



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on July 29, 2014

Title	Agenda Item Type
Trial Court Trust Fund Allocations: 2 Percent State-Level Reserve Process	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	July 29, 2014
Recommended by	Date of Report
Trial Court Budget Advisory Committee Hon. Laurie M. Earl, Cochair Mr. Zlatko Theodorovic, Cochair	July 22, 2014
	Contact
	Patrick Ballard, 818-558-3115 patrick.ballard@jud.ca.gov

Executive Summary

The Trial Court Budget Advisory Committee (TCBAC) recommends changes to the current Judicial Council–approved process for the allocation of the 2 percent state-level reserve in the Trial Court Trust Fund to expedite the distribution of the unexpended reserve funds to the trial courts earlier in the fiscal year. The TCBAC also recommends amending the statute that establishes the 2 percent reserve to reflect the adoption of the Workload Allocation Funding Methodology model by the Judicial Council.

Recommendation

1. The Trial Court Budget Advisory Committee recommends, starting in 2014–2015, that the Judicial Council distribute 100 percent of the remaining Trial Court Trust Fund 2 percent reserve funds in January, after the council’s December business meeting. The committee recommends that the request process be modified such that trial courts would have two

opportunities per fiscal year instead of four to request supplemental funding from the 2 percent reserve, as follows:

- Courts would continue to submit requests for supplemental funding for unavoidable budget shortfalls from the 2 percent reserve for consideration at the Judicial Council's October business meeting.
 - Courts would have one opportunity to submit a supplemental funding request for existing programs due to unforeseen emergencies or unanticipated expenses for existing programs for consideration by the Judicial Council at its December business meeting. The current council-approved process allows courts three opportunities to submit these types of requests at the council's business meetings in December, January, and February.
2. The Trial Court Budget Advisory Committee recommends, for 2015–2016, that the Judicial Council seek the repeal of Government Code section 68502.5(c)(2)(B) (see Attachment A), which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund appropriation in Program 45.10.

Previous Council Action

On June 27, 2012, the Governor signed into law Senate Bill 1021, which repealed the provisions in Government Code section 77209 related to urgent needs funding from the Trial Court Improvement Fund (TCIF) and added Government Code section 68502.5(c)(2)(B), which requires that the Judicial Council set aside as a reserve an amount equal to 2 percent of the TCTF appropriation in Program 45.10. In response to this new statute, the Judicial Council, at its August 31, 2012, meeting, approved the current policy with regard to the process, criteria, and required information for requesting supplemental funding from the reserve. This process modified what was approved by the council at its October 28, 2011, meeting as it related to requests for supplemental funding for urgent needs from the TCIF. (See Attachment B)

On June 27, 2014, the Judicial Council approved a 2015–2016 budget change proposal (BCP) for changes to the statutory language regarding the 2 percent TCTF reserve. The Trial Court Budget Advisory Committee (TCBAC) was to reevaluate the entire 2 percent TCTF reserve and allocation process. If the result of the evaluation was to recommend to the council that the process be changed then a BCP to change the language of the statute would need to be submitted to the Department of Finance (DOF).

Rationale for Recommendations

At the June 3, 2014, TCBAC meeting, a motion was made and approved unanimously to have a small group evaluate the entire 2 percent TCTF reserve process, including whether any statutory changes should be made to Government Code section 68502.5. A working group was formed to

review these issues. The group was tasked with bringing forward to the full advisory committee recommendations on possible changes to the current process that could be implemented in 2014–2015 and changes that would require statutory fixes that could be implemented in 2015–2016, for presentation to the Judicial Council at its July 29, 2014, meeting. The working group met once and brought a recommendation to the TCBAC at its July 7 meeting. The working group deferred to the TCBAC on two options for statutory changes.

Recommendation on Allocation Process

The recommendation from the TCBAC, which originated from its working group, is for the Judicial Council, starting in 2014–2015, to distribute 100 percent of the remaining TCTF 2 percent reserve funds in January, after the council’s December business meeting. Courts would have two opportunities per fiscal year instead of four to request supplemental funding from the 2 percent reserve. The Judicial Council’s current approved process would need to be updated to reflect this recommended change. (See Attachment C)

Options for changes. Before making its recommendation to the council, the TCBAC considered the following two options for changes to the 2 percent reserve process at its July 7, 2014, meeting. A description of how the change would work and its impact on the courts follows.

