



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21 or 22, 2014

Title	Agenda Item Type
Disposition of Vacant State-Owned Court Facilities	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21 or 22, 2014
Recommended by	Date of Report
Trial Court Facility Modification Advisory Committee	July 16, 2014
Hon. David Edwin Power, Chair	Contact
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Executive Summary

In connection with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Trial Court Facility Modification Advisory Committee (TCFMAC) recommends that the council declare the following three state-owned court facilities to be surplus property:

1. Clovis (Fresno County);
2. Reedley (Fresno County); and
3. Firebaugh (Fresno County)

The TCFMAC further recommends that the council direct staff to report to the Legislature that the three court facilities are surplus and take all actions necessary to obtain the Legislature's

authorization to dispose of the surplus facilities in accordance with Government Code sections 70391(c) and 11011.¹

The above-listed state-owned court facilities have been vacated by the Fresno Superior Court. The Superior Court of Fresno County has notified the Judicial Council that it does not have any future plans to re-open the facilities, and are supportive of efforts to dispose of them. Once the facilities are disposed of, the judicial branch will realize financial savings on maintenance costs.

Recommendation

The TCFMAC recommends that the council:

1. Declare the following state-owned court facilities to be surplus property:
 1. Clovis (Fresno County);
 2. Reedley (Fresno County); and
 3. Firebaugh (Fresno County)
2. Direct staff to report to the Legislature that the three court facilities are surplus court facilities and take all actions necessary to obtain the Legislature's authorization to dispose of the facilities in accordance with sections 70391(c) and 11011.

Previous Council Action

There has been no prior council action to declare state-owned court facilities as surplus.

Rationale for Recommendation

The declaration of vacant state-owned court facilities as surplus, followed by disposition of those facilities, will save the judicial branch the ongoing costs of property maintenance (utilities, landscaping, vandalism prevention/cleanup, etc.) The council previously delegated review of expenditures for ongoing trial court facility operations and maintenance to the TCFMAC. At its April 11, 2014, meeting the TCFMAC reviewed the list of state-owned, vacated court facilities, determined that these facilities were not being utilized, and would not in the foreseeable future be utilized, for court operations. TCFMAC voted to recommend that the council declare the listed facilities surplus as the initial step towards disposition.

Section 70391(c) vests in the Judicial Council the authority to dispose of transferred court facilities and requires it to comply with section 11011 when disposing of surplus court facilities:

The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

¹ All future references to "section" refer to the Government Code, unless otherwise noted.

(c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

1. If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011.

In California Rules of Court, rule 10.183(c)(2) the Judicial Council reiterated that the decision whether to dispose of surplus court facilities remains the responsibility of the Judicial Council and has not been delegated to staff.

Because the three court facilities in question were all previously the responsibility of the respective counties before being transferred to state ownership, the council will need to comply with the requirements of section 11011.

No authority specifically defines the term “surplus,” as used in Government Code section 70391, therefore, Government Code section 11011, which applies to the disposal of other state-owned properties, is instructive. Under that section, real property is subject to disposal as surplus if it is excess to the foreseeable needs of the owning agency. Statutory examples of such properties include:

- (1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.
- (2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.
- (3) Land not identified by the state agency within its master plans for facility development.

(Gov. Code, § 11011(a).) Thus, the Judicial Council must report to the Legislature as surplus any court facilities that are not being utilized, are underutilized, or not identified within the judicial branch master plans for facility development, so that the Legislature can authorize the council to dispose of the facilities.

Here, the superior court has reported that the three facilities in question are not being utilized and that they have no foreseeable plans to use these facilities for court operations. Furthermore, the facilities are not identified within the judicial branch facility master plans. Accordingly, the listed facilities must be reported to the Legislature as surplus facilities so that the Legislature can authorize the council to dispose of the facility.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was not circulated for comment. The listed facilities are limited to the Fresno Superior Court. Staff has received written communication from the court stating that the facilities

are no longer being used for court operations, the court does not intend to resume court operations at those locations, and the court supports the disposition of the facilities.

Alternatives

Under sections 70391(c) and 11011, if the Judicial Council determines that a facility is no longer being used, and there is no current or foreseeable use of the facility for court operations, the Judicial Council is required to report that as a surplus facility to the Legislature so that it can obtain legislative approval to dispose of the facility. The respective trial court informed the TCFMAC that they were not using, and did not have a foreseeable use for the three listed facilities, there were no legally authorized alternatives to consider, and the TCFMAC concluded it must recommend reporting the three facilities as surplus to the Department of General Services.

