

GUIDE TO FUNDING OPTIONS FOR COURT FACILITIES

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The National Center for State Courts maintains an extensive online library of information on issues relating to court facilities, including financing, design, planning, construction and facility standards. This library is available at www.ncsc.org.

BACKGROUND

Justice 2020, the Arizona Judicial Department's 2010-2014 strategic agenda, identifies the need for safe, secure and efficient court facilities. Goal 2B: Improving Operational Efficiencies, identifies the impact of the economic recession on court funding and the need for the judicial department to have a "consistent and reliable source of funding." The action plan for Goal 2B includes exploring "... alternative methods for funding court facilities and operations." (Arizona Supreme Court, 2009:5) The new strategic agenda for July 2014 – June 2019: "*Justice for All Arizona: Courts Serving Communities*" builds upon this theme, with the goal of "courthouse facilities and security;" this includes conducting a "... needs assessment for courthouse security infrastructure" and establishing "... minimum courthouse and courtroom security standards." (Arizona Supreme Court, 2013:7)

A 1995 project by Robert W. Tobin of the National Center for State Courts (NCSC) surveyed public officials involved in court facility financing, construction and remodeling projects. The project report, "A Court Manager's Guide to Court Facility Financing," is a valuable reference for court administrators facing the challenge of a capital court project. Tobin advocates that the court administrator can and should be a major player not only in the design and implementation of a court facility, but also in obtaining and advocating for how the facility will be funded and the terms of financing. He provides a detailed description of the various methods for financing court facilities (traditional and innovative); challenges and opportunities with each of these methods; case examples from twenty-eight states; and a guide to the decision-making process. The NCSC monograph is extensively cited throughout this white paper.ⁱ

This white paper by the Administrative Office of the Courts, Arizona Supreme Court, is intended to supplement the NCSC monograph, to provide an update on the challenges court administrators have faced in the years since the 1995 report and the methods, both traditional and innovative, used to finance the planning, design, construction, remodeling and maintenance of court facilities. Issues identified in the NCSC monograph are highlighted with examples from recent court projects across the nation.

CRITICAL ELEMENTS OF A COURT FACILITY PROJECT

A 2012 budget survey of state court administrators by the National Center for State Courts determined that the local government was the primary source of funding for courthouses and equipment in thirty (30) out of forty-five (45) states.ⁱⁱ Generally, court buildings are funded from the general fund or through some type of public financing (e.g. a bond).ⁱⁱⁱ In many cases, the governmental entity cannot provide all the necessary funds to upgrade or construct new court facilities. Further, moving to state funding of the judicial department does not guarantee resolution of the funding issue; both in terms of whether the local or state government is responsible for the facilities and in providing the funding for new construction and maintenance. There may be continued ambiguity and tension between the state and the local governmental entity as to responsibility for funding court facilities, construction, remodeling and ongoing maintenance; and in fact, the facilities issue may be the source of the greatest conflict and concern.^{iv}

Experiences of court administrators from across the nation highlight there are a number of key elements to a successful court facility project:

- A strategic plan that involves an “collaborative systems approach” among the stakeholders (Reinkensmeyer, 2011: 91);
- The court administrator acting as part of the solution by proposing a credible plan for financing the project; as compared to expecting the funding body to provide the funds from the general fund or develop the funding mechanism;
- The courts serving as good stewards of public monies, seeking efficiencies and cost reductions wherever possible and providing credible information on court needs, revenues and expenditures to governing bodies; and
- Flexibility in the design, location and financing of the facility.

“Funding Justice, Strategies and Messages for Restoring Court Funding, Justice at Stake,” stresses the need for ongoing, year-round engagement and collaboration with budget policymakers to address court funding challenges. Ongoing engagement with the policy makers provides the opportunity to provide education about the court’s needs and to demonstrate the courts can provide innovative and effective solutions to budget issues, including capital projects. The report provides a “blue-print” for developing and carrying the message to elected officials and the public.^v

A number of states have initiated discussion and collaboration on a court facilities project by establishing a commission or committee to study the issue. This effort often includes conducting a needs assessment, consulting with experts in court facilities/public projects and developing standards or guidelines for the court facilities.^{vi}

Discussions with court administrators who have recently received approval for a court facilities project highlight the responsibility of the court presenting a funding solution to the funding entity. Demonstrating the need for a facility and having the funding entity accept that need is just the first step; a “show me the money” solution is a necessary component to obtaining approval to proceed with the project. The proposed solution may include examples of efficiencies realized or possible efficiencies that may be realized in a new courthouse.^{vii}

Examples:

- In Maricopa County, Arizona, the judicial and administrative staff of the Superior Court developed a ten year master space plan through continual collaboration with the county wide justice planning consortium.
- The Flagstaff Municipal Court Administrator has worked collaboratively with other public stakeholders, the city finance department and the city council since the late 1990's on a city courthouse project. A 1997 evaluation found that the courthouse was one of the top city priorities for a capital project; the city subsequently hired an architectural firm specializing in court facilities to provide an assessment of space needs. The 2008 study identified the need for approximately 60,000 square feet (vs. the current courthouse size of approximately 10,000 square feet.) The location, design and size of the courthouse has been modified over the years, in an attempt to bring the total costs of the project within reach of the available funding and still meet the current and future needs of the court. The current plan is for approximately 40,000 square feet; this may be a remodel/expansion rather than new construction, and the original concept of a parking garage has been eliminated from the plan.
- The Juvenile Justice Center in Yavapai County (Arizona) and the Mesa Municipal Court project are other examples where flexibility was a critical component to obtaining approval to proceed with the project. In both cases, the original design of the facility was modified to reduce the overall cost. In Yavapai County, local officials, including the court administrator, worked with the architect to reduce the original design for two courtrooms to one courtroom and a hearing room; with room for later expansion for additional courtrooms. In Mesa, the plan was revised to provide two "shelled out" courtrooms, plus space at one end of the building for future expansion.
- The California Judicial Council developed a 20 year facility master plan for its trial courts, conducting an assessment of the state's courthouses and prioritizing the need for upgrades or new construction.^{viii} This master plan is one component of the ongoing collaborative effort with the Legislature and the Governor's Office on courthouse projects.
- A Court Facilities Task Force, a collaborative effort by the Oregon Judicial Department, Association of Oregon Counties and the Oregon State Bar, conducted a statewide survey on court facilities. The December 2006 report of the Task Force urged legislative action to identify the critical need for improvements to existing facilities and construction of new facilities, and proposed a dedicated revenue source to pay for debt services on bonds for construction and remodeling projects.^{ix}
- Legislation enacted in West Virginia in 2001 established the West Virginia Courthouse Facilities Improvement Authority, directed the Authority to conduct a study of the courthouses across the state, and to report its findings to the legislature the following year.^x

