

NCSC
KF
8732.5
T623
c.7

**A COURT MANAGER'S GUIDE TO
COURT FACILITY FINANCING**

by

Robert W. Tobin

October 1995

National Center for State Courts

State Justice Institute

Rec'd
11-27-95

Library
National Center for State Courts
300 Newport Ave.
Williamsburg, VA 23187-8798

©1995
National Center for State Courts
ISBN 0-89656-157-7
NCSC Publication Number R-177

* This monograph was prepared with support from a grant, *Court Facility Financing* (No. SJI-94-05C-B-322), to the National Center for State Courts from the State Justice Institute. It was prepared by staff from the National Center for State Courts. Points of view expressed in this monograph are those of the author and do not necessarily represent the official position or policies of the National Center for State Courts or the the State Justice Institute. Text of this document should not be quoted or cited without express permission of the National Center for State Courts.

Table of Contents

SUMMARY OF FINDINGS.....	1
INTRODUCTION AND ACKNOWLEDGMENTS	3
A. GOALS	3
B. METHODOLOGY	3
C. THE NATURE OF THE PRODUCT	3
D. ACKNOWLEDGMENTS.....	4
PART I MANAGEMENT OPTIONS AND CONSIDERATIONS IN FINANCING COURT FACILITY CONSTRUCTION	5
INTRODUCTION	5
A. CATEGORIZING COURT FACILITY FINANCING OPTIONS	5
B. DECISION ON WHETHER FACILITY FINANCING IS FEASIBLE.....	6
1. Constraints and Opportunities	8
2. Property Considerations.....	9
3. Up-Front Professional Costs.....	11
4. Intergovernmental Cooperation.....	12
5. The Decision to Proceed	13
C. DECISION ON INCURRING DEBT.....	13
1. Financing Without Incurring Debt	13
2. Short-Term Debt.....	14
3. Decision on Long-Term Debt	14
D. DECISION ON TYPE OF LONG-TERM DEBT	14
1. General Obligation Bonds.....	17
2. Revenue Bonds.....	18
3. Privatized Financing.....	18
4. Making the Choice	19
E. DECISION ON OBTAINING REVENUES TO REDUCE THE COST OF BORROWING	20
1. Revenue Streams	20
2. Appropriations from Earmarked Fees	22
3. Special Tax Levies	22
4. Subsidies for Courthouse Construction.....	22
5. Review of Options.....	23
PART II EXAMPLES OF COURT FACILITY FINANCING IN STATE COURTS.....	25
INTRODUCTION	25
A. ALABAMA	25
1. State of Alabama, Alabama Judicial Building, Montgomery	26

2. Lamar County Judicial Center, Vernon; Pickens County Judicial Building, Carrollton	27
3. Other Sites.....	28
4. Persons Contacted.....	28
B. ALASKA	28
1. Anchorage Courthouse	30
2. Persons Contacted.....	30
C. ARIZONA	30
1. Persons Contacted.....	31
D. ARKANSAS.....	31
1. Pope County Court House, Russellville.....	32
2. Washington County Court House, Fayetteville	33
3. Craighead County Annex, Jonesboro	33
4. Pulaski County Court House, Little Rock	34
5. Persons Contacted.....	34
E. CALIFORNIA	34
1. Certificates of Participation: The Los Angeles County Experience.....	37
2. Sacramento	38
3. Persons Contacted.....	41
F. COLORADO.....	42
1. Adams County	42
2. Jefferson County	42
3. Persons Contacted.....	43
G. CONNECTICUT.....	43
1. Middletown: Lease-Financing.....	45
2. Rockville: Lease-Purchase.....	45
3. Other Sites.....	46
4. Persons Contacted.....	46
H. FLORIDA	46
1. Polk County	47
2. Pinellas County.....	48
3. Other Sites.....	48
4. Persons Contacted.....	49
I. GEORGIA.....	49
1. DeKalb County, Decatur, Georgia	49
2. Other Sites.....	50
3. Persons Contacted.....	50
J. IDAHO	51
1. Ada County, Boise	52
2. Bingham County, Blackfoot.....	52
3. Persons Contacted.....	52
K. ILLINOIS	52
1. Lake County	54
2. Other Sites.....	55

3. Persons Contacted.....	55
L. KANSAS	55
1. Montgomery County Judicial Center	56
2. Johnson County.....	57
3. Persons Contacted.....	57
M. KENTUCKY	58
1. Miscellaneous Sites	61
2. Persons Contacted.....	62
N. MAINE.....	62
1. Cumberland County.....	63
2. Waterville.....	63
3. York County	64
4. District Court Facilities Financed Through the Judicial Building Authority in the Last Five Years	64
5. Persons Contacted.....	64
O. MARYLAND.....	64
1. Prince George's County.....	67
2. Persons Contacted.....	68
P. MASSACHUSETTS	68
1. Miscellaneous Sites	71
2. Persons Contacted.....	71
Q. NEW JERSEY	72
1. Gibraltar Building, Newark, New Jersey, Essex County	72
2. Richard J. Hughes Justice Complex	73
3. Persons Contacted.....	73
R. NEW YORK.....	74
1. New York City.....	77
2. Suffolk County	79
3. Persons Contacted.....	80
S. NORTH CAROLINA	81
1. Persons Contacted.....	82
T. OHIO.....	82
1. Stark County	83
2. Persons Contacted.....	84
U. OREGON	84
1. Klamath County	85
2. Persons Contacted.....	85
V. RHODE ISLAND.....	85
1. Joseph Garrahy Complex, Providence.....	86
2. Kent County Courthouse Project, South Kingston, Rhode Island	86
3. Persons Contacted.....	87
W. SOUTH DAKOTA	87
1. Minnehaha County, Sioux Falls.....	87

2. Pennington County, Rapid City	88
3. Persons Contacted	88
X. UTAH	88
1. Salt Lake Judicial Complex	90
2. Other Sites.....	91
3. Persons Contacted.....	91
Y. VERMONT.....	91
1. Frank G. Mahady Courthouse, Middlebury	92
2. Caledonia County Courthouse, St. Johnsbury	92
3. Other Sites.....	92
4. Persons Contacted.....	92
Z. VIRGINIA.....	93
1. Virginia Beach Judicial Center.....	93
2. York County/Poquoson Courthouse.....	94
3. Chesterfield County.....	94
4. New Kent County.....	95
5. Persons Contacted.....	95
AA. WEST VIRGINIA	96
1. Morgantown Courtroom Renovation.....	96
2. Persons Contacted.....	96
BB. WISCONSIN.....	97
1. Chippewa County Courthouse.....	97
2. Outagamie Justice Center	97
3. Persons Contacted.....	98
PART III THE BASIC ELEMENTS OF COURT FACILITY FINANCING	99
A. SCOPE OF TERM COURT FACILITY.....	99
B. NATURE OF COURT OCCUPANCY	99
C. TYPES OF FACILITY FINANCING NEEDS	100
1. Maintenance of Existing Facilities	100
2. Renovation of Existing Facilities.....	100
3. Construction of a New Facility or Annex	100
D. DETERMINING FACILITY FINANCING NEEDS	101
1. Use of Facility Standards.....	101
2. Use of Court Facility Master Plans for Capital Budgeting	101
3. Estimates of Operating Costs for Inclusion in Budget.....	102
4. Estimates of Capital Expenditures for Budgeting	102
E. GOVERNMENT RESPONSIBILITY FOR FINANCING COURT FACILITIES.....	104
1. Relative State and Local Responsibilities for Financing.....	105
2. Limits on State and Local Authority to Incur Indebtedness.....	106
F. BASIC METHODS OF CAPITAL FINANCING	109
1. Tax-Exempt Bonds.....	109

2. Long-Term Financing	110
3. Overview of Bond Market	118
4. Short-Term Financing.....	121
5. Debt Management	122

List of Figures

Figure 1: Major Facility Financing Decisions	6
Figure 2: Assessment of the Financial Environment	7
Figure 3: Decision on Incurring Debt.....	15
Figure 4: Decisions on Long-Term Debt	16
Figure 5: Debt Repayment: Reducing the Cost of Borrowing	21
Figure 6: Legal Structure, Los Angeles County	39
Figure 7: Long-Term Financing: Flow of Funds at Closing and During Construction/Implementation, Los Angeles County	40
Figure 8: Long-Term Financing: Flow of Funds to Trustee After Construction/Implementation, Los Angeles County	41
Figure 9: General Obligation Bonds	113
Figure 10: Revenue Bonds	114
Figure 11: Limited Tax Bonds	115
Figure 12: Certificates of Participation	116

List of Tables

Table 1: Summary of New York City Court Facility Plan.....	78
Table 2: Number of States Having Facility Guidelines	101
Table 3: Estimates of Operating Costs for Budget.....	102
Table 4: Estimates of Capital Costs for Budget	103
Table 5: Government Responsibility for Financing Appellate Court Facilities	105
Table 6: Government Responsibility for Financing Trial Court Facilities.....	106
Table 7: Legal Constraints on the Authority of States to Incur Debt.....	107
Table 8: Limitations on the Debt of Local Governments.....	108
Table 9: Common Types of Bonded Indebtedness	111
Table 10: Advantages of Different Types of Bonds	112
Table 11: Recent Variations in Debt Financing.....	117
Table 12: Comparative Volume of Short-Term and Long-Term Municipal Bonds, 1989-1993	119
Table 13: Principal Characteristics of Long-Term Municipal Bonds in 1993.....	119
Table 14: Distribution of Long-Term Municipal Bonds by Purpose in 1993	120
Table 15: Comparative Bond Yields as of November 3, 1994	120