1. Retain the Judicial Council–approved process for supplemental funding. Courts would have the opportunity to make requests for supplemental funding for the Judicial Council to consider at its December, January, and February meetings. Any unexpended funds would be distributed back to the trial courts by March 15. The current process delays the allocation of unexpended 2 percent reserve funds to the trial courts until later in the fiscal year as compared to option 2.
2. Change the current process as follows: In January, after the Judicial Council’s December business meeting, distribute 100 percent of the remaining TCTF 2 percent reserve funds to the courts. Courts would have two opportunities per fiscal year instead of four to request supplemental funding from the 2 percent reserve.

Discussion. The TCBAC reviewed the options presented and voted unanimously to recommend the approval of option 2 to the Judicial Council. This decision was made primarily because the committee believed that the change would expedite the distribution of the unexpended 2 percent monies to courts earlier in the fiscal year and could be implemented in 2014–2015 because no statutory changes would be required.

In addition, courts could still submit requests for supplemental funding for unavoidable budget shortfalls for consideration at the council’s October business meeting, and they would have one opportunity to submit requests due to unforeseen emergencies or unanticipated expenses for existing programs for consideration by the council at its December business meeting.

As indicated above, the current Judicial Council policy allows courts three opportunities to submit these types of requests for council consideration: at the council's business meetings in December, January and February. Some TCBAC members wanted to know how many court requests had been submitted after December in the past and were informed by staff that since the process started in 2012, one was submitted in 2013–2014 and two were submitted in 2012–2013.

Recommendation on Government Code

The recommendation from the TCBAC is that the Judicial Council seek the repeal of Government Code section 68502.5(c)(2)(B), which requires that the council set aside as a reserve an amount equal to 2 percent of the Trial Court Trust Fund appropriation.

Options for changes. Before making its recommendation to the council, the TCBAC reviewed the following two options for changes to Government Code section 68502.5(c)(2)(B) at its July 7, 2014 meeting, including a description of how the allocation would work and its impact on the courts.

1. Request the repeal of Government Code section 68502.5(c)(2)(B). Courts would no longer have to contend with a 2 percent reduction of their TCTF Program 45.10 allocation at the beginning of the fiscal year or the uncertainty as to the unexpended amount returned to them months later. However, courts would no longer be able to request urgent needs funding from the 2 percent reserve.
2. Request that the DOF appropriate funding for a 2 percent reserve to be administered at the state level by the Judicial Council. Courts would be able to request urgent needs funding from a state-level reserve and would no longer have to contend with a 2 percent reduction of their TCTF Program 45.10 allocation at the beginning of the fiscal year or the uncertainty as to the unexpended amount returned to them months later.

Discussion. The TCBAC voted to recommend the approval of option 1 to the Judicial Council. As discussed further below, this decision was made primarily because the statute that establishes the 2 percent reserve became law prior to the development and application of the Workload Allocation Funding Methodology and is inconsistent with the workload based funding model adopted by the Judicial Council. TCBAC members provided several reasons for supporting the approved recommendation rather than the option that would have requested the DOF to appropriate funding for a 2 percent reserve to be administered at the state level by the Judicial Council. The members expressed concern that requesting the DOF to appropriate funding for a 2 percent reserve for urgent needs may result in a reduction to trial court funds. Committee members acknowledged that the statute became law before the development and application of the Workload Allocation Funding Methodology. Hence, this statute is inconsistent with the workload-based funding model adopted by the Judicial Council and acknowledged by the Governor and Legislature. However, some committee members were concerned that recommending the repeal of the statute that establishes a reserve for urgent needs funding

without a process and funding source to replace it would be problematic, especially for smaller courts.

Two possibilities for a new funding source for urgent needs were discussed by the advisory committee: the cash advance process approved by the Judicial Council on June 27, 2014 and the amount over the 1 percent cap from court fund balances. However each of these alternatives appeared flawed. To qualify for a cash advance, the courts would need a balanced budget, which would not be the case for a court faced with a funding emergency; and the amount from court fund balances over the 1 percent cap under Government Code section 77203, would be insufficient for a statewide reserve fund for urgent needs.

Comments, Alternatives Considered, and Policy Implications

This item was not circulated for comment. Options were considered by the TCBAC and are discussed in the Rationale section of the report.

Implementation Requirements, Costs, and Operational Impacts

Not applicable.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended changes to the process for the allocation of the 2 percent reserve in the TCTF will address the strategic plan goals of Access, Fairness, and Diversity (Goal I); Independence and Accountability (Goal II); Modernization of Management and Administration (Goal III); Quality of Justice and Service to the Public (Goal IV); and Branchwide Infrastructure for Service Excellence (Goal VI).