KEY DECISION AREAS FOR FACILITY FUNDING

The NCSC monograph identifies four key decisions areas for consideration in a court financing project:

1. Is facility financing feasible?
2. Is it necessary to incur debt?
3. If incurring debt is necessary, then what type of debt will be used?
4. What source of revenue will be used to retire the debt? (Tobin, 1995: 6)^{xi}

1. Facility Financing Feasible?

“Constraints and opportunities (legal, economic, fiscal, political, chronological),” “property considerations,” “up-front costs” and “intergovernmental cooperation” are factors the court administrator needs to consider in the initial assessment as to whether it is possible to finance a court facility. (Tobin, 1995:7) Legal issues include “... legal or constitutional limits on debt and taxation and high requirements for voter approval (two-thirds in some jurisdictions), and limits on use of lease-purchase, certificates of participation, or design-build methods.” (Tobin, 1995: 8) The provisions in the federal Internal Revenue Code regarding tax-exempt bonds has led to the establishment of “building authorities” or other non-profit entities that qualify to issue federal tax exempt bonds.^{xii}

Economic, fiscal, political and chronological issues may include timing of the project and the current economic health of the state/local government; the fiscal approach/position of the government entity (board of supervisors, city council, state Legislature); the public’s desire for a “leaner government;” voter resistance to bond measures/tax increases; lack of awareness and support by the public and elected officials for the need for court facilities; competing demands of other public projects/agencies; and reluctance by elected officials to use non-traditional methods of financing that do not require their approval or the approval of the voters. Difficult economic times may provide unique opportunities for public projects. Low interest rates, the positive economic impact on the community through use of local vendors, the opportunity to buy foreclosed or reduced cost properties, and low long-term rental rates are factors that can positively impact the financing component of a project.

Property issues include whether there is a need to acquire land for the project, if the project will involve new construction or remodeling, and ownership or rental of a facility. In some cases, the government may already own the land for the project, or a significant component of the overall cost of a project can be borne through the sale of property held by the state or local government.^{xiii}

Many of the nation’s courthouses, including those in Arizona, hold historical significance. Often, the courthouses were originally built in the center of the city, and were constructed to accommodate not only the court, but other public offices, for example, the county assessor’s office. The design and age of these buildings present significant challenges to meet the current need for additional courtrooms, security, technology, etc.; however, the historical significance

of the building is a consideration that can encourage a funding entity to support the remodeling/expansion of the courthouse.

Up-front professional factors include the costs for the planning and design of the facility, and obtaining financial and legal advice. Public-private partnerships, as described later, *may* significantly reduce these up-front costs as the private vendor/developer assumes the responsibility for the financing of the project. In planning a project, the court administrator needs to determine the source of revenue for these up-front costs.^{xiv} Options include an appropriation from the general fund; using operating funds or monies from a dedicated fund; or obtaining a grant.

Inter-governmental cooperation can take a number of forms, including the state providing assistance to counties “(subsidies, grants, loans of credit, reimbursements, and direct construction...)”; sharing of resources among state agencies, among counties, or between a county and a city; federal funding and public-private partnerships. (Tobin, 1995: 12, 13) Pooling of resources can include multi-purpose buildings that house multiple public entities; for example, the municipal and justice of the peace courts, city attorney’s office, and public defender’s office.

Examples:

- The Flagstaff Municipal Court Project illustrates many of the legal, economic, fiscal, political, chronological and property factors:
 - A collaborative effort with other public entities led to a ballot initiative in both 2002 and 2010 to raise the monies for public projects. In 2002, the court project did not make the priority list for the ballot; priority was given to other public projects. In 2010, during difficult economic times, the courthouse project made the ballot but the measure was soundly defeated by the voters.
 - Historically, the city council and city treasurer have maintained a fiscally conservative approach, building a sizeable “rainy day fund,” holding significant assets in land and buildings, hesitating to enter into debt. Although the city general fund has sufficient monies to pay for the court project, the city council is reluctant to reduce the general fund, fearing negative impacts on credit ratings, or to enter into a lease-purchase agreement or other type of plan that would involve long-term debt outside of the secondary property tax bond process.
 - The City of Flagstaff owns large portions of land and the city council has considered both trading city owned land to a developer for partial payment of construction of a new municipal court, and using revenues from the sale of city land for the project. The first concept was abandoned on legal advice that the city cannot trade land for future equity, i.e. construction of the new courthouse. The city council then considered selling some city owned land to a developer and using the proceeds from the sale for the court project; however, at recent public meetings,

city residents voiced their strong opposition to the sale and new development, often due to vested interests in the target properties.