SUMMARY OF FINDINGS

The Court Facility Financing Project staff surveyed a number of public officials engaged in court facility financing and compiled a list of experiences that, in the aggregate, provide a good overview of this area of management. These experiences, largely technical in nature, are summarized in Part I, which deals with the detailed aspects of decision making in facility financing. Over and above these specific management considerations, there are some general conclusions that can be drawn from the survey:

- Many governments have, at least temporarily, given up traditional general obligation bond financing for public buildings.
- Some jurisdictions have relied on an even more traditional method of financing facilities—saving the money up front in order to avoid debt.
- The alternatives to traditional financing are incredibly varied and include some interesting instances of lease financing, revenue bonding, privatized financing, public-private cooperation, state-local cooperation, county-county cooperation, city-county cooperation, federal-local cooperation, and varied uses of court special facility fees, special taxes, property taxes, and revenue streams generated by the facility.
- The legal limits on debt, taxation, contracting, and bonding vary a lot by state and play an enormous role in the management decisions that are ultimately made on financing methods, so that it is difficult to draw analogies across state lines on financial methodologies.
- There is a great deal of ingenuity being exercised in financing court facilities within the legal and political constraints.
- The taxpayer revolt is still alive, causing considerable resistance to financing plans that bypass voters and raising a very fundamental issue about whether government officials ought to deliberately circumvent restrictions on debt.
- Sometimes, court managers are involved in devising financial strategies, but more commonly, they are not involved, often by their own choice. When they have been involved, they have sometimes been a moving force in getting the facility financed.
- The overall conclusion is that court managers should be involved and can be involved without becoming wizards in public finance but simply by knowing the rudiments.

INTRODUCTION AND ACKNOWLEDGMENTS

A. GOALS

This monograph presents the first definitive study of court facility financing. It is intended primarily for judges and court managers who are faced with the necessity of gathering resources to build or renovate court facilities. The monograph will be helpful in several ways: (1) setting forth and assessing financing options; (2) providing guidance on how to carry out responsibilities related to court facility financing; and (3) placing court facility financing in the broader context of capital financing of public buildings. The monograph will also be useful to state and county financial officers who are involved in financing court buildings.

B. METHODOLOGY

The information gathered for this monograph was obtained from the following sources: (1) a phone survey of state court administrative offices; (2) phone contacts with trial court managers of courts that have recently experienced facility construction; (3) phone contacts with state and local executive branch officials involved in court facility financing; and (4) legal research and public administration research.

Over 100 persons in 44 states were contacted. Information from 28 of these states appears in the monograph. All persons who supplied information used in the monograph were provided an opportunity to review the section on their states, and many took the time to make comments. The names of the persons contacted are listed in Part II by state, except for those persons who requested that their names not be listed.

C. THE NATURE OF THE PRODUCT

By its nature, facility financing involves large amounts of money. The means by which courts are obtaining and applying money to facility needs is the subject addressed in the monograph.

The monograph approaches the subject of court facility financing from the viewpoint of a court manager. The monograph makes the argument that court managers should take a relatively proactive role in facility financing, as they normally do in the design and implementation of court facility construction. Even granting that the nature of government organization often leaves court managers outside the financial decision-making process, court managers can still influence the methods and terms of financing.

The monograph is divided into three parts. Part I sets forth, in schematic form, the managerial decision points in court facility financing. Part II describes the actual process of court facility financing in 28 states. This part is organized by state because the laws and constitutional provisions of each state establish the framework and constraints for court financing, making it necessary to deal with each example of courthouse construction within the framework of state law. Part III provides background

information on the elements of court facility financing, governmental responsibilities for court facilities, the lexicon of court facility financing, and the general nature of bonds and debt instruments.

D. ACKNOWLEDGMENTS

The author acknowledges the assistance of the following advisory board members who were very helpful in providing their insights and specialized knowledge:

- Daniel Wathen, Chief Justice of the Supreme Judicial Court of Maine
- John Haas, Presiding Judge, Court of Common Pleas, Stark County, Ohio
- Dr. Geoff Gallas, Executive Administrator, First Judicial District of Pennsylvania
- James Beight, Architect, Hansen, Lind, Meyer, McLean, Virginia
- John Petersen, President, Government Finance Group, Arlington, Virginia
- Glen Little, Vice-President, Turner Construction Company

The author acknowledges the assistance provided by consultants Don Hardenbergh and James Lipovsky who handled the field contacts. It is not possible to list all the people who took time to provide information to the project staff, but their names do appear elsewhere in the monograph. Their help was invaluable.

PART I

MANAGEMENT OPTIONS AND CONSIDERATIONS IN FINANCING COURT FACILITY CONSTRUCTION

INTRODUCTION

Part I takes the financing information listed by state in Part II and translates it into a systematized list of points to be considered by court managers dealing with court facility construction. The list of points to consider is, however, largely superfluous if court facility financing is perceived as extraneous to court management. One clear finding of the project surveys is that the great majority of court managers do not see the financing of court facilities as an aspect of court administration. The five basic reasons advanced for this position are the following: (1) court facility financing is a function proper to the other branches inasmuch as they control capital expenditures; (2) the judicial branch lacks the specialized expertise required for major financial undertakings; (3) if the loan payments are not charged back to the court budget, there is no compelling need to worry about the financing method; (4) even if loan repayment is reflected in the court budget, the inclusion is a pro forma bookkeeping decision that really does not affect the courts that much; and (5) in the course of a career, court managers may not have to deal with facility financing more than once and therefore cannot be expected to concern themselves greatly with this aspect of financial management.

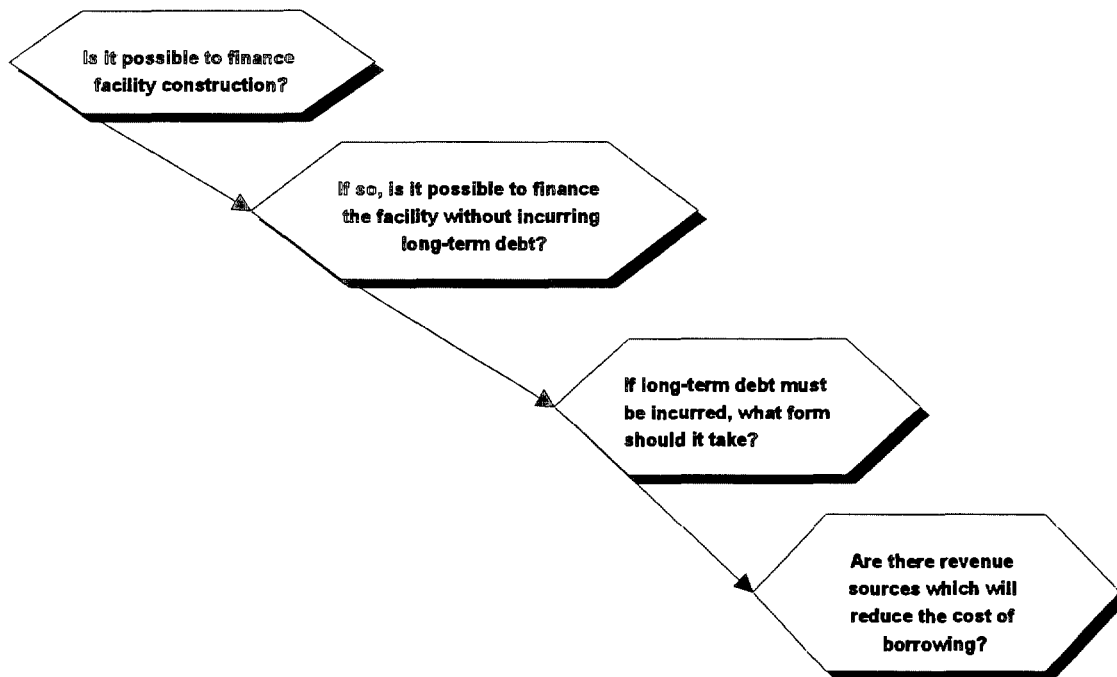
It is the premise of this monograph that court managers should know the rudiments of court facility financing. Although the arguments listed above are not without merit, they add up to an abdication of responsibility for one of the most costly elements of court expenditure and an act of faith in executive branch financial managers that may or may not be justified. There are cogent reasons why court managers have to be knowledgeable about court financing: (1) sometimes court managers have to be the moving force behind a financing scheme when the other branches lack enthusiasm or envision a series of obstacles; (2) there is a public obligation for court managers to join in seeking the cheapest and least risky means of facility financing and in seeking to create a legal framework that permits flexibility in financing without sacrificing taxpayer protections; (3) appropriating bodies are well aware of the cost of court facilities and will at various times allude to the high cost of facility construction when considering the operating budget of the courts; and (4) appropriating bodies are also aware when court facility financing is poorly handled and do not exempt court officials from blame on the theory that capital financing of court facilities is none of their business. In fact, it is.