Attachments

1. Attachment A: Government Code, § 68502.5(c)(2)(B)
2. Attachment B: Judicial Council Approved Process for Supplemental Funding
3. Attachment C: Summary of Recommended Changes to Judicial Council Approved Process

Government Code section 68502.5(c)(2)(B)

(B) Upon preliminary determination of the allocations to trial courts pursuant to subparagraph (A), the Judicial Council shall set aside 2 percent of the total funds appropriated in Program 45.10 of Item 0250-101-0932 of the annual Budget Act and these funds shall remain in the Trial Court Trust Fund. These funds shall be administered by the Judicial Council and be allocated to trial courts for unforeseen emergencies, unanticipated expenses for existing programs, or unavoidable funding shortfalls. Unavoidable funding shortfall requests for up to 1.5 percent of these funds shall be submitted by the trial courts to the Judicial Council no later than October 1 of each year. The Judicial Council shall, by October 31 of each year, review and evaluate all requests submitted, select trial courts to receive funds, and notify those selected trial courts. By March 15 of each year, the Judicial Council shall distribute the remaining funds if there has been a request from a trial court for unforeseen emergencies or unanticipated expenses that has been reviewed, evaluated, and approved. Any unexpended funds shall be distributed to the trial courts on a prorated basis.

Judicial Council-Approved Process for Supplemental Funding

Below is the process for supplemental funding that was approved by the Judicial Council at its August 31, 2012, meeting.

- a. Supplemental funding for urgent needs is defined as unavoidable funding shortfalls, unforeseen emergencies, or unanticipated expenses for existing programs.
 - i. A request can be for either a loan or one-time funding that is not repaid, but not for ongoing funding.
- b. The submission, review, and approval process is:
 - i. All requests will be submitted to the Judicial Council for consideration;
 - ii. Requests will be submitted to the Administrative Director of the Courts by either the court's presiding judge or court executive officer;
 - iii. The Administrative Director of the Courts will forward the request to the AOC Director of Finance [now Fiscal Services Office].
 - iv. AOC Finance Division [Fiscal Services Office] budget staff will review the request, ask the court to provide any missing or incomplete information, draft a preliminary report, share the preliminary report with the court for its comments, revise as necessary, and issue a final report for the council;
 - v. The final report will be provided to the requesting court prior to the report being made publicly available on the California Courts website; and
 - vi. The court may send a representative to the Judicial Council meeting to present its request and respond to questions from the council.
- c. Beginning in 2012–2013, court requests for supplemental funding for urgent needs due to unavoidable budget shortfalls, must be submitted to the Administrative Director of the Courts, by no later than October 1. Courts are encouraged to submit supplemental funding requests for urgent needs before the October 1 deadline, but no earlier than 60 days after the Budget Act is enacted into law.
- d. Beginning in 2012–2013, the Judicial Council shall allocate up to 75 percent of the 2 percent state-level reserve fund by October 31 of each year to courts requesting supplemental funding for urgent needs due to unavoidable funding shortfalls.
- e. Beginning in 2012–2013, after October 31 and by March 15 of each fiscal year, the Judicial Council shall allocate the remaining funds if there has been an approved request from a trial court(s) requesting supplemental funding for urgent needs due to unforeseen emergencies or unanticipated expenses for existing programs. Any unexpended funds shall be distributed to the trial courts on a prorated basis.

- f. To be considered at a scheduled Judicial Council business meeting, requests submitted after October 31 for supplemental funding due to unforeseen emergencies and unanticipated expenses must be submitted to the Administrative Director of the Courts at least 25 business days prior to that business meeting.
- g. The Judicial Council would consider appropriate terms and conditions that courts must accept in order to receive supplemental funding for urgent needs.

Judicial Council-Approved Criteria for Eligibility for and Allocation of Supplemental Funding

Below are the criteria for eligibility for and allocation of supplemental funding for trial courts' urgent needs that were approved by the Judicial Council at its August 31, 2012, meeting.

- a. Only trial courts that are projecting a current-year negative fund balance can apply for supplemental funding related to urgent needs.
- b. Generally, no court may receive supplemental funding for urgent needs in successive fiscal years absent a clear and convincing showing.
- c. Courts submitting on or before October 1 can only receive up to the amount the court contributed to the 2 percent state-level reserve fund. If the requested amount is beyond the court's contribution to the 2 percent state-level reserve fund, the Judicial Council may distribute more funding to the court, after October 31 and prior to March 15 of the fiscal year.

More specifically, courts that submit by October 1 a request for an unavoidable funding shortfall, may apply with updated financial information for unforeseen emergencies or unanticipated expenses for existing programs distribution at a future Judicial Council business meeting prior to March 15.

