



DONALD W. DICKINSON: "The problem we're faced with is that we have to make a budgetary decision in six weeks," says the San Francisco court clerk.

Counties Resist Joining

# Confusion Surrounds Trial Court Funding

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SACRAMENTO — In the final days of their session last year, legislators rushed into law the long-awaited Trial Court Funding Act of 1987.

Now, scarcely eight months later and months before the law is to take effect, in January 1989, the Legislature may change the \$350-million program. Lawmakers are considering a blizzard of bills that could affect whether counties trade their court revenues for the state's block grant.

"To the credit of the Legislature, [trial court funding] is probably the biggest allocation of money to the counties since Proposition 13," said Penny Bohannon, manager of legislative affairs for Ventura County. "Ideally, it would have made counties very solvent; but practically, it's a mess."

At least 20 measures — perhaps as many as 40 — would do everything from revise technical language to exempt specific fees and assessments the local courts must return to the state in order to qualify for state money under the funding act. It has created no small amount of confusion.

Arguing that returning all revenues will compromise certain court operations and special programs — such as alcohol- and drug-abuse education, dispute resolution, emergency medical services and process-serving — counties want to keep certain revenues. Many of the bills relate to certain programs and the fees they assess.

Rather than a failing of the act itself, Gregory Schmidt, principal consultant to the Senate Judiciary Committee, said the state of follow-up legislation "if anything, is an indictment of past practices in the zillions of penalty assessments scattered throughout the codes."

Michael Corbett, legislative advocate for the County Supervisors Association of California, said counties are concerned that "dedicated-revenue" programs will be jeopardized under the funding act.

"The fees are collected to drive a particular program," Corbett said. "To the extent the money is taken away, they would have to be supplanted by the counties."

Adding to the arduousness of the task is the projected state budget shortfall, which could reach \$1 billion this year. Although money for long-awaited state funding of the trial courts remains in the governor's budget — and there have been no moves to delete it — the future of the program is clearly jeopardized by the state's uncertain financial picture.

The Trial Court Funding Act creates a *quid pro quo* whereby counties forgo additional judgeships unless they exchange court-generated fees for a state block grant. Part of the deal includes a commitment to continue certain programs mandated by the state that are currently reimbursed by the state, but that counties would be obligated to continue and pay for out of the block grant.

The block grants are flat fees of \$455,000 to \$480,000 per judge per year. San Francisco would receive \$185,000 per judge to reflect the unique nature of the city-county government in San Francisco.

But, with the maze of bills pending, counties are uncertain about what fees they will be trading and which programs they will have to start paying for themselves, without state aid.

"The problem we're faced with is that we have to make a budgetary decision in six weeks," said Donald W. Dickinson, county clerk and executive officer of the San Francisco Superior Court. "But the Trial Court Funding Act [revisions] won't be finalized. It puts us in a very difficult situation."

"Some counties are in a bind, because they really need new judgeships to get their calendars under control," said Dickinson. "But if they don't go into [the program], they don't get new judges."

Local and state officials familiar with

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# Trial Court Funding Already in Disarray

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the current crop of bills say any substantive policy changes, especially those that may cost the state money, are hampered by confusion over the budget shortfall.

"There is the looming problem of the shortfall," said Schmidt. "If you're \$1 billion short, and you have a new program starting up that costs \$350 million, it's tempting to postpone it."

Corbett said the counties are focusing on technical "cleanup" legislation contained in AB 2640 by Assembly Speaker Willie Brown, D-San Francisco. This bill is relatively non-controversial compared with other bills which, while desirable to the counties, could cost more money than legislators want to spend.

"Given the state's current fiscal situation, which at best can be described as shaky, our focus has shifted to [AB] 2640, which is the administrative cleanup," Corbett said. "We are concerned about the current year's funding. We don't know what the impact [of the shortfall] will be because we don't know what the revenues look like."

Jeffrey Arthur, consultant to the Senate Appropriations Committee, said many proposed changes in the funding mechanism of the act — mainly affecting the amount of money that the counties must return to the state from fees, fines and forfeitures — cannot be resolved easily without action on the budget shortfall.

"The bills either change the state's obligation to make payments or change the counties' obligation," Arthur said. "You've got money moving in two directions, so the bills affect one or both ends of the money movement."

But no money will move if there's no appropriation for the Trial Court Funding Act, Arthur said.

"I'm sitting here worrying about the trees when the forest is on fire," he said.