A. CATEGORIZING COURT FACILITY FINANCING OPTIONS

There was a time when the construction and renovation of court facilities was routinely financed through issuance of general obligation bonds, but voter resistance, debt limitations, tax caps, and general scarcity of resources have necessitated a more varied approach to capital financing. Financial necessity has given birth to a lot of ingenious and

sometimes complex financing methods. The variety is so rich that it is very difficult to depict the decision-making process in a comprehensive diagram that follows a chronological flow with fixed decision points. It is, however, possible to group decisions and decision-making information into four basic categories that are roughly sequential:

Figure 1
Major Facility Financing Decisions



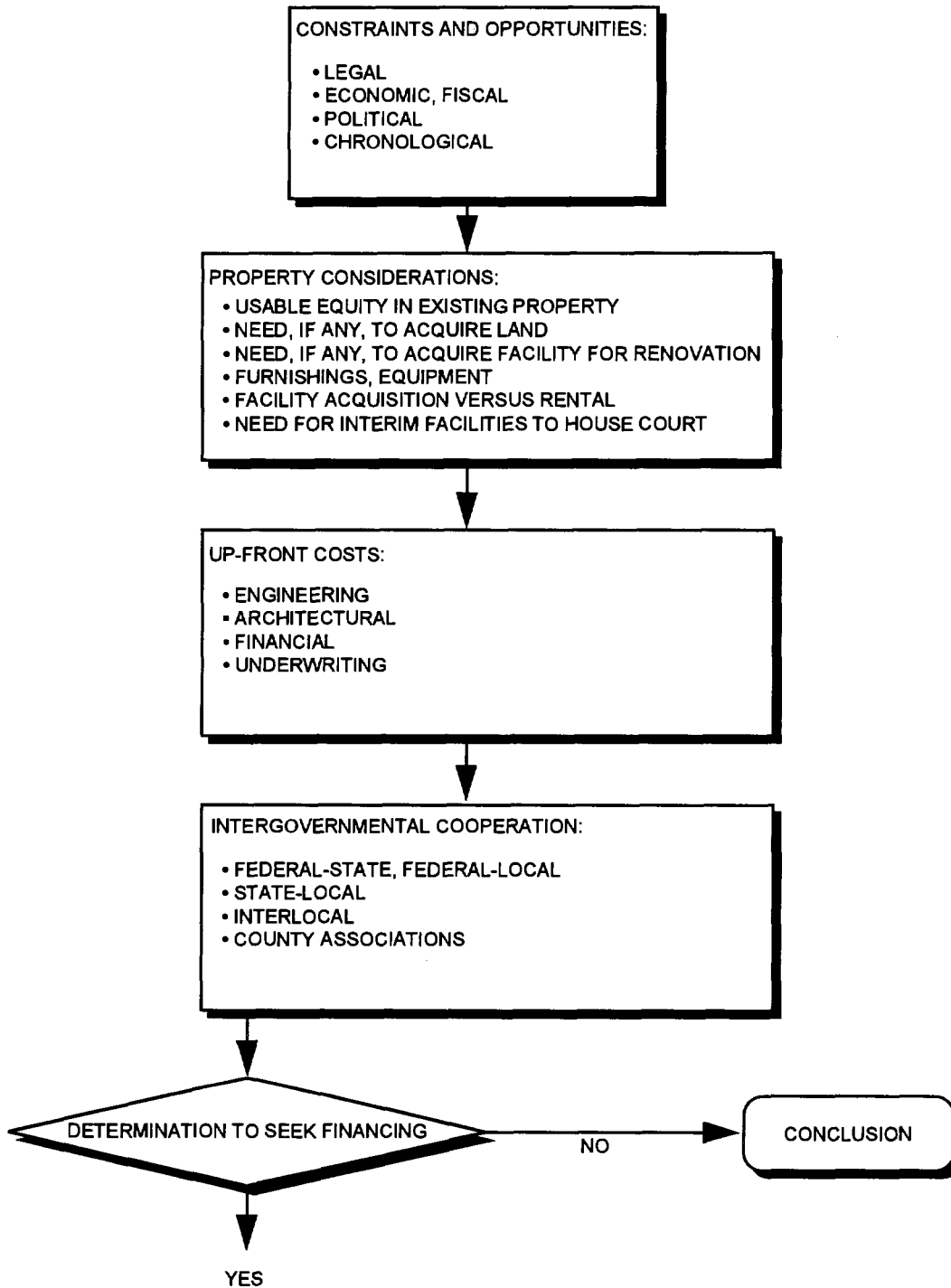
These four decision areas are individually described in sections B through E of Part I. They assume a preliminary decision that a facility is needed.

B. DECISION ON WHETHER FACILITY FINANCING IS FEASIBLE

Once the need for a new or renovated court facility is determined, the first step is an assessment of financial options. It does not automatically follow that there are feasible options, and so there must be a decision on whether to seek financing. The process of making this decision has four elements (which are summarized in Figure 2): (1) appraising the economic, political, and legal constraints and opportunities; (2) analyzing the various property considerations that affect the feasibility of financing; (3) analyzing the up-front costs; and (4) assessing the opportunities for intergovernmental cooperation in financing the facility.

In the discussion of these elements below, reference is made to states that illustrate the specific point being discussed. The illustrations are contained in the state descriptions in Part II.

Figure 2
Assessment of the Financial Environment



1. Constraints and Opportunities

The single biggest issue in financing court facilities has been the extent to which the chosen method of financing bypasses control of voters or legislators. The combination of voter resistance to bond issues and the volatility of the bond market has reduced the attractiveness of general obligation bonds issues and increased the use of financing options that do not require approval of the electorate. This trend is producing a reaction from governors and legislators, who object to what they consider an undemocratic circumvention of the taxpayers or the state legislature and to the usually higher interest rates under nonconventional financing.¹ This political constraint may make it difficult to use methods that bypass the legislature or the voters. A very fundamental principle is involved.

Legal constraints are another consideration affecting facility financing. These may take the form of legal or constitutional limits on debt and taxation and high requirements for voter approval (two-thirds in some jurisdictions),² and limits on use of lease-purchase,³ certificates of participation,⁴ or design-build methods.⁵ Conversely, some states have attempted to increase options for court facility financing.⁶

Federal tax legislation on tax-exempt bonds affects court facility financing. In the early 1980s it was possible to freely invest the proceeds of tax-exempt bond sales in higher yield investments and to use the arbitrage to finance court facilities or to lower the cost of borrowing. This arbitrage option has been largely foreclosed by amendments to the Internal Revenue Code.⁷ These amendments have also reduced the percentage of space in a building that can be used to produce a revenue stream.

¹ See Alaska, Connecticut, and Rhode Island, where such concerns were raised. These states do finance court facilities.

² See California. This state illustrates the taxpayer rebellion on a major scale. Bond issues are normally not a feasible option. Counties rely heavily on certificates of participation.

³ See Alaska. The Alaska legislature amended the state law in 1994 to restrict the use of lease-purchase agreements by state agencies.

⁴ Certificates of participation (COPs) are a form of lease financing whereby investors purchase a share in the revenues of a long-term lease on a building being constructed or renovated. See footnote 63 for examples of COP financing.

⁵ Under the Wicks Act in New York, contracts for construction of public buildings must be broken down into three functional areas rather than assigned to a prime contractor. This makes design-build impossible without special legislation.

⁶ See New York and Maine, both of which have given courts access to state building authorities.

⁷ See Kentucky and Alabama. Prior to the legal changes on arbitrage, the Kentucky Association of Counties made good use of arbitrage on county bond issues to keep down the cost of borrowing. The Alabama Judicial Authority has, within the current constraints, tried to make good use of arbitrage. See DeKalb County, Georgia, for another example of a county association being involved in investment decisions. See also Arkansas, which permits counties to issue taxable bonds. These were used to finance court facilities in Washington County. See Part III, Section F.1., for discussion of tax-exempt bonds.

The most obvious limitation on financing is the economic condition of the borrowing entity.⁸ Even in states where the principal burden of financing is on the state, there will be periods when financing is simply unavailable. Many county governments are simply unable to provide adequate facilities.⁹ Another constraint is the condition of the bond market itself and the interest rates on commercial loans.¹⁰ The time may not be right. Sometimes, court facilities are included in a state capital improvement program and lose out to other public buildings in the battle for priority, as occurred in Arizona. Courts may also be in competition with other courts for scarce resources, if they are in a jurisdiction with a long-term capital improvement program for court facilities.¹¹

Occasionally, investigation will reveal that there are monies accumulated in special funds that may be available to initiate a construction effort or at least fund up-front costs.¹²

Timing may be an aid to financing rather than a drawback. During the period of very low interest rates in the early 1990s, many governments refinanced¹³ and some generated additional funds for construction.¹⁴ There are also situations in which for health or building code reasons a court facility must be erected or renovated quite rapidly, thus opening up an opportunity for nontraditional financing.¹⁵

2. Property Considerations

There are a number of property considerations that affect a decision on whether to seek financing for facility construction or renovation.

⁸ See New York. Court facility financing in New York City is strongly influenced by the relative cost of G/O bonds and revenue bonds issued by the Dormitory Authority for court facility construction. Because of the city's bond ratings, it has been judged preferable to use revenue bonds for the time being.