- d. Allocate to all courts after March 15 a proportionate share of any unexpended funds from the 2 percent state-level reserve, regardless of whether the Judicial Council has allocated to a court supplemental funding for an urgent need in the current fiscal year, using courts' current year Trial Court Trust Fund and General Fund base allocation.
- e. If a court that is allocated supplemental funding determines during the fiscal year that some or all of the allocation is no longer needed due to changes in revenues and/or expenditures, [it] is required to return the amount that is not needed.

Judicial Council-Approved Information Required to be Provided by Trial Courts for Supplemental Funding

Below is the information required to be provided by trial courts for supplemental funding for urgent needs that were approved by the Judicial Council at its August 31, 2012, meeting.

- a. A description of what factors caused or are causing the need for funding;
- b. If requesting a one-time distribution, an explanation of why a loan would not be appropriate;
- c. Current status of court fund balance;
- d. Three-year history of year-end fund balances, revenues, and expenditures;
- e. Current detailed budget projections for the current fiscal year (e.g., FY 2012–2013), budget year (e.g., FY 2013–2014), and budget year plus 1 (e.g., FY 2014–2015);
- f. Measures the court has taken in the last three years regarding revenue enhancement and/or expenditure reduction, including layoffs, furloughs, reduced hours, and court closures;
- g. Employee compensation practices (e.g., cost-of-living adjustments) and staffing levels in the past five years;
- h. Description of the consequences to the court’s operations if the court does not receive funding;
- i. Description of the consequences to the public and access to justice if the court does not receive funding;
- j. What measures the court will take to mitigate the consequences to court operations, the public, and access to justice if funding is not approved;
- k. Five years of filing and termination numbers;
- l. Most recent audit history and remediation measures;
- m. If supplemental funding was received in prior year, please identify amount received and explain why additional funding is again needed in the current fiscal year; and

- n. If the request for supplemental funding is not for a one-time concern, the court must include an expenditure/revenue enhancement plan that identifies how the court will resolve its ongoing funding issue.

Summary of Recommended Changes to Judicial Council Approved Process

Judicial Council Approved Process for Supplemental Funding	Trial Court Budget Advisory Committee Recommendation 1
<p><u>Page 1(e)</u></p> <p>e. Beginning in 2012–2013, after October 31 and by March 15 of each fiscal year, the Judicial Council shall allocate the remaining funds if there has been an approved request from a trial court(s) requesting supplemental funding for urgent needs due to unforeseen emergencies or unanticipated expenses for existing programs. Any unexpended funds shall be distributed to the trial courts on a prorated basis.</p> <p><u>Page 2(c)</u></p> <p>c. Courts submitting on or before October 1 can only receive up to the amount the court contributed to the 2 percent state-level reserve fund. If the requested amount is beyond the court’s contribution to the 2 percent state-level reserve fund, the Judicial Council may distribute more funding to the court, after October 31 and prior to March 15 of the fiscal year.</p> <p>More specifically, courts that submit by October 1 a request for an unavoidable funding shortfall, may apply with updated financial information for unforeseen emergencies or unanticipated expenses for existing programs distribution at a future Judicial Council business meeting prior to March 15.</p> <p><u>Page 2(d)</u></p> <p>d. Allocate to all courts after March 15 a proportionate share of any unexpended funds from the 2% state-level reserve, regardless of whether the Judicial Council has allocated to a court supplemental funding for an urgent need in the current fiscal year, using courts’ current year Trial Court Trust Fund and General Fund base allocation.</p>	<p><u>Page 1(e)</u></p> <p>e. Beginning in 2012–2013 2014-2015, after October 31 and by March 15 December 31 of each fiscal year, the Judicial Council shall allocate the remaining funds if there has been an approved request from a trial court(s) requesting supplemental funding for urgent needs due to unforeseen emergencies or unanticipated expenses for existing programs. Any unexpended funds shall be distributed to the trial courts on a prorated basis.</p> <p><u>Page 2 (c)</u></p> <p>c. Courts submitting on or before October 1 can only receive up to the amount the court contributed to the 2 percent state-level reserve fund. If the requested amount is beyond the court’s contribution to the 2 percent state-level reserve fund, the Judicial Council may distribute more funding to the court, after October 31 and prior to March 15 December 31 of the fiscal year.</p> <p>More specifically, courts that submit by October 1 a request for an unavoidable funding shortfall, may apply with updated financial information for unforeseen emergencies or unanticipated expenses for existing programs distribution at a future the Judicial Council business meeting prior to March 15 meeting in December.</p> <p><u>Page 2(d)</u></p> <p>d. Allocate to all courts after March 15 in January a proportionate share of any unexpended funds from the 2% state-level reserve, regardless of whether the Judicial Council has allocated to a court supplemental funding for an urgent need in the current fiscal year, using courts’ current year Trial Court Trust Fund and General Fund base allocation.</p>