- Coconino County is considering an inter-governmental agreement for remodeling a multi-use municipal and city court facility in Page, Arizona; the inter-governmental agreement may include a loan between the county and the city.
- Low interest rates and the positive impact on the local economy were factors that encouraged the Yavapai County board of supervisors to incur debt for a new justice center.
- The Superior Court in Yavapai County sits in the center of the city and was originally built as a multi-purpose building for both the court and other public offices. The historical significance of this facility is a factor that contributed to approval of funding for remodeling of the courthouse, this includes build-out of office space into courtrooms and providing needed security measures for the court.
- In Georgia, the first floor of the Atlanta Fulton County multiuse building is dedicated to a public library; the upper floors are for use by the court.
- The West Virginia Courthouse Facilities Improvement Authority provides grants to counties to assist with remodeling and new construction projects. The grants require a twenty percent contribution from the county. The majority of these grants address safety and structural issues. In 2011 the Authority granted \$80,000 to Morgan County towards a new \$11 million courthouse. For the 2014 funding cycle, the Authority granted \$2.1 million to twenty-four counties for improvements or repairs to court facilities.^{xv}
- Colorado is seeking legislative approval to create an “Underfunded Courthouse Facilities Grant Program” and Fund. Similar to the West Virginia model, a newly created Colorado commission would review applications from counties. The Colorado commission would make recommendations to the state court administrator regarding grants to counties for planning services, matching funds or leveraging grant funding opportunities for renovation or new construction projects. The legislation identifies that access to safe and secure court facilities is a fundamental component to ensuring access to justice and that both anticipated and unexpected events have driven the need for renovations or construction of court facilities. The provisions of the legislation recognize the geographical, demographic and economic diversity of the state and the impact of these factors on the ability of a county to fund court facilities and services. If approved, the legislation will appropriate \$1.5 million from the state general fund to the newly created fund.^{xvi}

2. Decision on Incurring Debt. There are three main options for financing: fund without any debt; with short-term loans; or with long-term debt.^{xvii} In some cases, the funding governmental entity may be able to provide the necessary funds without incurring any debt. The funding body may have sufficient monies in its general fund; can generate the funds by selling a public asset; or pay off a debt on another project early and use the revenues accumulated for the original project for the court facility. A tax increase is another option.

Federal funds may be available under specified circumstances; for example, to repair or reconstruct a courthouse damaged by a hurricane or to remodel a courthouse to address security issues, etc. Grants and/or private donations may also provide part, or all of the funding for a project.

Examples:

- The courthouse in Anchorage, Alaska is a unique example of a court facility financed solely with appropriations from the state general fund. ^{xviii}
- The State of Hawaii funds all court facility projects through appropriations from the state legislature. Testimony before the Senate Committee on Ways and Means by staff from the Hawaii Supreme Court Administrative Office in April 2013 urged the legislators to provide construction funding for a new Judiciary Court Complex in Kona. Upon approval of the funding, the project is managed by the Public Work Division of the Department of Accounting and General Service, with the AOC serving as facilitator of the project and liaison between the state agency and contractors. ^{xix}
- The Superior Court in Maricopa County, in collaboration with other criminal justice partners, was successful in obtaining a \$250,000 Homeland Defense grant for a gate/metal plate for an entrance to an older court building. ^{xx}
- The Superior Court in Mohave County is using funds from a State Justice Institute (SJI) grant and has contracted with the National Center for State Courts to conduct a needs assessment and consultation for its justice center project.
- A statewide sales tax (“SPLUS”) in Georgia raises monies for local government infrastructure improvements; permissible uses of these monies including court facility improvements and new construction. ^{xxi}

The NCSC Monograph identifies one option as placing “. . . short-term debt installments such as grant anticipation notes (GANs), tax anticipation notes (TANS), bond anticipation notes (BANs), lines of credit, or bonds that are to be retired in less than five years.” (Tobin, 1995:14) Other short-term instruments include revenue anticipation notes (RANs) and tax and revenue anticipation notes (TRANS). These short-term instruments are sometimes used where there is a short timeframe to start the project, or as one component of the overall financing plan. Some of these instruments mature within a very short period of time, for example, within a year.

The Municipal Securities Rulemaking Board provides the following definitions for these instruments:

“Bond anticipation notes (BANS) – Notes issued by a governmental unit, usually for capital projects, that are repaid from the proceeds of the issuance of long-term bonds.”

“Grant anticipation notes (GANs) – Notes issued on the expectation of receiving grant funds, usually from the federal government. The notes are payable from the grant funds, when received.”

“Revenue anticipation notes (RANS) – Notes issued in anticipation of receiving revenues at a future date.”

“Tax anticipation notes (TANS) – Note issued in anticipation of future tax receipts, such as receipts of ad valorem taxes that are due and payable at a set time of the year.”

“Tax and revenue anticipation notes (TRANs) – Notes issued in anticipation of receiving future tax receipts and revenues at a future date.” (MSRB)

- 3. The Type of Long-Term Debt.** Most court facility projects involve long-term debt: general obligation bond financing, revenue bonds, or certificates of participation (COPs); or some form of private financing.^{xxii}

General obligation bonds represent the traditional and least expensive approach to funding. However, this method includes a number of challenges, including the requirement for voter approval; competition with other worthy public projects to be placed on the ballot; tax and debt limitations; and the length of time it typically takes to put this method of financing in place.

Revenue bonds provide a number of advantages and are often used where a general obligation bond is not feasible because of tax and debt limitations. Typically, obtaining the financing through a revenue bond approach is more certain and faster, and avoids the political and legal challenges of general obligation bonds. Often the revenue bonds form part, but not all of the funding strategy. This method of financing involves some form of public building entity issuing the bonds; for example, a judicial building authority.

The Internal Revenue Code places specific requirements on use of a non-profit building authority. IRS Ruling 63-20 specifies that the state must have a beneficial interest in the non-profit and upon satisfaction of the debt, the governmental entity must hold full legal title for the property of the corporation for which the debt was incurred. Further, the corporation must be approved by the state or political subdivision. The non-profit organization issues tax-exempt bonds; the building is leased to the governmental entity and the government makes lease payments from the building fund or other sources of revenue.

