed to indemnify the branch for tort liability and repair costs in the event of seismic failure in these buildings, but the counties are not currently performing retrofit efforts to improve seismic durability of these buildings. The branch has been on notice of these conditions for over a decade. CBS television recently ran a news report about this problem in several markets, and the *Los Angeles Times* has also made inquiry.

Consequences of inadequate O&M funding

In nearly every instance of infrastructure or mechanisms requiring maintenance—whether involving an automobile, aircraft, or building—there is a need to perform preventive maintenance in order to get the maximum useful service life for key components. For example, a car requires routine oil checks and changes to avoid premature engine failure. The same holds true for many courthouse components that contain pumps, filters, switches, brakes, electronic controls, and the like. The state inherited many courthouses that had been poorly maintained by the counties over the last decade. The branch’s inability to provide an adequate level of preventive maintenance combined with its inability to finance FM overhaul of systems being used far beyond their scheduled service life has caused the continued deterioration of the overall condition of our existing courthouses. The facilities program is now bound to providing “run to failure” solutions to emergency problems, not a rational approach to timely remediation of known problems. The lack of adequate preventive maintenance is a key source of the problem because it forces the program to allow known problems to deteriorate until the point of total failure (and consequently disruption to court operations) so that the needed work can be justified as a Priority 1 or Priority 2 FM.

Fund 3066, the Court Facilities Trust Fund, is the sole source of funding for major building operation expenses (commonly known as “O&M expenses” as compared to FM spending), specifically, expenses for utilities, leases, insurance, and routine/preventive maintenance. The following chart shows the cost trends for these several categories in recent years. The average for the five year period from FY 09–10 to FY 13–14 was \$104,447,000.

Category of Expense	FY 09–10	FY 10–11	FY 11–12	FY 12–13	FY 13–14	FY 14–15 (Estimated)	FY 15–16 (Estimated)
Utilities	\$39,556	\$40,005	\$44,109	\$45,961	\$47,043	\$48,335	\$50,428
Insurance	\$954	\$1,789	\$1,227	\$1,802	\$1,775	\$1,638	\$1,939
Rent	\$13,829	\$15,627	\$15,504	\$15,123	\$16,927	\$16,660	\$16,241
Routine Maintenance	\$45,816	\$48,899	\$38,821	\$40,489	\$46,979	\$47,057	\$49,011
Total	\$100,155	\$106,320	\$99,661	\$103,375	\$112,724	\$113,690	\$117,619

Dollars in thousands

The bulk of the revenue to pay these expenses comes from the County Facility Payments (CFPs), in which the prior agreements are fixed and not increased to match inflation. The average total revenue for the five year period from FY 09-10 to FY 13-14 was \$105,300,000.

Revenues/ Resources	FY 09–10	FY 10–11	FY 11–12	FY 12–13	FY 13–14	FY 14–15 (Estimated)	FY 15–16 (Estimated)
CFPs	\$86,128	\$89,711	\$90,198	\$90,484	\$94,407	\$96,242	\$96,093
General Fund	\$5,785	\$8,053	\$8,053	\$8,053	\$8,053	\$8,053	\$8,053
Night Court Fees	\$1,799	\$1,906	\$5,013	\$2,636	\$2,159	\$2,367	\$2,213
Rental	\$3,140	\$3,235	\$4,861	\$3,928	\$4,677	\$7,920	\$7,487
Other/Misc Income	\$78	\$209	\$2,568	\$886	\$479	\$101	\$55
Total	\$96,930	\$103,114	\$110,693	\$105,987	\$109,775	\$114,683	\$113,901

Dollars in thousands

Note above that in various years (e.g. FY 2009–2010, FY 2010–2011, and FY 2013–2014) Fund 3066’s O&M expenses have exceeded its revenue. Until now, this has been possible due to Fund 3066 cash-flow management practices that have allowed a minimal fund balance to support limited budget variations over time.

The inadequacy of O&M funding has been a significant issue since at least FY 2009–2010, when the branch got actual responsibility for 15 million square feet of courthouse space. Changes since then, however, have compounded the problem, and these pressures continue to intensify as the Capital Projects Program brings to completion many more new courthouses. Utility and lease expenses have incurred inflationary increases and the only line item that can be adjusted downward to reflect the lack of adequate funding is the routine maintenance line. This year, in order to stay within budget, preventive maintenance work will be decreased to minimum code compliance requirements, standby generator maintenance, and annual HVAC filter replacements only. This budget-driven cut in services will result in increased system failures, negative impact to court operations, and overall increased costs to the council, the courts, and the public.

Continued lack of General Fund reinvestments in the state’s court infrastructure will lead to even higher cuts in FY 2016–2017 in routine and preventive maintenance. This will necessitate the elimination of additional non-code-compliant preventive maintenance work, potential decreases or elimination of standard services such as landscaping maintenance and pest control, and eventually (and most detrimental to the courts) the elimination of building-based technicians. These potential operational cuts will increase the system failures and limit response capability of the branch, creating court closures, increasing mitigation costs, and generating disruptions to the services the branch provides. Public and court satisfaction with the services provided by the Judicial Council will decrease.