Implementation Requirements, Costs, and Operational Impacts

In moving forward with the disposition of surplus court facilities, in accordance with sections 11011(c) and 70391(c), staff will report to the Legislature that the council has declared these three court facilities as surplus, and request authorization from the Legislature to dispose of them as authorized by law. Because the listed court facilities were transferred from Fresno County, staff will, in compliance with section 70391(c)(2) consult with the county concerning the disposition, and if requested, the surplus facility shall be offered to that county at fair market value prior to being offered to any other state or local government agency. If the county is not interested in reacquiring the facility, the facility will then be offered to other state and local government agencies before exploring other methods of disposition.

Costs will be incurred in the disposition process, including items such as appraisals, surveys, environmental reports, and title and escrow fees, and for non-governmental transactions, prospective real estate broker commissions. Costs incurred will, however, be offset by the sale proceeds. Per the provisions of Article III, Section 9 of the California Constitution, the remaining sale proceeds will be deposited in the Deficit Recovery Bond Retirement Sinking Fund.

Attachments and Links

1. Cal. Rules of Court, rule 10.183:
http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183
2. Government Code section 70391:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391
3. Government Code section 11011:
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011



2014 California Rules of Court

Rule 10.183. Decision making on transfer of responsibility for trial court facilities

(a) Intent

The intent of this rule is to allocate among the Judicial Council, the trial courts, and the Administrative Office of the Courts, responsibility and decision making for the transfer of responsibility for trial court facilities from the counties to the Judicial Council.

(b) Definitions

As used in this rule, the following terms have the same meaning as provided by Government Code section 70301:

- (1) "Court facilities";
- (2) "Maintenance";
- (3) "Responsibility for facilities"; and
- (4) "Shared use."

(Subd (b) amended effective January 1, 2007.)

(c) Responsibilities of the Judicial Council and the Executive and Planning Committee

The Judicial Council must determine the following issues concerning transfer of responsibility of court facilities, except in the case of a need for urgent action between meetings of the council, in which case the Executive and Planning Committee is authorized to act under rule 10.11(d).

- (1) Rejection of transfer of responsibility for a building under Government Code section 70326; and
- (2) A decision to dispose of a surplus court facility under Government Code section 70391(c).

(Subd (c) amended effective January 1, 2007.)

(d) Responsibilities of the Administrative Office of the Courts

The Administrative Office of the Courts is responsible for the following matters related to transfer of responsibility for court facilities, in addition to matters expressly authorized by statute:

- (1) Keeping the courts informed and involved, as appropriate, in the negotiations with the counties for transfer of responsibility for court facilities;
- (2) Except as provided in (c)(1), approving an agreement transferring responsibility for a court facility to the state;

- (3) Administering a shared-use court facility, including:
 - (A) Making a decision to displace a minority county tenant under Government Code section 70344(b);
 - (B) Seeking a change in the amount of court space under Government Code section 70342; and
 - (C) Responding to a county seeking a change in the amount of county space under Government Code section 70342; and
- (4) Auditing the collection of fees by trial courts under Government Code section 70391(d)(1) and the money in local courthouse construction funds under Government Code section 70391(d)(2).

(Subd (d) amended effective January 1, 2007.)

(e) Appeal of county facilities payment amount

The Administrative Director of the Courts must obtain the approval of the Executive and Planning Committee before pursuing correction of a county facilities payment amount under Government Code section 70367. This provision does not preclude the Administrative Director of the Courts from submitting a declaration as required by Government Code section 70367(a). The Administrative Director of the Courts must report to the Executive and Planning Committee any decision not to appeal a county facilities payment amount.

Rule 10.183 amended and renumbered effective January 1, 2007; adopted as rule 6.182 effective June 23, 2004.

GOVERNMENT CODE – GOV

TITLE 8. THE ORGANIZATION AND GOVERNMENT OF COURTS [68070 - 77655]

(Title 8 added by Stats. 1953, Ch. 206.)

CHAPTER 5.7. Superior Court Facilities [70301 - 70403]

(Chapter 5.7 added by Stats. 2002, Ch. 1082, Sec. 4.)