In 1995, the NCSC Monograph identified private financing options, including lease-purchases and design-build-finance arrangements with a developer or non-profit corporation that issues COPs or bonds, as occasionally being used for court projects.^{xxiii} In the years since the 1995 report, public entities have increasingly considered or utilized some form of private financing arrangement. These arrangements are now commonly referred to as “Public-Private Partnerships”, (“PPP”, “P3” or “PBI”), and typically involve a contract between a government entity and a private party or consortium, where the private party provides the project and assumes substantial financial, technical and operational risk for the project.

Public-private partnerships may take a variety of forms, including long-term lease agreements, sale-leaseback of public buildings, design-build-operation agreements, design-build-finance-operate-maintain agreements; lease-purchase agreements; and projects where the government provides some type of grant, subsidy or incentive (e.g. a tax break) to encourage investment by the private entity.^{xxiv} The newer public-private projects typically involve a special organization/company, often referred to as a “special purpose vehicle” (SPV). The SPV is the entity that signs the agreement with the government; the SPV consists of a consortium of experts for the project, including the general contractor, architect and financier for the design, construction and maintenance of the facility. The government may or may not have an equity share in the SPV. Many of these projects involve an agreement where upon completion of the facility, the government leases the facility from the private consortium, either as the sole tenant of the building or as one of multiple public and private tenants. Inherent in these projects is the need for the government to identify the source of revenue that will support the lease payments for the term of the agreement.

Certificates of Participation (COPs) are another alternative to general obligation bonds and are frequently used for court facility and other public projects. Certificates of Participation generate revenue from sale of interests in lease revenues on a court facility; where the court building serves as the collateral on the debt. COPs may be issued by a non-profit organization or entity. A COP may be a component of a lease-purchase agreement with financing provided through a private bank or the builder.

The potential benefits of public-private partnerships include:

- A private enterprise can bring expertise and efficiencies to the project that would not otherwise be available to a public construction project;
- The private enterprise, not the government entity, incurs the long term debt. Therefore, voter approval is not required and the governmental entity’s debt load is not affected;
- The cost of the project can be distributed to the government over a longer period of time;
- The overall cost of the project *may* be less, based on the assumption that the project will be completed in a shorter time frame and construction costs are expected to increase over time;
- The loan does not affect the debt load of the governmental entity;
- The private enterprise carries the risks associated with the project, including cost overruns and delays; and
- Ongoing maintenance of the facility can be a component of the agreement with performance measures built into the agreement to ensure quality maintenance of the facility.

Public-private partnerships also present potential limitations:

- A design-build process, where a public agency contracts with a private general contractor to design and build the facility and the government is responsible for the financing, operation and maintenance of the facility, is dependent upon a comprehensive program/space requirements assessment, to avoid project cost overruns due to change orders. Ongoing and close involvement of the judiciary, and the ability to make quick decisions are also critical in a design-build project. Theoretically, a design-build process, as compared to a traditional design-bid-build method, will reduce overall building construction time, and thereby the total cost for the project. The governing structure and group-decision making practices observed in many courts may present significant challenges to the courts regarding timely interaction with the contractors and timely decisions to avoid project cost overruns.^{xxv}
- A P3 project “. . . can require the government to perform new activities and take on certain risks that it may not be experienced at handling.” Risks include poor drafting of agreements, long term contracts that limit the government’s flexibility to change funding allocations, and unforeseen challenges, including the private entity being acquired by another company or going out of business. (Taylor, 2012: 11,12)
- A P3 project bypasses public approval and subjects the project, the funding body and the governing entity to resistance from the voters/general public.
- Experience to date with P3 projects demonstrates that these projects receive a limited number of bidders, typically one to three entities submit bids. This reduced competition could be detrimental; in contrast, competition among a larger number of bidders generally reduces the overall cost and increases the quality of a project.^{xxvi}
- The overall payment for the P3 financing may be higher than a traditional financing method, given that a private entity pays higher interest rates than government entities to borrow money. A P3 project also includes a profit margin for the private entity.
- The financing for a P3 project typically extends out over a longer period of time than in a traditional building model, with the court leasing the facility over a period of up to thirty years.

Examples:

- The Santa Cruz court facility, a \$15 million dollar project housing the Superior Court and adult and juvenile detention centers was built using two bonds: a jail district bond, and a ½ cent sales tax. Payments on the jail district bond are supported by an agreement with the federal government to refer federal detainees to the Santa Cruz facility. The bond is also backed by the county general fund, however, because the revenues from the federal detainee program have not been sufficient to meet the debt service and operating costs, it has been necessary for the county to provide unexpected payments from the county general

fund. Of the total project cost, approximately \$1 million is from the jail district funds to cover the costs of the cells and security required at the courthouse.^{xxvii}

- The Mesa Municipal Court project highlights how a collaborative approach with other stakeholders may help overcome voter resistance to approving a bond. The public safety bond approved by the voters included funding for the Mesa Crime Lab and the municipal courthouse. The Mesa Police Department needed to expand its facility into the space occupied by the old courthouse; combining the crime lab and courthouse in one bond measure helped to ensure approval by the voters.
- California has utilized COPs as a financing strategy for its courthouses since the late 1960's. One example is the Carol Miller Justice Complex in Sacramento. This facility was completed in 1991 with a lease-purchase arrangement with the developer. Subsequently, the county purchased the facility, utilizing a public building authority that could issue tax-exempt bonds.^{xxviii}
- Alabama established a “judicial building authority” through joint action of the Governor’s Office; Legislature and the Chief Justice. The building authority may carry out a number of actions, including the construction of facilities and issuance of bonds up to a limit of \$40 million; with repayment of the bonds from rent paid by the user of the facility. This method was used to fund and construct a new court facility in Montgomery, Alabama.^{xxix}
- In recent years, universities have increasingly relied upon the building authority method to finance building projects. For example, Western Kentucky University established a nonprofit corporation to purchase residence dorms; the corporation issued \$65 million in tax-exempt bonds and the revenue from student dormitory fees is paying the lease. When the bonds mature, the University can buy back the buildings or continue the lease arrangement.
- The Plenary Group, an international infrastructure business, entered into design-build-finance-maintain agreements for justice facilities in Australia and Canada. Nine new police and court facilities were completed across Southern Australia in 2006.^{xxx} The Thunder Bay Consolidated Courthouse in Ontario, Canada is scheduled for completion in early 2014.^{xxxi}
- The California Judicial Department is the first in the United States to utilize a full public-private partnership model for the recent construction of a new court building in Long Beach.^{xxxii}
 - The California Judicial Department collaborated with the state Legislature, Joint Legislative Budget Committee, Governor, and Department of Finance to identify and evaluate options for this project.
 - The California Judicial Department was granted authority by the state Legislature to investigate use of a public-private partnership for court facilities and subsequently, was granted authority to use a Performance-Based Infrastructure (PBI) approach for the