⁹ See Massachusetts and New York. In these states the state legislature found that local governments were unable to provide adequate facilities for courts and enacted legislation to address this problem. See also Vermont, where counties have been gradually relinquishing facility financing to the state. See also Illinois, where a legislative finding that local governments could not provide public buildings led to a statute creating public building commissions.

¹⁰ Courts often use commercial banks to finance facility construction if the amount is not large and the package is not complex. Often the rate of interest is higher than the market rate, but sometimes local banks are very competitive. Alabama (Pickens County), Kansas (Montgomery County), Illinois (Lake County), and Wisconsin (Outagamie County) have used bank financing.

¹¹ See California (Los Angeles County) and New York (New York City) for examples of court facility improvement programs of local governments. See Maryland for an example of a state capital improvement program for limited jurisdiction trial courts.

¹² See Alabama (Lamar County), Arkansas (Craighead County), and West Virginia (Monongalia County).

¹³ See Maine, New York (Suffolk County), and Virginia (Chesterfield County and Virginia Beach).

¹⁴ See Alabama (Lamar County), South Dakota (Pennington County), and Virginia (Chesterfield County).

¹⁵ See Rhode Island, where a court facility was seriously below standard, causing consideration of nontraditional methods of financing.

The first consideration is the site. The site may already be owned by the government responsible for facility financing. If not, it may be available by donation,¹⁶ sale at a reduced price,¹⁷ long-term rental at a reduced price,¹⁸ or trade of property with another government entity.¹⁹ If the site must be acquired, an additional expense factor is added to the capital cost.

Sometimes, the facility plan calls for acquisition of a building to be renovated.²⁰ This adds not only a land acquisition cost but a facility cost. However, such acquisitions are normally made because the property is on the market at a low price, as for example, property purchased from the Resolution Trust Corporation.²¹

If renovation of an existing building is the chosen path, there may be a need to relocate court personnel and court functions, adding another cost.²² Renovation of an existing building that is a historical monument may be complicated, but it may also be a vehicle for attracting financing.²³

Governments have an equity in the buildings they own but find it hard to take advantage of this. Under some forms of financing, the value of the building can be used as a means of generating investment in a facility.²⁴ Moreover, a government can sometimes finance a new facility by selling an existing facility.²⁵

Another basic question is the treatment of furnishings and equipment. This cost is often capitalized, adding to the cost of borrowing.²⁶ In some largely state-financed systems, the states pay for equipment and furnishing and the counties pay for the facility.²⁷

¹⁶ See Alabama (Montgomery County), a contribution by the City of Montgomery to encourage construction of a court facility in an urban redevelopment area; and Colorado (Adams County) a gift by the City of Brighton.

¹⁷ See New York (Suffolk County), below-market sale by state educational organization.

¹⁸ See Illinois (Lake County), below-market rental by private developer.

¹⁹ See Idaho (Bingham County).

²⁰ See Arkansas (Fayetteville), Florida (Dade County), Maine (York County), and West Virginia (Monongalia County).

²¹ See Florida (Dade County) and Maine (York County).

²² See Florida (Polk County) and New Jersey (Essex County).

²³ See Ohio (Stark County).

²⁴ See Alabama (Pickens County), essentially a mortgage. COPs, like those in California, are basically ways to use a court building as collateral.

²⁵ See Arkansas (Craighead County).

²⁶ See California (Sacramento) for an illustration of the capitalization of every cost: land, furnishings, up-front professional costs, and the building.

²⁷ See Colorado and South Dakota as examples.

It occurs with some frequency that it is financially preferable to rent a facility rather than to acquire it. In such instances, renovation can be passed on to the lessor and the cost included in the rent.²⁸

Any of the above property considerations can present obstacles to financing. Even where they do not present serious obstacles, they may alter the financial package or affect the timing of the financial plan.

3. Up-Front Professional Costs

Associated with court facility construction are some very expensive professional costs, among them the cost of engineering studies, preliminary architectural designs and preparation of contract specifications, financial expertise, advice of bond counsel, and assistance from underwriters. Even if these expenses are eventually capitalized, they must first be paid out of operating funds or some revolving fund set up for the purpose of paying front-end costs. These funds may or may not be in the court budget.

Some of the up-front costs are dependent on the method of contracting or financing. Simple methods of financing reduce the need for financial and legal expertise and the assistance of underwriters. Use of design-build methodology reduces design cost, and if the contractor also arranges the financing, there is a greatly reduced need for professional expertise of a legal and financial nature.²⁹ Revenue bonds almost always are the most complicated issues and have high up-front costs,³⁰ but it often occurs that the methods with cheap up-front costs have high borrowing costs and vice versa.³¹

The costs of professional services can often be reduced by relying on expertise in government agencies or county associations that provide technical assistance.³² One reason that some court officials like to finance through state building authorities is that these agencies have staff members who are familiar with the complexities of financing public facilities and can protect courts without courts having to spend a lot of money on

²⁸ See Maryland (Ocean City). Maryland uses a model to ascertain whether it is more advantageous to buy or rent.

²⁹ Connecticut has developed a comparative cost grid to measure design-build costs against those for traditional methods of contracting. This verifies the relatively lower front-end costs for design-build.

³⁰ See Alabama (Montgomery), Maine, New York (Suffolk County and New York City), and Utah (Salt Lake City).

³¹ Connecticut studied the relative costs of general obligation bond financing against a lease-purchase arrangement in Rockville and a design-build-finance arrangement in Middletown. The Rockville project was refinanced with G/O bonds, but the Middletown project was not refinanced with G/O bonds because the cost of privatized financing was only slightly higher.

³² See California, Georgia, and Kentucky, where county associations provide substantial technical assistance to counties.

professional advice. Public authorities, however, commonly charge a fee for their services that is reflected in the cost of borrowing.³³

Courts very often do not consider the high costs of these services unless their unavailability prevents a project from starting. Sometimes, what appear to be services provided out of the executive branch budget end up as capitalized costs being paid by the courts.

Ultimately, the issue of front-end costs reduces itself to several questions:

Given the probable method of construction and financing, what services are needed?

Do the funds exist to acquire these services from private sources, and if not, can they be provided by experts in government agencies?

Who ultimately bears the cost of these services whether externally or internally provided?

4. Intergovernmental Cooperation

Governments can overcome financial impediments by enlisting the aid of other government entities or by pooling resources. This aid takes various forms:

- state aid to counties for facility construction in the form of subsidies, grants, loans of credit, reimbursements, and direct construction of trial court facilities for some counties that cannot meet their burden;³⁴
- state agencies pooling resources;³⁵
- occasional local government help to the state;³⁶
- counties pooling resources;³⁷

³³ See New York, where the Dormitory Authority charges a fee for the services it provides. These fees vary with the extent of the role defined by a local government.

³⁴ See Kentucky, Massachusetts, and Vermont. New York has a fee-fed fund to subsidize court facility construction by local governments. See also Maryland (Prince George's County), where the state contributed to courthouse construction. See Ohio, where the Department of Youth Services makes grants for juvenile detention facilities and juvenile rehabilitation facilities. See Wisconsin (Chippewa County), where a state sales tax rebate to counties has been used for courthouse construction.

³⁵ See Maryland. The state has a number of regional multi-agency service centers for state agencies with a high level of in-person public contact. District courts are included in these facilities, thereby reducing the cost to the state.

³⁶ See New Jersey, where a building authority of Mercer County was used to construct a state justice center in Trenton.

³⁷ County associations in California and Kentucky have put together pooling arrangements to fund public buildings. Changes in the federal tax laws have reduced the use of such pools.

- a county and a city pooling resources;³⁸
- federal funding;³⁹ and
- private-public cooperation.⁴⁰

Intergovernmental aid, even partial aid, has been an important factor in determining whether a court facility project can proceed, particularly in nonaffluent counties.

5. The Decision to Proceed

The assessment of the financial environment will lead to a go or no-go decision. If it is decided that the necessary funds exist to proceed, then another set of decisions must be faced, as outlined in Figure 3. It should be noted that a decision to proceed may be based on premises that later prove faulty; for example, an assumption of voter approval of a bond issue.⁴¹

C. DECISION ON INCURRING DEBT

The decision to finance a court facility project does not necessarily entail incurring long-term debt or any debt at all. Basically, there are three options: financing without debt; financing with short-term debt instruments; and financing with long-term debt instruments. There are occasional overlaps in these three categories, but in general, the categories stand alone.

1. Financing Without Incurring Debt

It is very hard to finance capital improvements from operating funds, but it does occur, even on large projects. The most prominent example of this is the courthouse in Anchorage, Alaska, which is being financed from appropriations over a five-year period to coincide with cash needs of the project.⁴² Some jurisdictions have been able to locate funds that could be made available for courthouse construction: in one instance, the

³⁸ See California, where the city of San Diego and San Diego County pooled resources, and Virginia, where York County and Poquoson shared the cost of building.

³⁹ See Oregon, where FEMA was used to finance a courthouse, and Idaho, where PILT funds (payments in lieu of taxes) were invested and used to fund courthouse construction. See also Alabama (Lamar and Pickens Counties), where a special line item in the 1993 HUD appropriation was used for courthouse construction in two counties.

⁴⁰ See Ohio (Stark County), where contributions from nonprofit affiliates of major corporations in the area were pooled with county funds for courthouse construction.

⁴¹ See Florida (Dade County), where defeat of a general obligation bond issue left the courts to finance the renovation and acquisition of a building from court fees.