ARTICLE 7. Authority and Responsibility [70391 - 70394]

(Article 7 added by Stats. 2002, Ch. 1082, Sec. 4.)

70391.

The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

- (a) Exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities.
- (b) Exercise the full range of policymaking authority over trial court facilities, including, but not limited to, planning, construction, acquisition, and operation, to the extent not expressly otherwise limited by law.
- (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:
 - (1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011, and as follows, except that, notwithstanding any other provision of law, the proportion of the net proceeds that represents the proportion of other state funds used on the property other than for operation and maintenance shall be returned to the fund from which it came and the remainder of the proceeds shall be deposited in the State Court Facilities Construction Fund.
 - (2) The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to another state agency or local government agency.
 - (3) The Judicial Council shall consider whether the potential new or planned use of the facility:
 - (A) Is compatible with the use of other adjacent public buildings.
 - (B) Unreasonably departs from the historic or local character of the surrounding property or local community.
 - (C) Has a negative impact on the local community.

(D) Unreasonably interferes with other governmental agencies that use or are located in or adjacent to the building containing the court facility.

(E) Is of sufficient benefit to outweigh the public good in maintaining it as a court facility or building.

(4) All funds received for disposal of surplus court facilities shall be deposited by the Judicial Council in the State Court Facilities Construction Fund.

(5) If the facility was acquired, rehabilitated, or constructed, in whole or in part, with moneys in the State Court Facilities Construction Fund that were deposited in that fund from the state fund, any funds received for disposal of that facility shall be apportioned to the state fund and the State Court Facilities Construction Fund in the same proportion that the original cost of the building was paid from the state fund and other sources of the State Court Facilities Construction Fund.

(6) Submission of a plan to the Legislature for the disposition of court facilities transferred to the state, prior to, or as part of, any budget submission to fund a new courthouse that will replace the existing court facilities transferred to the state.

(d) Conduct audits of all of the following:

(1) The collection of fees by the local courts.

(2) The moneys in local courthouse construction funds established pursuant to Section 76100.

(3) The collection of moneys to be transmitted to the Controller for deposit in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5.

(e) Establish policies, procedures, and guidelines for ensuring that the courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, construction, design, operation, and maintenance.

(f) Establish and consult with local project advisory groups on the construction of new trial court facilities, including the trial court, the county, the local sheriff, state agencies, bar groups, including, but not limited to, the criminal defense bar, and members of the community. Consultation with the local sheriff in design, planning, and construction shall include the physical layout of new facilities, as it relates to court security and other security considerations, including matters relating to the safe control and transport of in-custody defendants.

(g) Manage court facilities in consultation with the trial courts.

(h) Allocate appropriated funds for court facilities maintenance and construction, subject to the other provisions of this chapter.

(i) Manage shared-use facilities to the extent required by the agreement under Section 70343.

(j) Prepare funding requests for court facility construction, repair, and maintenance.

(k) Implement the design, bid, award, and construction of all court construction projects, except as delegated to others.

(l) Provide for capital outlay projects that may be built with funds appropriated or otherwise available for these purposes as follows:

- (1) Approve five-year and master plans for each district.
- (2) Establish priorities for construction.
- (3) Recommend to the Governor and the Legislature the projects to be funded by the State Court Facilities Construction Fund.
- (4) Submit the cost of projects proposed to be funded to the Department of Finance for inclusion in the Governor's Budget.
- (m) In carrying out its responsibilities and authority under this section, the Judicial Council shall consult with the local court for:
 - (1) Selecting and contracting with facility consultants.
 - (2) Preparing and reviewing architectural programs and designs for court facilities.
 - (3) Preparing strategic master and five-year capital facilities plans.
 - (4) Major maintenance of a facility.

(Amended by Stats. 2010, Ch. 328, Sec. 100. Effective January 1, 2011.)

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980]

(Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]

(Division 3 added by Stats. 1945, Ch. 111.)

PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11894]

(Part 1 added by Stats. 1945, Ch. 111.)

CHAPTER 1. State Agencies [11000 - 11148.5]

(Chapter 1 added by Stats. 1945, Ch. 111.)

ARTICLE 1. General [11000 - 11019.11]

(Article 1 added by Stats. 1945, Ch. 111.)

11011.