construction of the Long Beach courthouse. Key to this approach is the built-in incentive in the agreement for high-quality construction and ongoing maintenance of the building.

- The criteria for the selection of the private vendor, through a RFQ and RFP process, included compliance with the “. . . Judicial Council’s construction requirements, financial value, quality of architectural and urban design, environmental consciousness, and operational efficiency. Candidate teams will also need to demonstrate how they plan to build local support for the project and their plans for outreach to the local construction subcontractor community.” (Judicial Branch of California, 2009)
- A key component of the negotiating and development of the project was a “Value for Money Analysis.” “According to the State Legislative Analyst’s Office:

A commonly used analysis is a “value for money” (VFM) analysis, which identifies all the costs of a project (such as the design, construction, and operation and maintenance of the facility) over the life of the project or the term of the lease with the private partner. These costs are then “discounted” over time to determine the project’s cost in net present value. In other words, because the expenditures take place over several decades and the timing of the expenditures differs between a P3 approach and the more traditional procurement approach, the comparisons are adjusted to account for the fact that money available at the present time is worth more than money available in the future. (Taylor, 2012: 15)

The analysis was reviewed by the Department of Finance and helped the state decide that a public-private partnership was the best choice for the project.

- A private interdisciplinary vendor, Long Beach Judicial Partners LLC (LBJP), was selected to provide the financing, design, construction, operation and ongoing maintenance of the Long Beach Courthouse, under a 35 year agreement with the state.
- The state owns the land and the property and does not pay any costs until occupancy of the building. (This aspect of the project is what distinguishes this approach from a lease-purchase arrangement.) The private vendor, not the state, assumes any risks associated with delivery and operation including late delivery of the project, cost overruns, increase in interest rates, or vacancies of third party tenants.
- Upon occupancy, the state pays an annual service fee. This fee begins at approximately \$50 million and is based upon occupancy of the building and performance of the vendor in providing quality maintenance and operation of the building. Annual increases in the fee are permissible, based on the Consumer Price Index. The state pays a reduced fee for any failure by LBJP to meet the standards specified in the agreement.

- The project includes future room for expansion of the courthouse. In the interim, the space is rented to third party tenants, with the private vendor, not the state, assuming the risk of loss of revenue due to tenant vacancies.
- Court user fees and tenant leases are a primary source of funding to pay the state's costs.
- The AOC states the building was completed under budget, and 14 months sooner than what would have been possible under a traditional building process.
- The California Judicial Council will report to the Legislature and the Governor in 2014 on the outcome of the project and the advisability of similar approaches for other courthouses in the state.
- Other jurisdictions are now considering public-private partnerships for a criminal justice project:^{xxxiii}
 - The city of Houston, Texas is reviewing bids for a P3 project for a new municipal court/police department complex.
 - In Indianapolis, the city mayor is leading the effort for a P3 project for a new Marion County criminal justice complex that will house criminal courts, a jail and juvenile detention center, and office space for the prosecutors and public defenders.
 - As identified earlier, the Flagstaff City Council considered a public-private partnership for its courthouse project where land would be traded as partial payment towards the construction. Although this approach was ultimately not approved; the city and the court are now exploring other public-private partnerships options.
- The Mesa Municipal Court project included one aspect of a public-private partnership. Sundt Construction Company was hired as a "Construction Manager at Risk," with Sundt assuming all risks associated with cost overrides for the project.

4. Revenues to Reduce the Cost of Borrowing

Experiences of court administrators from across the nation, demonstrate that presenting the governing body (the state legislature, board of supervisors, city council) with a credible plan for financing the project, including servicing of the debt, is critical to obtaining approval to proceed with a capital project. Typically, this plan is a combination of various methods, with a small portion, if any, dependent upon a general fund appropriation or operating expenses. Options for sources of revenue as identified by the NCSC Monograph include a revenue stream within the court facility; court fees that are dedicated to a special fund; special tax levies and subsidies for facility construction.^{xxxiv}

Revenue streams within the court facility include rental of the space within the building complex to public and private entities; fees from rental of parking spaces; and inter-

governmental agreements where, for example, the federal government pays a county a specified dollar amount to house federal prisoners and detainees in the county jail.

Special funds, such as court facility funds, or court security funds, are a common component of the financing solution for a court facility project. A typical source of revenue for these special funds is an additional fee, or an increase in court filing fees. Courts commonly utilize these special revenues to enhance some other source of funding to supplement or match, for example, funds from a local or state funding source, and/or to provide a portion of the revenue stream to service the debt for construction. In some cases, these revenues may fund short term financing for the initial costs of a project; for example, the planning and design component.

