

FEBRUARY 12, 2021

The 2021-22 Budget: Funding for Trial Court Construction



LEGISLATIVE ANALYST'S OFFICE

Overview

- **Two Funds Support Trial Court Construction.** Chapter 1082 of 2002 (SB 1732, Escutia) shifted ownership and responsibility for maintenance of nearly all trial court facilities from the counties to the state. It also gave Judicial Council the authority to construct future trial court facilities, including selecting projects to recommend for funding. Two special funds—the State Court Facilities Construction Fund (SCFCF) and Immediate and Critical Needs Account (ICNA)—generally support such construction. The judicial branch conducted a number of facility assessments to identify the construction projects that would be supported by these accounts.
 - **SCFCF.** Senate Bill 1732 increased certain criminal and civil fines and fees and deposited the revenues into SCFCF to finance trial court construction and other facility-related expenses. Subsequent statute in 2007 prohibited additional expenditures above the amount appropriated in the *2007-08 Budget Act* unless the fund could support already approved projects.
 - **ICNA.** Chapter 311 of 2008 (SB 1407, Perata) increased certain criminal and civil fines and fees and deposited the revenues into ICNA to finance up to \$5 billion in trial court construction projects and other facility-related expenses. It also prohibited Judicial Council from approving projects that could not be fully financed with the revenue deposited into ICNA.
- **Significant Amount Redirected From Construction Accounts.** Since 2009-10, nearly \$1.6 billion has been transferred from SCFCF (\$239 million) and ICNA (\$1.3 billion) to the General Fund and to support trial court operations. Currently, a total of \$55.5 million is transferred annually to support trial court operations. These redirections were generally made during the fiscal downturn to reduce pressures on the General Fund.



Overview

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- ***Decline in Revenue Deposited Into Construction Accounts.*** Over time, the amount of revenue into SCFCF and ICNA has steadily declined, largely due to a decline in criminal fine and fee revenue. It is currently estimated that each fund's 2020-21 revenues will be around 56 percent lower than their peak levels roughly a decade ago.
- ***Overview of This Analysis.*** In this analysis, we first provide an update on the status of the trial court construction program. We then provide an overview of the Governor's proposals for court construction funding, assess those proposals, and offer associated recommendations.



Status of Trial Court Construction Program

Program Effectively Halted in Recent Years

- All 14 trial court construction projects financed by SCFCF have been completed.
- Prior to the passage of the 2018-19 budget, 12 out of 42 ICNA projects had been completed. Of the remaining projects, 16 had been placed on hold, 11 were not initiated, and 3 were canceled due to a lack of sufficient revenues.
- The 2018-19 budget included \$1.3 billion in lease revenue bond authority backed by the General Fund to finance ten planned ICNA projects—nine that had been placed on hold and one that had not been initiated. These funds effectively backfilled the \$1.4 billion in transfers to the General Fund that occurred between 2009-10 and 2017-18.

Not Enough Funds to Support Current Obligations

Estimated Annual Obligations on Construction Accounts <i>(In Millions)</i>			
	SCFCF	ICNA	Total
Financing payments for completed projects ^a	\$82.0	\$151.0	\$233.0
Facility modification projects	40.0 ^b	25.0	65.0
Facility personnel and operating costs	40.0	—	40.0
Trial court operations	5.5	50.0	55.5
Totals	\$167.5	\$226.0	\$393.5

^a Includes debt service and Long Beach Courthouse service payments. The Long Beach Courthouse, which was not one of the original ICNA selected projects, was constructed using an alternative financing method that resulted in annual service payments (which grows annually) now being paid from ICNA.

^b Authority for \$15 million expires at the end of 2023-24.

SCFCF = State Court Facilities Construction Fund and ICNA = Immediate and Critical Needs Account.



Status of Trial Court Construction Program

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- As shown in the figure, ICNA and SCFCF have a total of roughly \$400 million in annual expenditure obligations. However, their combined estimated annual revenues total around \$220 million. Both funds have been relying on their fund balances to spend beyond their annual revenues. Absent any action, SCFCF faces insolvency in 2021-22. However, due to its larger fund balance, ICNA would not become insolvent until 2024-25. As such, the accounts will shortly lack sufficient funds to support current obligations, much less any new ones (such as new construction projects).

Judicial Branch Completed Reassessment of Project Needs

- As required by the 2018-19 budget package, Judicial Council reassessed its trial court needs in November 2019 and ranked projects according to its priorities. Judicial Council developed the methodology for conducting this reassessment based on certain criteria (such as each project's impact on court users) specified by the Legislature in statute. For example, Judicial Council decided how individual criteria would be defined and weighted.
- The reassessment identified a total of 80 projects—56 new buildings and 24 renovations—totaling an estimated \$13.2 billion. Roughly one-fifth of these projects are previously identified ICNA projects that were placed on hold or were never initiated.
- Judicial Council categorized projects into five groups in the following priority order: 18 immediate need (\$2.3 billion), 29 critical need (\$7.9 billion), 15 high need (\$1.3 billion), 9 medium need (\$1.6 billion), and 9 low need (\$100 million).



Governor's Proposals

Consolidates Trial Court Construction Accounts

- The Governor's budget proposes to consolidate SCFCF and ICNA. This action allows the ICNA fund balance to be used to prevent SCFCF from becoming insolvent in the budget year. This delays the need to address the insolvency until the combined account becomes insolvent and is unable to meet its current obligations.
- The Governor's budget does not propose any changes to the level of expenditures from the combined account. For example, it maintains spending on facility modification projects at \$65 million for 2021-22.