(a) On or before December 31 of each year, each state agency shall make a review of all proprietary state lands, other than tax-deeded land, land held for highway purposes, lands under the jurisdiction of the State Lands Commission, land that has escheated to the state or that has been distributed to the state by court decree in estates of deceased persons, and lands under the jurisdiction of the State Coastal Conservancy, over which it has jurisdiction to determine what, if any, land is in excess of its foreseeable needs and report thereon in writing to the Department of General Services. These lands shall include, but not be limited to, the following:

(1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.

(2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.

(3) Land not identified by the state agency within its master plans for facility development.

(b) Jurisdiction of all land reported as excess shall be transferred to the Department of General Services, when requested by the director of that department, for sale or disposition under this section or as may be otherwise authorized by law.

(c) The Department of General Services shall report to the Legislature annually, the land declared excess and request authorization to dispose of the land by sale or otherwise.

(d) The Department of General Services shall review and consider reports submitted to the Director of General Services pursuant to Section 66907.12 of this code and Section 31104.3 of the Public Resources Code prior to recommending or taking any action on surplus land, and shall also circulate the reports to all agencies that are required to report excess land pursuant to this section. In recommending or

determining the disposition of surplus lands, the Director of General Services may give priority to proposals by the state that involve the exchange of surplus lands for lands listed in those reports.

(e) Except as otherwise provided by any other law, whenever any land is reported as excess pursuant to this section, the Department of General Services shall determine whether or not the use of the land is needed by any other state agency. If the Department of General Services determines that any land is needed by any other state agency it may transfer the jurisdiction of this land to the other state agency upon the terms and conditions as it may deem to be for the best interests of the state.

(f) When authority is granted for the sale or other disposition of lands declared excess, and the Department of General Services has determined that the use of the land is not needed by any other state agency, the Department of General Services shall sell the land or otherwise dispose of the same pursuant to the authorization, upon any terms and conditions and subject to any reservations and exceptions as the Department of General Services may deem to be for the best interests of the state. The Department of General Services shall report to the Legislature annually, with respect to each parcel of land authorized to be sold under this section, giving the following information:

(1) A description or other identification of the property.

(2) The date of authorization.

(3) With regard to each parcel sold after the next preceding report, the date of sale and price received, or the value of the land received in exchange.

(4) The present status of the property, if not sold or otherwise disposed of at the time of the report.

(g) Except as otherwise specified by law, the net proceeds received from any real property disposition, including the sale, lease, exchange, or other means, that is received pursuant to this section shall be paid into the Deficit Recovery Bond Retirement Sinking Fund Subaccount, established pursuant to subdivision (f) of Section 20 of Article XVI of the California Constitution, until the time that the bonds issued pursuant to the Economic Recovery Bond Act (Title 18 (commencing with Section 99050)), approved by the voters at the March 2, 2004, statewide primary election, are retired. Thereafter, the net proceeds received pursuant to this section shall be deposited in the Special Fund for Economic Uncertainties.

For purposes of this section, net proceeds shall be defined as proceeds less any outstanding loans from the General Fund, or outstanding reimbursements due to the Property Acquisition Law Money Account for costs incurred prior to June 30, 2005, related to the management of the state's real property assets, including, but not limited to, surplus property identification, legal research, feasibility statistics, activities associated with land use, and due diligence.

(h) The Director of Finance may approve loans from the General Fund to the Property Acquisition Law Money Account, which is hereby created in the State Treasury, for the purposes of supporting the management of the state's real property assets.

(i) Any rentals or other revenues received by the department from real properties, the jurisdiction of which has been transferred to the Department of General Services under this section, shall be deposited in the Property Acquisition Law Money Account and shall be available for expenditure by the Department of General Services upon appropriation by the Legislature.

(j) Nothing contained in this section shall be construed to prohibit the sale, letting, or other disposition of any state lands pursuant to any law now or hereafter enacted authorizing the sale, letting, or disposition.

(k) (1) The disposition of a parcel of surplus state real property, pursuant to Section 11011.1, made on an “as is” basis shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property, the purchaser or transferee shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(2) If the disposition of a parcel of surplus state real property, pursuant to Section 11011.1, is not made on an “as is” basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

(3) For the purposes of this subdivision, “disposition” means the sale, exchange, sale combined with an exchange, or transfer of a parcel of surplus state property.

(Amended by Stats. 2009, 2nd Ex. Sess., Ch. 6, Sec. 1. Effective May 21, 2009.)