For their part, the counties are hesitant to join the funding act, which initially offered them a deadline of July 1, then Aug. 1, and, if AB 2640 passes, Sept. 5. The counties are uncertain about the future of the program, and some fear they will receive less money under the act than without it.

Dickinson echoed the sentiments of other court administrators around the state who said counties are in a bind: They must wait for final action on technical changes in the act before deciding to participate in the program while they also must make local budgetary decisions.

Anne Kelly, an assistant to the speaker who has worked on provisions of the act since it was first introduced in 1985, said only one county, Modoc, has announced plans to adopt the program.

Others familiar with the proposed funding act revisions said counties are waiting for legislation to clarify the funding act before deciding whether to join. "They are holding out as long as possible to see if they'll get a better deal," said Schmidt.

The various bills to make changes in the act could all be rolled into one measure, AB 1197, also by Brown and hashed out in an Assembly-Senate conference committee.

"This is such a fundamental change in the way the courts are funded," Kelly said. "Every bill will be considered — that is the speaker's assurance."

The technical changes contained in AB 2640 are thought to be non-controversial, with the disputed changes to be swept into AB 1197 or another legislative measure. Brown's AB 2640 is unopposed, so far.

However, concern has arisen that the Deukmejian administration will oppose a provision in AB 2640 that the counties strongly support. The block grants are conditioned on the counties waiving reimbursement for all state mandated programs, whether or not they are court-related.

The amendment that may cause the governor problems would eliminate the funding act's requirement that local courts waive all claims for state reimbursement of non-court-related mandated local programs.

Without major changes in the act,

several counties, including those with no- or low-property tax cities, have indicated they cannot afford to join the trial court funding program because they would lose money. No- or low-property tax cities are those that levy low or no property taxes based on provisions in Proposition 13, the 1978 property-tax limitation measure.

"Even the non-controversial legislation may become controversial," Dickinson added. "The thing has really been a zoo."

And, Dickinson said, the state budget shortfall comes at the same time as a budget deficit in San Francisco, creating special problems for San Francisco courts. Opting into the program for San Francisco, he said "may be attractive in the short term [because] anything at this point helps."

Lynn Coleman, assistant county clerk in Marin County, said Marin probably won't go into the program because it would be likely to lose money.

"Every time we calculate it, it comes out a different figure," she said. "It doesn't look like something we'll be opting into unless it is cleaned up considerably."

Coleman said Marin's main concern is state reimbursement for costs involving inmate litigation at San Quentin, for which the county would not be reimbursed under the Trial Court Funding Act. One of the bills to change the act, SB 612 by Sen. Robert Presley, D-Riverside, would permit such reimbursement.

Officials from counties with no- or low-property tax cities in their boundaries — including Ventura, Santa Clara, Contra Costa, San Bernardino and Riverside counties — are furious about a last-minute provision added to the Trial Court Funding Act last year that requires them to shift money to those cities in return for grants.

One of the counties hardest hit by the act's provisions is Santa Clara, which would receive 17 new judgeships under the act but would be forced to shift money to the no- and low-tax cities in the county's jurisdiction — Cupertino, Saratoga, Monte Sereno and Santa Clara.

"We have significant concerns because of the no- and low-property tax provisions," said Grace Yamakawa, county clerk and executive officer of the Santa Clara County Superior Court. "We need the judgeships, but [the act] does have a tremendous impact on our financial situation."

Some of the most vocal critics of the funding act are in Ventura County.

"Trial court funding was intended to provide counties with a block grant of state funds per judgeship," said Bohannon, "and overall it sounds like a windfall for the counties to have the funding picked up for the trial courts."

"We'd be sending more money back than we would get. We are the one county that would run into the red the first and the fastest. We would be fiscally irresponsible to participate."

Although Ventura County would get one additional Municipal Court judgeship under the act, Bohannon said the cost is not worthwhile. Although no official decision has been made by the Board of Supervisors, Bohannon said technical legislation is unlikely to satisfy Ventura County and will probably be too late.

"It's going to happen in the last week of the Legislature, after all county budgets are finalized," she said, adding that Ventura County has asked Speaker Brown to postpone the deadline for opting into the funding program until Oct. 15, after the state budget is signed by the governor.

Stanley Collis, assistant director for court services for the state's Judicial Council, which sets policy for the state's courts, discounted concerns that the state budget shortfall might delay implementation of Trial Court Funding.

"It would be attractive [to budget-cutters], but the politics of that would be more difficult than any other budget cut," he said.