Proposes to Fund Future Court Construction Projects From the General Fund

- **Funding for Four Projects in 2021-22.** The Governor's budget proposes a total of \$8.3 million General Fund and \$66.5 million in lease revenue bond authority to support four construction projects. Under the proposal, the debt service on these bonds would be repaid over time from the General Fund.
 - Construction of two ICNA projects previously placed on hold—the new Lakeport Courthouse (\$1.6 million General Fund and \$66.5 million in lease revenue bond authority) and the new Ukiah Courthouse (\$3.3 million General Fund)—which were also identified as the highest-priority need in the 2019 reassessment.
 - Planning studies for two projects—\$972,000 General Fund for the new Nevada City Courthouse (an ICNA project that was not initiated) and \$2.3 million General Fund for various Los Angeles Superior Court facilities.



Governor's Proposals

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- ***Plans to Request 12 More Projects by 2025-26.*** Based on its five-year infrastructure plan, the administration plans to initiate 12 additional projects after 2021-22—three projects per year for the next four years. The administration estimates that these 12 projects would require \$302 million General Fund for preconstruction activities and \$1.8 billion in lease revenue bond authority for construction during this period. (We note that this is not the total cost for all 12 projects. For example, projects beginning construction after 2025-26 will require additional lease revenue bond authority.) While the actual debt service owed will depend on interest rates at the time bonds are sold, we estimate this level of lease revenue bond authority could result in annual debt service payments from the General Fund of around \$100 million. The projects identified by the administration generally reflect the priority order identified in the judicial branch's 2019 reassessment.



Assessment

Consolidation of Construction Accounts Reasonable, but No Plan to Address Insolvency

- The Governor's proposed consolidation of SCFCF and ICNA is reasonable as it delays the need to address the SCFCF's insolvency in the budget year. Additionally, there is no rationale for maintaining two separate accounts.
- However, the Governor's proposal does not address the pending insolvency of the consolidated account by 2023-24. Absent any changes in revenues or existing ongoing expenditures, significant General Fund resources would be needed to meet financing payments for completed projects and other obligations.
- We estimate additional General Fund resources would be needed through 2039-40 to meet these obligations. Specifically, \$175 million in 2023-24, declining to \$160 million annually from 2024-25 through 2032-33. Beginning in 2032-33, the amount needed would further decline as the debt service for an increasing number of projects will be completely paid off.

Construction Program Effectively Restarted, but Supported by General Fund

- The Governor's proposal to support future trial court construction projects from the General Fund is a reasonable approach as both construction accounts are unable to support existing obligations, much less new ones.
- Additionally, supporting new projects directly from the General Fund helps ensure that the projects will be weighed in the context of the Legislature's broader General Fund priorities, including other state infrastructure needs. This will be particularly important in the coming years given the state's projected operating deficit.



Assessment

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Selected Projects May Not Reflect Legislative Priorities

- The Governor’s 2021-22 construction proposals—and those planned in the coming years—generally reflect projects identified as the highest-priority need under the judicial branch’s 2019 reassessment.
- However, the Legislature may not agree with the judicial branch’s methodology, such as how certain criteria were defined and weighted, and may decide that additional factors should be considered. As such, the Legislature will want to consider its priorities when selecting which construction projects should move forward.



Recommend Shifting Full Responsibility for Trial Court Construction to the General Fund

- **Approve Governor’s Approach to Fund New Projects From General Fund.** We recommend the Legislature approve the Governor’s new approach to fund new trial court construction projects from the General Fund. As we discussed, this approach helps ensure that any new construction projects are weighed against the Legislature’s other General Fund priorities.
- **Shift Responsibility for Current SCFCF and ICNA Obligations to General Fund as Well, Rather Than Consolidate Accounts.** In order to fully address the pending insolvency of the two existing construction accounts on a permanent basis, we recommend the Legislature eliminate the accounts and shift their current obligations on already completed projects to the General Fund. This helps ensure that any General Fund construction-related obligations are fully accounted for and considered when evaluating the state’s overall fiscal condition and determining General Fund spending priorities. (To the extent the Legislature does not want to eliminate SCFCF and ICNA and shift their obligations to the General Fund, we would recommend approving the Governor’s proposal to consolidate the two accounts.)
- **Shift Nonconstruction-Related SCFCF and ICNA Expenditures to the General Fund.** To maintain support for the nonconstruction expenditures supported by the construction accounts, we recommend appropriating from the General Fund \$65 million for facility modification projects, \$40 million for facility personnel and operating costs, and \$55.5 million for trial court operations—a total of \$160.5 million annually. (We note this amount would decline to \$145.5 million in 2024-25 due to the expiration of an SCFCF facility modification budget request approved in 2014-15.)



Recommend Shifting Full Responsibility for Trial Court Construction to the General Fund

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- ***Shift SCFCF and ICNA Revenues to the General Fund.*** To partially offset the costs shifted to the General Fund, we recommend the Legislature deposit all construction account revenue into the General Fund. (We note that, due to legal limitations on the use of revenues, the civil fee revenue might need to be deposited into a special fund supporting trial court operations with a corresponding reduction in the total amount of General Fund support for trial court operations.)
- ***Appropriate Funding for Trial Court Construction Based on Legislative Priorities.*** We recommend the Legislature determine which specific construction projects to fund based on its priorities, which may or may not include any of the projects currently proposed by the Governor or the judicial branch. The Legislature's construction priorities may also differ from the prioritization identified in the 2019 reassessment.