⁴² See Alaska.

proceeds from the sale of a public building;⁴³ in another, accumulated funds in a jail improvement fund.⁴⁴ Other jurisdictions have accumulated the proceeds of a property surtax⁴⁵ or an addition to the sales tax⁴⁶ and have been able to undertake construction without incurring debt. One county funded a courthouse by accelerating tax payments.⁴⁷ Sometimes, unexpected damage to a courthouse from major calamities of nature provides a basis for funding renovation or new construction.⁴⁸ Capital needs can also be satisfied by private contributions.⁴⁹

2. Short-Term Debt

The term to maturity on most bonds for courthouse construction tends to be in the 15- to 20- year range. When the amount of indebtedness is not large and the time frame necessary to retire the debt is not long, it is possible to use short-term debt instruments, 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.

Occasionally, when there is a need to get a project started quickly, the initial funding is raised by issuance of short-term debt instruments.⁵⁰ However, in some instances the financing strategy has been to minimize debt service by defeasance of bonds within a few years.⁵¹

3. Decision on Long-Term Debt

In most instances court facility financing involves long-term debt. A decision to incur such debt raises a variety of complex questions.

D. DECISION ON TYPE OF LONG-TERM DEBT

If a decision is made to incur long-term debt, there are three basic options, as depicted in Figure 4: (1) traditional general obligation bond financing; (2) revenue bonds or certificates of participation issued through a public entity such as a public building authority; and (3) privatized financing of the type used in lease-purchase arrangements in

⁴³ See Arkansas (Craighead County).

⁴⁴ See West Virginia (Monongalia County).

⁴⁵ See Arkansas (Pulaski County).

⁴⁶ See Colorado (Adams County).

⁴⁷ See Virginia (York County).

⁴⁸ See Oregon (Klamath County) for a FEMA grant after an earthquake.

⁴⁹ See Ohio (Stark County), where private contributions covered most of the facility cost, which cut the amount of indebtedness.

⁵⁰ See Ohio (Stark County), where BANs were issued to supplement some private contributions.

⁵¹ See Kansas (Montgomery County), where tax revenue bonds were sold through a local bank and retired in three and a half years instead of the planned seven years.

which the builder/developer provides the financing vehicle, commonly a single-purpose, nonprofit corporation that issues bonds or certificates of participation. The use of such nonprofit corporations permits the issuance of tax-exempt securities.

Figure 3
Decision on Incurring Debt

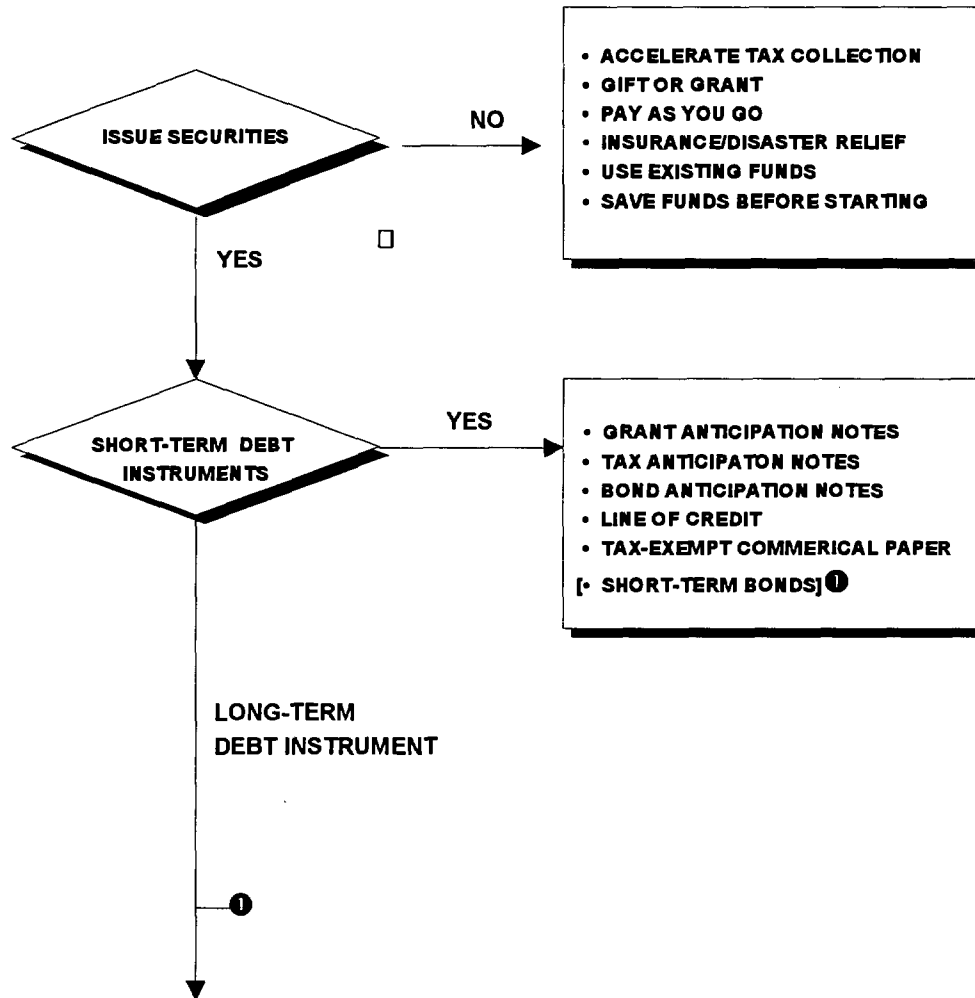
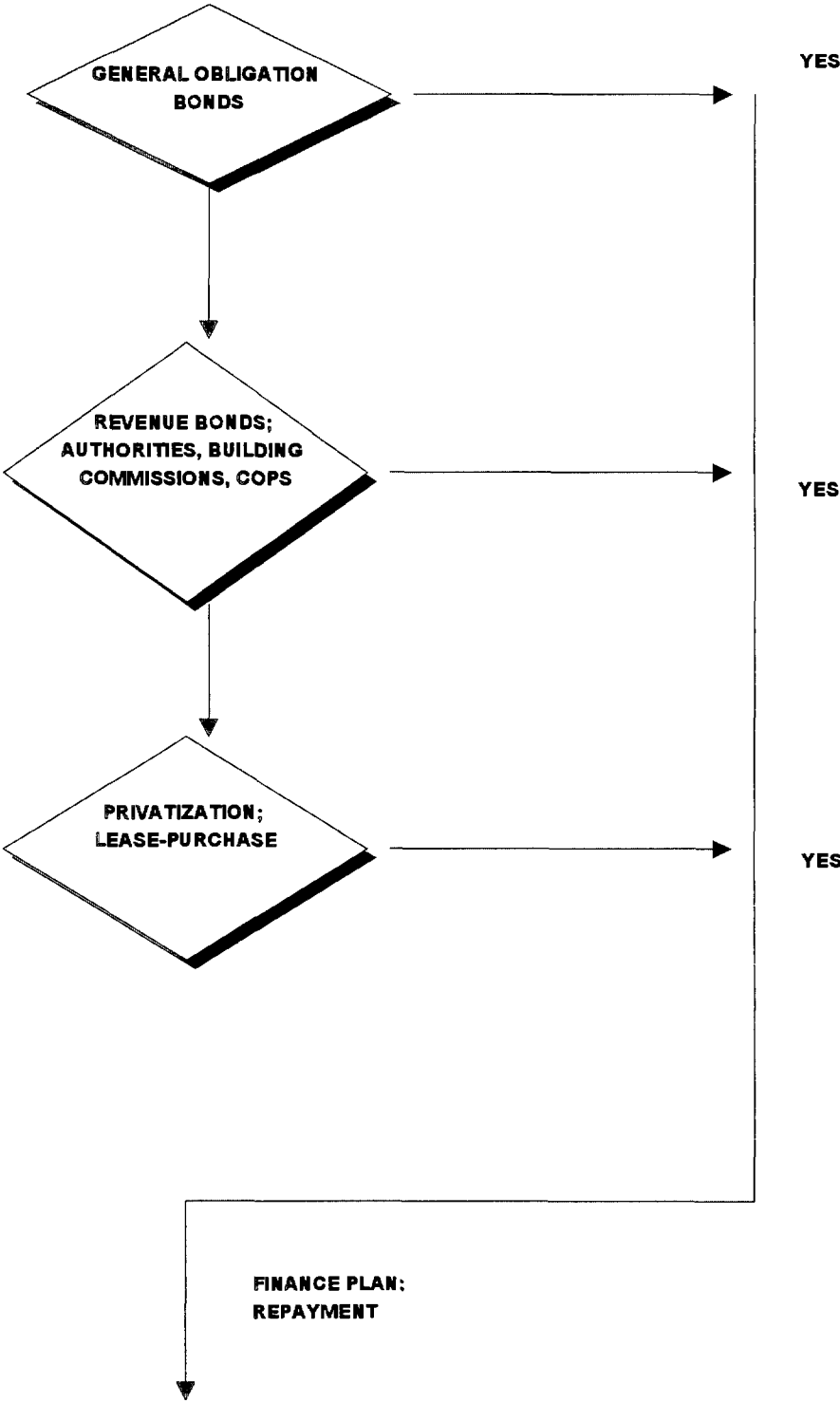


Figure 4
Decisions on Long-Term Debt



1. General Obligation Bonds

The emphasis of the project was on alternatives to traditional funding methods, but examples of general obligation bond financing were included when they involved some interesting feature.⁵² They were also included because they are still the preferred financing vehicle for most jurisdictions for the following reasons:

- They provide the least expensive means of borrowing because the general credit of the governmental entity is committed;
- Assuming a normal bond rating, they are the easiest to sell and usually do not require complex tailoring to make them attractive to the secondary bond market, as do most other types of bond issues and certificates of participation; and
- Use of general obligation bonds requires voter approval and thus insulates public officials from later criticism that they circumvented popular control.