Critical issues regarding revenue streams and special funds/fees include the appropriateness of courts using fees, surcharges and other fees and court costs for funding purposes; the authority of the chief justice to establish court fees and to determine the distribution of these fees; local vs. state fees; diversion or raiding of special funds during economic times and factors beyond the control of the court that impact fees and revenues.^{xxxv} A public-private partnership *may* alleviate some of the risks associated with tenant leases as described in the Long Beach PBI project; or the funding body may be required to back the loan and use general fund monies when revenues do not meet initial projections.

Examples:

- The Flagstaff City Council, by city ordinance, established a “disposition entry fee,” with the money dedicated to a “City Court Facility Fund.”^{xxxvi} The revenues from this fee are one component of the overall plan to fund the construction of the new courthouse. The court administrator estimates this fund, combined with revenues from the Court Improvement Fund, could be used to retire approximately five million dollars of a twenty year note on the courthouse project.
- The Mesa Municipal Court Administrator worked closely with the City Finance Director to identify various revenue streams to finance the debt service on voter approved bonds for construction of a new courthouse. A significant portion of the revenues to finance the debt came from a “court construction fee” that is imposed on every case. This example also demonstrates the importance of the initial planning stage of the project and collaboration with private entities. The chosen architect for the project hired a private consultant to study city demographics and trends in filings. Using data from the consultant’s report, the court administrator and finance director projected revenues associated with the court construction fee and developed the plan to use the revenues from the fee to retire the debt. The consultant’s report also provided information regarding the space needs of the court. This report was critical to receiving city council approval to proceed with the project.
- A number of Arizona courts have a Court Enhancement Fund. The Scottsdale City Court imposes a \$15 additional charge on all fines, sanctions, penalties and assessments, with the monies dedicated to providing supplemental funding for the court’s technology, operations and security.^{xxxvii} Recently, Scottsdale has been exploring the option of utilizing the

monies in this fund to pay for debt service on a bond for remodel and expansion of the courthouse.

- The remodeling project for the Superior Court in Mohave County relied on the statutory provisions of the Law Library Fund, that monies in the fund may be used, under specified circumstances, for “. . . additions, alterations and repairs to the courthouse.”^{xxxviii}
- The Mohave County Board of Supervisors approved a quarter cent sales tax for public capital improvements, including the construction of a new jail; this tax increase sunsets in 2019. Because the debt on this construction will be retired within the next few years, the board of supervisors is considering utilization of the revenues from the sales tax as one component of the funding for a courthouse project.^{xxxix}
- In Maricopa County a court security user fee for the Superior Court and justice courts was initially considered, but ultimately rejected.
- During the 2011 Arizona legislative session, a proposal was introduced to create local judicial facility districts. Under the provisions of HB 2373, the board of supervisors in each county was authorized to establish a “tax-levying public improvement district” for the purpose of acquisition, construction, operation, maintenance and financing of county judicial facilities. The board of supervisors could levy an excise or ad valorem tax, with voter approval, with the revenues dedicated to the County Judicial Facility District General Fund. The legislation also gave the presiding judge of the Superior Court responsibility over the district and the authority to agree to the board of supervisors entering into intergovernmental agreements with other governmental entities for joint or cooperative construction, maintenance and operation of judicial facilities. Counties would be required to maintain the level of support for judicial facilities, as determined by the amount spent in the year immediately preceding the new tax levy. After introduction in the Arizona State Legislature, the bill failed to obtain a hearing and ultimately died.^{xl}
- In 2012 the Alabama legislature passed legislation (HB 688) increasing docket fees in all civil cases except child support cases and in all circuit, district and municipal courts with a portion of the revenues dedicated to the State Judicial Administration Fund. The authorized purposes of the fund include court facilities.
- Arkansas has a State Administration of Justice Fund. The fund consists of court costs and fees and special revenues from real estate transfer fee; permissible uses of the fund include court facilities, with the intent that these revenues will be used along with bonds to finance court construction.^{xli}
- California charges “licensing” fees to community, non-profit organizations and commercial enterprises for use of its court facilities, including parking structures. The fees are dependent upon the entity using the facility, with commercial enterprises paying more, and whether the use of the court facility is outside of regular business hours.^{xlii}

- Significant portions of California’s court construction fund have been diverted in recent years for court operations and to the state general fund.
- Colorado is a recent example of a court facility project that illustrates many of the issues discussed in this paper. The Colorado Supreme Court worked with the State Legislature and other criminal justice entities to assess the need for a new justice complex, identifying potential cost savings to the state through building efficiencies and avoidance of lease payments in privately owned buildings; and to provide a financing solution for the capital project. Key components of Colorado’s project include:
 - The judicial department’s plan for a new court facility included early and ongoing engagement with state legislators. Part of this effort involved requesting and receiving a small state appropriation for the assessment and planning stages of the project. Testifying before the legislative committees for this appropriation helped to educate the legislators as to the need for a building, and the various options that may be available for financing. The AOC utilized this appropriation to hire a private entity, the Urban Land Institute, to perform an independent evaluation of the need for a new facility and the proposed site location.
 - Legislation approved by the 2008 Colorado legislature identifies the cost efficiencies of bringing various public entities, including the Colorado Supreme Court, Court of Appeals, AOC, Department of Law and Public Defender into one facility: the Ralph L. Carr Justice Complex. These entities were previously housed in multiple office buildings. The legislation cites the current cost of private leases, the expectation that private leasing costs will escalate; and the potential for decreased operating costs through elimination of duplicative services and utility savings.^{xliii}
 - The legislation authorized the judicial branch to enter into lease-purchase agreements with a non-profit or for-profit corporation and to issue certificates of participation for the construction of the complex.
 - The funding mechanisms for the new state justice center include an increase in civil filing fees. The new fees took effect in 2008 and were allowed to accumulate until construction on the project started in 2010. Other sources of revenue for the project include tenant leases and parking space fees.
- Florida has built new courthouses through the use of a voter approved sales tax increase.
- In Louisiana, the New Orleans Civil District Court project is being funded, in part, through an increase in filing fees.^{xliv} Additional revenues will be generated through leasing of parking space and retail space within the facility complex. A private service operator will run the parking structure and the private retail space.
- The City of Henderson in Nevada enacted, via local ordinance, an additional \$10 administrative assessment fee on criminal convictions, with the revenues exclusively dedicated for court facilities, including acquisition of land, construction, remodeling,

expansion, technology, equipment, furniture and to pay debt service on any bonds issued for court facility projects. After five fiscal years, any excess funds that have not been committed to a project revert to the city general fund.^{xlv}