It is essential that one or more BCPs for additional funding of O&M expenses from the General Fund be pursued with the utmost possible vigor and clarity as to their importance.

Funding sources and budget

The Facility Modification Program is funded from two sources:

- State Court Facilities Construction Fund (Sen. Bill 1732); and
- Immediate and Critical Needs Account (Sen. Bill 1407).

The total legislative appropriations for facility modifications in FY 2015–2016 is \$65 million, consisting of \$40 million in SCFCF funds and \$25 million in ICNA funds.

Allocation for statewide facility modifications planning

The TCFMAC recommends allocating \$4 million for this category, which targets the costs associated with facility assessments and facility modification planning. This allocation includes the costs of contracts, equipment, and materials to set up operations; development of building-specific facility management plans and procedures; development of hazardous material plans; and continuation of facility analysis using engineers, technicians, and trade professionals to determine the condition of facilities within the Real Estate and Facilities Management portfolio. These tasks are required to identify deferred maintenance requirements, plan future requirements, and ensure proper maintenance, thereby reducing the need for future facility modifications. Most of the needed costs will be used for consultant expenses. The proposed allocation of \$4 million is a \$1 million decrease from the previous year's allocation. This funding is redirected due to the increase in emergency facility modifications that require additional funding.

Allocation for Priority 1 facility modifications

A reserve of \$10 million is recommended for allocation to immediate or potential emergency needs (Priority 1) that may develop in facilities. The allocation is an increase from the FY 2014–2015 based on the:

- Annual number of Priority 1 events over the past three fiscal years;
- Increased cost-per-event due to continued systems degradation; and
- Continued impact of the Los Angeles portfolio with its particularly large facilities, which are generally in poor condition.

Planned facility modifications

The TCFMAC recommends two facility modification projects as planned work. This work is planned because there was insufficient program funding available to fully fund these projects in FY 2014–2015. The funding shortfall was due to the increased demand on emergency funding. These two projects, totaling \$2.9 million, are for code-required fire alarm renovations for buildings in the Superior Courts of Orange and Los Angeles Counties.

The TCFMAC makes every effort to focus on the priority of each project and its potential impact to the local court, not the facility location or previous funding history. While it is possible that, over a short period of time, one court may receive more funding per square foot than another, this is the result of the facility needs. Over the longer term, these variances will equalize.

Allocation for Priority 2–6 facility modifications

The TCFMAC recommends the allocation of most of the remainder of the budget, \$48.1 million, to this category. The TCFMAC will review all facility modifications and fund those with the highest priority according to the council-approved policy. The TCFMAC approves the funds from this category proportionally over the course of the year, ensuring that funds are available for the highest priorities throughout the year.

The Judicial Council’s office of Real Estate and Facilities Management will continue to perform energy studies on targeted facilities. These studies have identified a number of operational changes and facility modifications that will reduce ongoing utility costs. In an effort to continue to increase the sustainability of courthouse facilities, \$2 million has been allocated to target both energy and water conservation projects for FY 2015–2016. In FY 2014–2015, \$1 million of facility modification funds was allocated to energy efficiency projects. In FY 2013–2014, \$1.3 million of facility modification funds was allocated for this purpose. The current cumulative return on that investment in the form of utility costs savings is approximately \$1.1 million annually.

Comments, Alternatives Considered, and Policy Implications

The report was posted for court comment and sent directly to trial court leadership for a one-week period of August 3, 2015 through August 7, 2015. No comments were received. As such, no alternatives were presented for consideration. This budget allocations report does not have any policy implications.

Implementation Requirements, Costs, and Operational Impacts

The TCFMAC considered various dollar allocations for the different budget categories. The amounts recommended are based on historical data and a conservative funding plan to allow sufficient funds for critical needs as they are identified by the courts and Judicial Council staff. This allocation strategy will allow the TCFMAC to have the flexibility to fund the most critical needs throughout the year.

The FY 2015–2016 Facility Modification Program budget will be allocated as the council approves, including as determined by the TCFMAC under the council-approved policy. There is no cost to the trial courts associated with the allocations recommended in this report.

Attachments

1. Attachment A: List of Planned Facility Modifications for FY 2015–2016



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

Budget Allocations for Statewide Trial Court Facility Modifications
Planned Facility Modifications
FY 2015-2016

	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	ESTIMATED COST	FACILITY MODIFICATION PROGRAM SHARE OF COST	FACILITY MODIFICATION PROGRAM BUDGET % OF COST
1	FM-0017040	Los Angeles	Compton Courthouse	19-AG1	2	Fire - Phase 2 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 1,834,800	\$ 1,213,353	66.13%
2	FM-0028322	Orange	Central Justice Center	30-A1	2	Fire - Phase 2 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 1,827,947	\$ 1,666,539	91.17%
							\$ 3,662,747	\$ 2,879,893	