Despite these benefits there are many reasons why it is not feasible to use general obligation bonds: (1) anticipated voter rejection (the most frequently cited reason in the survey);⁵³ (2) tax and debt limitations that require forms of debt that are not subject to legal limitations;⁵⁴ (3) urgencies of time (traditional methods of capital financing tend to stretch out for years);⁵⁵ (4) poor bond ratings that make it preferable to use a public authority;⁵⁶ (5) inability to obtain a priority rating in the capital improvement program of the government that finances court facilities;⁵⁷ and (6) a desire to avoid restrictive laws in the construction of public buildings.⁵⁸

⁵² See Connecticut, Maryland, and Massachusetts, where state-level bond issues have been a major source of capital financing for courts; see also Arkansas (Pope County) and Wisconsin (Chippewa County), where earmarked excise or property tax proceeds have been used to enhance G/O bond issues.

⁵³ There is some sensitivity about this issue. Many people surveyed were torn between a recognition that voters should exercise control over the level of debt and taxation and their responsibility as public officials to provide an acceptable setting for the administration of justice.

⁵⁴ See California and Illinois.

⁵⁵ See Connecticut, where the normal capital financing cycle is quite long and more expeditious methods have occasionally been sought.

⁵⁶ New York City has been using the Dormitory Authority because the city's bond rating has been low. For the short term, it is advantageous to use the revenue bonds of the authority.

⁵⁷ See Maryland (Hyattsville), where a low priority for one court project led to innovative financing. See also Arizona, where the appellate courts had a delay of several years because of their low priority in the state capital improvement program.

⁵⁸ See New York. The Dormitory Authority is exempted from some restrictions on contracting for public buildings that are applicable to counties.

2. Revenue Bonds

Revenue bonds are normally the second choice if issuing general obligation bonds is not feasible, but there are jurisdictions where issuing revenue bonds is the primary method of financing public buildings because the legal limitations on debt and taxation make it difficult or impossible to use general obligation bonds. More commonly, however, revenue bonds are a possible option rather than the sole practical choice. The survey found examples of revenue bond financing through a variety of public agencies: state building authorities,⁵⁹ judicial building authorities,⁶⁰ industrial development associations,⁶¹ and local building commissions.⁶²

The advantages of revenue bonds are (1) greater certainty and speed, by avoidance of the lengthy and unpredictable political process surrounding general obligation bonds; (2) expertise provided by some of the more sophisticated building authorities; and (3) in some jurisdictions, latitude in applying the laws governing the construction of public buildings. The disadvantages are almost the converse of the advantages of general obligation bonds.

Also widely used as an alternative to general obligation bonds are certificates of participation. This method of capital financing is based on sale of interests in lease revenues from a renovated or newly constructed facility and has frequently been used to finance court facilities.⁶³

3. Privatized Financing

Lease-purchase arrangements through a private builder/developer are used on occasion.⁶⁴ The financing may be provided through a commercial bank, or the builder may set up the financing mechanism, such as a nonprofit corporation that issues bonds or COPs and holds title to the property during the pendency of the debt.⁶⁵ Some counties have entered into lease-purchase agreements with major commercial leasing

⁵⁹ See New York (Suffolk County) and Rhode Island.

⁶⁰ See Alabama, where a judicial building authority was used to construct an appellate court facility; see also Maine, which has a judicial building authority, and California (Los Angeles County), where COP financing is done through a courthouse corporation.

⁶¹ See Maryland (Prince George's County) and Virginia (New Kent County). See also Colorado (Jefferson County), where COP financing was done through the Jefferson Finance Corporation. See also California (Sacramento County), where a lease-purchase arrangement was refinanced through the county's Public Facility Finance Corporation.

⁶² See Illinois (Lake and St. Clair Counties) and Kansas (Johnson County).

⁶³ See California (Los Angeles County); Colorado (Jefferson County); Connecticut (Middletown); Georgia (DeKalb County); South Dakota (Minnehaha County); and Virginia (Chesterfield County and Virginia Beach). See also Part III, F.2., and Figure 12.

⁶⁴ See Alaska (Anchorage); California (Sacramento); Connecticut (Rockville); Maine (Waterville); and Maryland (Hyattsville).

⁶⁵ See Connecticut (Middletown) for an example of design-build-finance.

corporations.⁶⁶ This method eases the front-end political and economic burden and removes the financing almost entirely from public view. The retirement of the debt usually shows up as a form of rental in the operating budget of the agency occupying the building.

The good points cited for this method are that (1) it provides good cost control because there is a single accountable entity and much less likelihood of cost-related changes; (2) speed is greater than any other method with greater likelihood of completion within schedule; and (3) it defers the need for public funds because the builder picks up a lot of the early costs.

This method is not highly regarded by many public officials. Critics argue that this method ought to be a last resort, if used at all because (1) the method does not provide public accountability; (2) the method is not suitable for complex phased projects with financing spread out over a long construction schedule; (3) it reduces the level of court involvement and tends toward generic public buildings that are not really court-specific; and (4) the cost of borrowing is higher (partially offset by speed and reduction of front-end costs).

4. Making the Choice

There are a number of factors that influence the choice of basic financing methods. If the statements below are treated as interrogatories, a preponderance of affirmative responses would indicate the need for nonconventional methods.

Decision Factors

- The likelihood is high that G/O bond issue will be defeated.
- Facility is simple enough in design to be constructed within a two-year period.
- Financing need not be phased over a multiyear period.
- Speed is of the essence.
- Jurisdiction is used to constructing public buildings through building authorities.
- The local political ethos does not place high value on public referendums on indebtedness.
- Tax and debt limitations make it almost impossible to pledge the general credit of the borrowing entity.
- Courts do not fare well in capital improvement programming of the government that finances court facilities.

⁶⁶ See Virginia (Chesterfield County).

- The bond rating of the borrowing entity is poor.
- The borrowing entity has little in-house expertise in facility financing.
- The cash flow position of the borrowing entity requires a highly structured debt package.
- The cost of borrowing is not normally subjected to close public scrutiny.

E. DECISION ON OBTAINING REVENUES TO REDUCE THE COST OF BORROWING

Long-term indebtedness involves a financial plan and a repayment plan.⁶⁷ Typically, repayment is made from the governmental general fund in the form of an annual appropriation to the government entity occupying the facility or to a government agency that has a general responsibility for the financing of public buildings. The appropriation is keyed to the financial plan and may take the form of an appropriation to pay a rental to an authority or corporation holding title to the facility, or it may take the form of a debt service appropriation. The payment to investors from this appropriation may go directly from the responsible government entity to a trustee who makes individual distributions to investors, or the payment may be routed to the trustee or fiscal agent through a public authority or an intermediary corporation.

As the costs of long-term borrowing are high, many methods are used to reduce the burden on the general fund. Among the options available to managers are:

- developing a revenue stream within the court facility;
- using court-collected fees placed in special funds;
- special tax levies to defray costs; and
- subsidies for facility construction.

These are summarized in Figure 5.

1. Revenue Streams

One method of reducing the size of the appropriations for debt repayment is to create a revenue stream within the building. The most common sources of revenue are (1) rentals of space to public agencies;⁶⁸ (2) rental of space to private tenants, for example, where a condominium arrangement exists;⁶⁹ (3) fees for parking spaces;⁷⁰ and (4) fees paid

⁶⁷ See Part III, F.2., on long-term financing.