- The North Carolina courts assess a facility fee, ranging from \$5 to \$7; these monies are then distributed to the local governmental entity which has the responsibility for the court facilities. Revenues from this fee may be used to retire outstanding debts on the construction of court facilities, or to reimburse the local governmental entity for monies spent on facilities.
- During the 2011 legislative session, the Oregon state legislature modified Oregon Revised Statute § 1.178 to authorize expenditures from the State Court Facilities and Security Account (SCFSA) for capital improvement projects, approximately \$2.3 million was provided in the 2011-2013 budget for this purpose. The SCFSA fund consists of revenues from court fines. However, 2012 legislation (SB 1579) undid the 2011 legislation by preventing the use of the monies for capital improvements and the funding was swept. The 2013-2015 Oregon budget request sought expenditure authority that includes \$2 million for a shared cost project with Union County for a new \$5.6 million courthouse.^{xlvi}
- The state legislatures in Oregon and South Carolina gave the judicial department flexibility in meeting its funding needs by granting broad authority to the Chief Justice to set and distribute fees.
- Utah constructed a court facility in Salt Lake City in part by increasing court fees, with the increase dedicated to payment of the bond.
- In 2003, the West Virginia state legislature amended state law to provide a funding source for the West Virginia Courthouse Facilities Improvement Authority (Authority). Funds are generated through special fees on civil cases and marriage licenses collected by the courts and on gun licenses issued by the county sheriffs. These special fees are deposited into the Courthouse Facilities Improvement Fund (Fund).^{xlvii} . During the 2013 legislative session, the state legislature approved additional statutory changes to allow the Authority to issue revenue bonds, notes or other debt instruments and to pay the debt with moneys from the Fund. However, the Governor vetoed this legislation, citing concerns the Fund would not be able to sustain debt services that could stretch out thirty years.^{xlviii}
- Wyoming's 2014 legislature will consider a bill (D. 166) to create a "court security assistance fund" and to provide a \$10 million appropriation from the state general fund. This legislation builds upon the 2008 legislation that established the Wyoming Court Security Commission, under the Wyoming Supreme Court. Under the provisions of the 2014 draft legislation, the Commission will have the authority to provide supplemental grants to counties for court security and construction. The counties are required to provide a minimum of 50% of the project cost from non-state sources.^{xlix}

CONCLUSION

Providing safe, secure and efficient court facilities is a challenging assignment for the judicial department in every state. The experiences of court administrators from across the nation demonstrate that a flexible, innovative and collaborative strategic process utilizing the resources and expertise of partners from both the public and private sectors, can result in a facility that will meet the needs of the public and the judiciary, not only for today but for years in the future.

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ENDNOTES

ⁱ Tobin, 1995. Express permission was granted by the National Center librarian to the Arizona Supreme Court, Administrative Office of the Courts, to quote and cite text from this monograph.

ⁱⁱ See National Center for State Courts, January 2013.

ⁱⁱⁱ See Raftery, January 14, 2014. Mr. Raftery identifies: “For many states and localities, the construction or repair of a courthouse requires local or state legislative funding or the issuance of a bond which would require a vote of the locality.”

^{iv} See Carlson et al, 2008 and Schlieper, 2012 for a discussion of the New Jersey and Minnesota experiences.

^v National Center for State Courts, 2012.

^{vi} California, Kentucky, Nebraska, New York, Utah and Virginia have developed standards for court facilities. Information on these standards is available on the *Courthouse Design Resource Guide* page of the NCSC website at www.ncsc.org.

^{vii} See, for example, the discussion regarding the Colorado Ralph L. Carr Justice Center on page 18 and the Mesa Municipal Court project on pages 16 and 17 of this white paper.

^{viii} Legislation enacted in 1997 (AB 233) restructured California’s court system to a state-funded system and created a Task Force on Court Facilities. The Task Force conducted a needs assessment of the state’s facilities and reported to the Legislature in October 2001.

^{ix} See Oregon, 2006.

^x West Virginia Courthouse Facilities Improvement Authority, 2014. HB 2844 approved by the 2001 West Virginia legislature, added § 29-26-1 to the Code of West Virginia, establishing the Authority. The legislation also created § 29-26-6: The Courthouse Facilities Improvement Fund. Subsection (b) of § 29-26-6 directs the Authority to conduct the study. www.legis.state.wv.us/bill. See a further discussion of the West Virginia Authority and Fund on page 8 of this white paper.

^{xi} See Tobin: Figure 1: Major Facility Financing Decisions: 6.