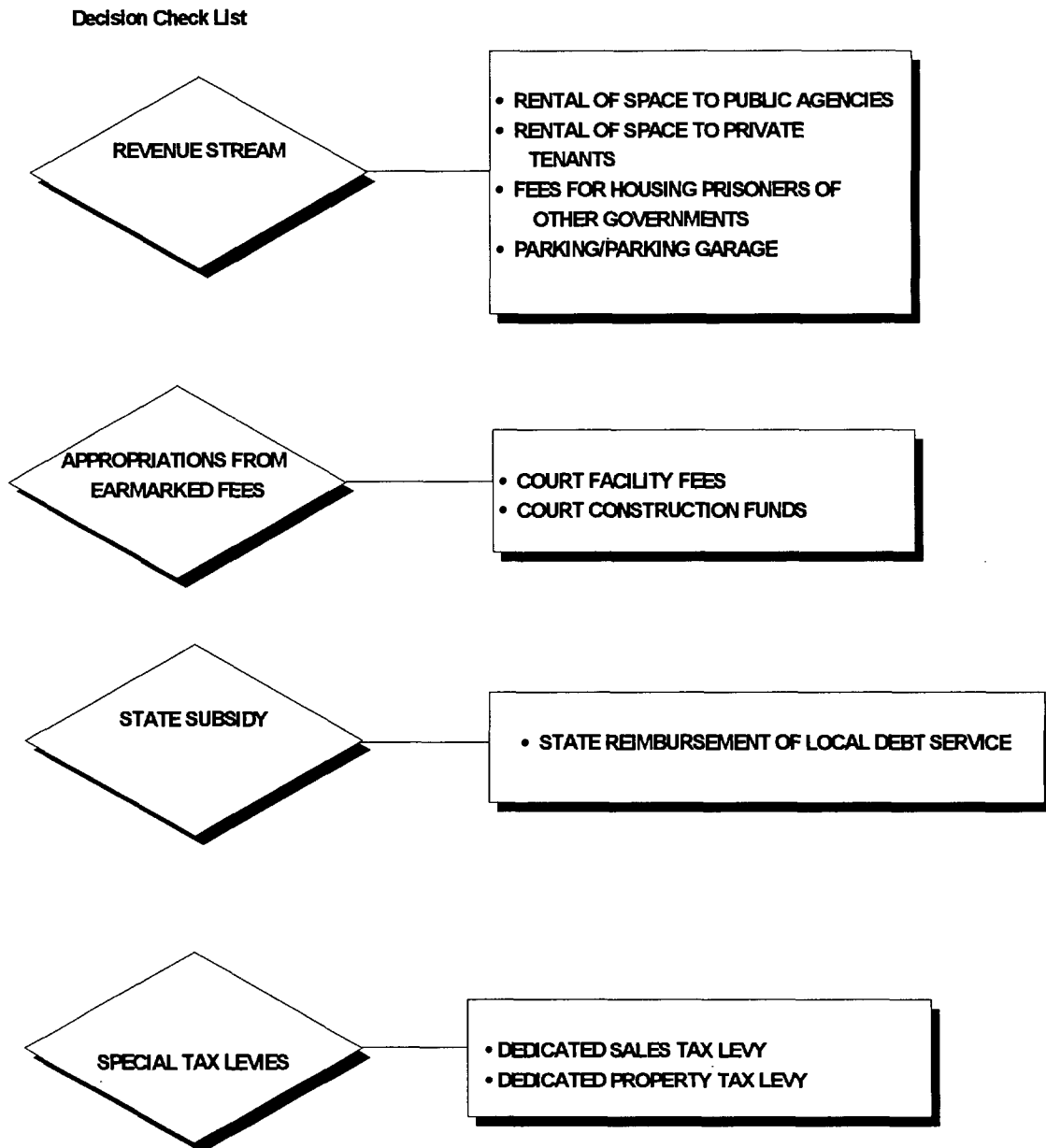
⁶⁸ See Virginia (Chesterfield County), where a victim-witness unit paid rent.

⁶⁹ See Arkansas (Washington County), where the court shared a building with private tenants.

⁷⁰ Many of the sites included in the survey included parking as one of the capital costs, but the parking was

for housing prisoners of other governments in a jail located within a facility housing courts.⁷¹

Figure 5
Debt Repayment: Reducing the Cost of Borrowing



primarily free space. Not included in the survey was the Arlington, Virginia, courthouse, which reportedly has some parking space that is income-producing and built into the scheme for debt repayment.

⁷¹ See Idaho (Bingham County) and Wisconsin (Outagamie County).

2. Appropriations from Earmarked Fees

Some jurisdictions collect fees from litigants for support of court facilities. These fees may not be placed in a special fund for court facilities or may be too small in amount to be of much use for capital financing.⁷² In some jurisdictions, however, these fees go into special funds intended for courthouse construction and can be used for purposes of repaying loans, most commonly in the form of certificates of participation.⁷³ Some states have state-level special funds that are fed by fees collected at the trial court level and made available to counties that undertake to construct or renovate court facilities or to state agencies to construct justice facilities.⁷⁴ Locally imposed court costs may also be used to fund state-level facilities.⁷⁵

3. Special Tax Levies

State law often permits the imposition of a surtax for some specific purpose, such as the construction of a public building. Such surtaxes usually require voter approval of the amount and purpose and frequently have sunset provisions. Some of these additions to the tax burden are on sales taxes,⁷⁶ others on property taxes.⁷⁷ The former is often more popular because it falls in part on persons who are transients rather than property owners.

One option is to collect such taxes in advance to obviate the need for borrowing, but often the decision is made to use the tax proceeds either to reduce the amount being borrowed or to expedite the defeasance of bonds, thus reducing interest costs.

4. Subsidies for Courthouse Construction

Some states reimburse counties for their expenditures on court facilities, either by building debt service into a rental fee paid to the county⁷⁸ or by using state capital funds to reimburse counties.⁷⁹

⁷² See Florida and North Carolina. Both states have court facility fees (in Florida they are implemented by local ordinance), but the total collections are rather small in relation to needs and are primarily intended for maintenance.

⁷³ See California.

⁷⁴ See New York.

⁷⁵ See Arkansas, where a trial court cost is collected to fund a state justice center in Little Rock.

⁷⁶ See Florida (Pinellas County and Punta Gorda in Charlotte County) and Kansas (Montgomery County). See also Wisconsin (Chippewa County), where a state sales tax was rebated to Chippewa County for facility construction.

⁷⁷ See Kansas (Johnson County); see Illinois (Sangamon County), where, by referendum, an earmarked property tax was dedicated to a juvenile detention facility.

⁷⁸ See Kentucky.

⁷⁹ See Massachusetts.

5. Review of Options

The options for ameliorating the burden of repayment are varied but basically reduce themselves to (1) using the facility to generate offsetting revenue; (2) using court costs to pay debt service or a pledge; (3) using special tax levies to pay debt service; and (4) relying on state reimbursement of local debt service. All of these options are circumscribed by law, so it is necessary for a court manager to ascertain the permissible alternatives in his or her jurisdiction and to make a determination as to which, if any, are feasible.

PART II

EXAMPLES OF COURT FACILITY FINANCING IN STATE COURTS

INTRODUCTION

This part of the monograph provides an overview of facility financing in the state courts. The descriptions of financing methods are grouped by state because the funding mechanisms are largely determined by state law. Twenty-eight states are included and listed in alphabetical order.

Preceding the write-up for each state is a summary of the particular financing methods that are addressed. Where pertinent, there are legal citations. In each state description, specific projects are used to illustrate a particular form of capital financing. For those desiring additional information, there is list of persons who provided information.

A. ALABAMA

Summary: Alabama illustrates (1) the use of judicial building authorities; (2) state and municipal cooperation in using court construction as part of an urban development program; (3) contribution of city land to build a court; and (4) use of special congressional appropriations to fund a court facility.

The state has assumed responsibility for financing state courts,⁸⁰ but has not included the responsibility for trial court facilities in the scope of its commitment.⁸¹ Counties have a duty to erect courthouses,⁸² to create temporary facilities in an emergency,⁸³ and to impose a special tax levy for courthouses.⁸⁴ Municipalities pay for district court facilities that are not in the county courthouse⁸⁵ and are generally responsible for providing facilities to municipal courts.⁸⁶

Alabama governmental entities make great use of building authorities. Alabama law permits the creation of a state building authority specifically for the judiciary by the joint action of the governor, lieutenant governor, the director of finance, the speaker of

⁸⁰ Ala Code § 12-19-1

⁸¹ Ala Code § 12-19-3

⁸² Ala Code § 11-14-10

⁸³ Ala Code § 11-14-12

⁸⁴ Ala Code § 11-14-16

⁸⁵ Ala Code § 12-19-4

⁸⁶ Ala Code § 12-14-2

the house, and the chief justice.⁸⁷ This mechanism, the Judicial Building Authority, is limited in use to the City of Montgomery and the appellate and state-level judicial agencies located there.⁸⁸

The Authority can purchase or lease property, build, equip, and maintain judicial facilities,⁸⁹ and exercise eminent domain.⁹⁰ The Authority may issue bonds up to a limit of \$40 million (excluding refunding bonds).⁹¹ Such bonds are to be repaid from rents paid by the unified judicial system at a level and pace commensurate with the scheduled payment of debt service.⁹² The term limit on the bonds is 30 years.⁹³ The bond proceeds are paid into a special fund in the state treasury and must be used for court facilities;⁹⁴ rental proceeds go into a restricted fund dedicated to retirement of the bonds.⁹⁵

Counties may also create public building authorities to construct county buildings, specifically including courthouses.⁹⁶ The underlying financial scheme is the issuance of revenue bonds repayable through rental of the facility by the user agency,⁹⁷ with title transferring to the county upon final retirement of the bonds.⁹⁸ Municipalities have a similar authority.⁹⁹

1. State of Alabama, Alabama Judicial Building, Montgomery

This project involved construction of a new \$40 million, 241,000 GSF court building in downtown Montgomery in an area being targeted for redevelopment. The building was financed by the Alabama Judicial Building Authority, which is authorized to issue bonds for appellate court facilities. In 1990 the Authority issued current interest bonds in the amount of \$24,595,000, to mature on January 1 of the years 1994-1999 and 2014. The Authority also issued capital appreciation bonds in the amount of \$15,403,556, with maturity dates running from 2000 to 2012. The period of indebtedness was 20 years and the average interest about 7 percent. The projected interest payment to maturity was

⁸⁷ Ala Code § 41-10-262

⁸⁸ Ala Code § 41-10-260(7)

⁸⁹ Ala Code § 41-10-267(5)

⁹⁰ Ala Code § 41-10-267(8)

⁹¹ Ala Code § 41-10-268

⁹² Ala Code § 41-10-275

⁹³ Ala Code § 41-10-268

⁹⁴ Ala Code § 41-10-270

⁹⁵ Ala Code § 41-10-272

⁹⁶ Ala Code § 11-15-1

⁹⁷ Ala Code § 11-15-8

⁹⁸ Ala Code § 11-15-18

⁹⁹ Ala Code § 11-56-1 et seq.

about \$50 million, making the estimated cost about \$90 million. The issue was covered by municipal bond insurance. The essential security was rent from the state tenants.