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- xii See page 10 of this white paper for a discussion of the IRS provisions.
- xiii Tobin, 1995: 10.
- xiv Tobin, 1995: 11.
- xv West Virginia Courthouse Facilities Improvement Authority, 2014.
- xvi Raftery, January 2014. House Bill 14-1069, Colorado State Legislature, was approved by the Colorado House Judiciary Committee on 1/28/14. :
- xvii See Tobin, 1995:13, 14; and Figure 3: Decision on Incurring Debt: 15 and Figure 4: Decisions on Long-Term Debt: 16.
- xviii Tobin, 1995:13.
- xix Information provided by Chang-Ming Yeh, Principal Judicial Facility Planner at NCSC. Also see Testimony to the Hawaii Senate Committee on Ways and Means, Monday, April 1, 2013 by W. Tom Mick, Policy and Planning Department Head on House Bill No. 197, H.D. 2., S.D.1. This legislation was signed into law as Act 133 on June 18, 2013 and provides construction funding for the Kona Judiciary Center. The facility is estimated to cost \$90.7 million and is now scheduled to begin construction in 2016, with completion in 2019. Environmental concerns have led to selection of a new site for the facility and delays in the start of the project.
- xx Reinkensmeyer, 2011:90.
- xxi Information provided by Chang-Ming Yeh, Principal Judicial Facility Planner, National Center for State Courts, December 2013.
- xxii Tobin, 1995: 14 – 18.
- xxiii (Tobin, 1995: 19.
- xxiv Chang-Ming Yeh, Principal Judicial Facility Planner at the NCSC, advises: “Design – build is merely a building delivery mechanism and could be applied in various funding situations, not necessarily just for P3 financing.”
- xxv Information provided by Chang-Ming Yeh, Principal Judicial Facility Planner, NCSC, December 2013.
- xxvi Taylor, 2012:12.
- xxvii The actual referrals from the federal government have not kept pace with the projected numbers. The county needs approximately 120 referrals per month and the actual numbers are about 70 per month. Diane McGinnis, Court Administrator, Superior Court in Santa Cruz County.
- xxviii SB 1407, approved in 2008 by the California Legislature, created \$5 billion in lease-revenue bonds for court facility projects.
- xxix Tobin, 1995: 25, 26.
- xxx Plenary Group, 2014.
- xxxi Infrastructure Ontario, 2010.
- xxxii California Courts: The Judicial Branch of California, August 2013.
- xxxiii Murray, December 8, 2013.

^{xxxiv} Tobin, 1995:20.

^{xxxv} See Reynolds, 2011. This policy paper by the Conference of State Court Administrators advocates that courts should receive substantial funding from general governmental sources and should not be expected to operate exclusively from fees. The Conference also recommends against the common practice of local governing bodies setting local fees and surcharges.

^{xxxvi} Flagstaff City Code, Title 1, Section 1-15-001-008: Fees to be Charged by the City Court; and Section 1-15-001-0009: Establishment of Funds and Allocation of Fees.

^{xxxvii} Scottsdale City Ordinance Sec. 9-7.2. City Court Enhancement Fund.
<http://library.municode.com/index.aspx?clientId=10075>

^{xxxviii} Arizona Revised Statute § 12-305. <http://www.azleg.state.az.us>.

^{xxxix} Resolution No. 99-148 was approved by the Mohave County Board of Supervisors on August 23, 1999. The resolution references Arizona Revised Statute § 42-6103 that authorizes the Board of Supervisors, on a unanimous vote, to levy a county general excise tax and to use the revenues for countywide services. The resolution notes an increasing demand for services in Mohave County, the need for capital improvements, and the inability of the county to pay for these projects solely from the county's existing funding sources. The revenues from the tax are placed in the County Capital Improvement Fund, with monies in the fund to be used only for specified county facilities, including a Law and Justice Center. www.mohavecounty.us.

^{xl} See House Bill 2373: Judicial Facility Districts. State of Arizona, House of Representatives, Fiftieth Legislature, First Regular Session, 2011. www.azleg.state.az.us.

^{xli} Arkansas §19-5-993. <http://law.justia.com/codes/arkansas/2010/title-19/chapter-5/subchapter-9/19-5-993>

^{xlii} California Court Use License Agreement charges \$200 per day, per facility for use outside of normal business hours. The court may apply additional fees for janitorial and security services. Commercial users pay an additional fee. All users must comply with the adopted policy for third party use of court facilities.

^{xliii} See Laws 2008, Chapter 417, Senate Bill 08-206, Colorado State Legislature at http://tornado.state.co.us/gov_dir/leg_dir/olls/sl2008a/sl_417.pdf. Section 1 includes the legislative declaration that the state judicial building is "overcrowded and unsafe" and that it is in the best interests of the state to consolidate justice agencies into one facility. Section 2 authorizes the state court administrator to execute lease-purchase agreements and notes that enactment of this legislation meets the requirements of Colorado law. Colorado law requires specific legislation to authorize a lease-purchase agreement; this cannot be accomplished through a general or supplemental appropriation bill.

^{xliv} Act No. 900, 2010 Regular Session of the Louisiana State Legislature, authorized the Civil District Court of the parish of Orleans to impose additional filing fees, on a phased in approach. Fees are set for the period of time up until the public bids for the construction period are let; then reset for the period of time after the bids are let, until retirement of the debt. Monies are forwarded to the Courthouse Construction Fund under the authority of the Civil District Court for the parish of Orleans Judicial District Court Building Commission. The legislation also established the Commission as a public corporation, empowered to contract for the construction, equipping and maintenance of a new courthouse; and to pledge the revenues from the filing fees for the payment of any obligation, loan agreement, or other financing agreement in connection with the issue of bonds. The Joint Legislative Committee on the Budget and the State Bond Commission must approve the use of revenues for payment of any bonded indebtedness for the acquisition or construction of a new facility.

^{xlv} Code of Ordinances 1723, Title 2: Administration and Personnel, Chapter 2.06: Municipal Court, Section 2.06.020, Administrative Fee Exceptions. Henderson, Nevada, 1997.

^{xlvi} Oregon Supreme Court, 2013: 359 -382.

^{xlvii} West Virginia Courthouse Facilities Improvement Authority, 2014.

^{xlviii} See Raftery, January 14, 2014. Senate Bill 331 was approved by the 2013 West Virginia legislature, but vetoed by the Governor. Legislation was reintroduced for the 2014 legislative session (HB 2988) and again seeks to give the Authority the ability to issue bonds. As of the date of this white paper, the 2014 legislation is pending before the House Finance Committee.

^{xlix} Raftery, November 7, 2013.