The Authority invested the bond proceeds in Flexible Collateralized (by treasuries) Repurchase Agreements with an unlimited right of withdrawal. For a while this arrangement produced positive arbitrage that belonged to the IRS, but later the arbitrage became negative. Within a given five-year period negative arbitrage can be used to offset positive arbitrage, with any net positive arbitrage being rebated to the U.S. Treasury.

Another interesting aspect of the Montgomery court project was its centrality to the redevelopment of downtown Montgomery. It was completed in 1993 and is thought to have significantly contributed to the goal of revivifying the downtown area. The city of Montgomery donated \$2.5 million in land (basically one city block) for the project. The idea was to increase the activity in the city by concentrating state office buildings in the area. Other state buildings and some private buildings were located in the area: three parking decks, a nine-story tower for state office workers, a 22-story tower with both state and private tenants, and a mini-convention center with a park, a day care center, and a 237-room Embassy Suites Hotel. Much of the public investment came from the state retirement system, a possible source of funding in many states. About \$350 million was invested, but the city planners felt that the courts were the key to the success of the plan.

2. Lamar County Judicial Center, Vernon; Pickens County Judicial Building, Carrollton

These two counties are in the congressional district of Representative Tom Bevill, who persuaded the Appropriations Committee to include \$1.5 million for Lamar and Pickens Counties in the HUD FY 93 appropriations bill. The money was included in the Assisted Housing subtitle of appropriations but was not, strictly speaking, a HUD program.

In Lamar County the cost of renovation and new construction of court facilities is estimated at \$890,000, of which \$750,000 is covered by the federal appropriation. In Pickens County the cost of a new court facility is estimated at \$1.47 million, of which \$750,000 is covered by the federal appropriation. The HUD money is drawn down by each county by calling the HUD office monthly, giving a code, and then saying how much money they wish to draw for direct deposit to the county's account.

Each county had to finance the difference between the federal appropriation and the cost of the facility. Lamar County realized an infusion of cash from refinancing the long-term indebtedness of the county. Apparently, the county was also able to obtain about \$10,000 through a pledge from the Hospital Trust Fund. Some years ago there was a 4 mil county tax (which is no longer in effect) to build a hospital. This hospital was sold years ago, but the attorney general said that the proceeds from the sale had to go to purposes consistent with the original tax. A 24-member, county-appointed board approves projects from the fund and found that the court facility qualified.

Pickens County faced a more difficult financing problem as the difference between the HUD money and the cost of the new court facility was about \$720,000. The county is paying this amount from general funds as a condition of the grant. This \$720,000 was put up by two local banks at a low 4.76 percent interest rate and is being repaid by the county from its general funds in monthly installments of about \$6,000. In effect, the county mortgaged the facility and thereby avoided some of the up-front bond costs.

3. Other Sites

Alabama law allows for passage of legislation that permits counties to impose special property taxes to fund public buildings, including courthouses.¹⁰⁰ Some counties provide for the tax to end when the indebtedness is paid off. Elmore and Lee Counties have used this method, as reported in the survey.

4. Persons Contacted

Name	Title	Phone Number
Hunter Slaton	Finance Director AOC	334-242-0300
Helen Clayton	Administrative Assistant, Alabama Judicial Building Authority	334-242-0300
Gene Stabler	Assistant Treasurer, State of Alabama	334-242-7502
Roy Boudreaux	City Planner, Montgomery	334-241-2428

B. ALASKA

Summary: The uniqueness of Alaska in size, population density, and governmental structure are such that no specific models were sought in that state. Nonetheless, the state provides an interesting example of state funding of trial court facilities. The new Anchorage courthouse, which was included in the state capital budget, is funded directly from the state general fund over a five-year period.

Alaska has a local government structure unlike that of any other state and is to a large extent unique. The court system is state-financed and relatively centralized in its administration. The supreme court has authority over all matters relating to the planning design, construction, maintenance, occupancy, leasing, and operation of all court facilities and cooperates with the Department of Transportation and Public Facilities (hereafter Department) so that court facility construction projects are carried out in accordance with

¹⁰⁰ Ala Code § 11-14-16

the statutes and regulations generally applicable to state public works projects.¹⁰¹ A court facility is defined as a state facility in which 75 percent or more of the net usable space is occupied by the court system and other justice-related agencies.¹⁰²

The Commissioner of the Department maintains a list of persons who desire to provide construction services to state agencies, and the court system is explicitly permitted to use it.¹⁰³ The executive branch in Alaska has a centralized purchasing system that includes construction services,¹⁰⁴ but the administrative director of courts is permitted to draft procedures on procurement of construction consistent with the statute on centralized purchasing.¹⁰⁵ The administrative office of courts has a facilities manager who reports facility needs to the state court administrator.

The judicial branch is authorized to lease property, but if the annual lease payment exceeds \$500,000 and the total amount of the lease exceeds \$2.5 million, the legislature must be notified.¹⁰⁶ The judicial branch and other government entities once had a fairly similar carte blanche on lease-purchase agreements, but the authority has recently been eliminated.¹⁰⁷ Prior to the repeal of the statute granting lease-purchase authority, the court entered into a \$6 million, ten-year lease-purchase agreement for court offices in Anchorage.

About one-fourth of the court facilities are owned by the state and often include other state agencies as occupants. The normal pattern is for these buildings to be financed through the Alaska Building Authority, although some have been financed by a direct appropriation (see below). Relatively small capital needs are commonly met by a direct appropriation.

There are multimillion dollar court complexes in the few urban areas of the state where most of the population is concentrated. But for the most part, the state's court facilities consist of office space in buildings owned by private owners, by local governments, or in some cases, by the federal government. Often, the courts share the building with other entities.

¹⁰¹ Alaska Stat § 22.05.025(a)

¹⁰² Alaska Stat § 22.05.025(b)

¹⁰³ Alaska Stat § 36.30.050

¹⁰⁴ Alaska Stat § 36.30.005

¹⁰⁵ Alaska Stat § 36.30.030

¹⁰⁶ Alaska Stat § 36.30.080(c)

¹⁰⁷ Alaska Stat § 36.30.085 requiring legislative approval of lease-purchase

1. Anchorage Courthouse

In 1996 the Nesbett Courthouse in Anchorage will be ready for occupancy. This 220,000 GSF building will cost about \$47 million, excluding the site which was acquired earlier. The building has been downsized from the original plans.

The money to finance the courthouse is derived from straight general fund appropriations over a five-year period. Varying by year based on anticipated cash needs, the appropriation levels are approximately \$5 million; \$19 million; \$19 million; \$2.7 million; and \$2.6 million.

2. Persons Contacted

Name	Title	Phone Number
Kit Duke	Facilities Manager, AOC	907-264-8238
Chris Christensen	General Counsel, AOC	907-264-8228

C. ARIZONA

Summary: Arizona is cited primarily in reference to state-funded appellate facilities.

The Arizona court system is financed largely by local governments, and therefore the provision of trial court facilities is a responsibility of local government. County boards have the authority (and the duty) to erect courthouses¹⁰⁸ and to issue bonds for courthouse construction.¹⁰⁹ Justice court expenses for "office rent" are referred to as a "county charge."¹¹⁰ Cities and towns have responsibility for the creation of municipal courts¹¹¹ and the consequent duty of providing facilities.

The State of Arizona is starting to rely more on lease-purchase arrangements for public buildings. The Commissioner of the Department of Administration is authorized to use such devices.¹¹² The state has created a "Capital Outlay Stabilization Fund" fed by rents from state agencies in leased facilities.¹¹³ This statute explicitly includes the "judicial branch of state government."

¹⁰⁸ Arizona Rev Stat Ann § 11-251(8)

¹⁰⁹ Arizona Rev Stat Ann § 11-271

¹¹⁰ Arizona Rev Stat Ann § 22-117(A)

¹¹¹ Arizona Rev Stat Ann § 22-402

¹¹² Arizona Rev Stat Ann § 41-792

¹¹³ Arizona Rev Stat Ann § 41-792.01

The appellate courts and the state-level judicial agencies are part of the state facility system administered by the Department of Administration, which provides state facilities, including the “courts building.”¹¹⁴ The supreme court is permitted to ask the Department for facility management assistance, including Division I of the Court of Appeals, which sits in Phoenix.¹¹⁵ The Department also does the capital improvement plan for state agencies.¹¹⁶

The Supreme Court has had some problems with the capital budget. For five years the court tried without success to obtain legislative approval for a building to house appellate courts, the state law library, the administrative office of courts, and related court agencies. It took this length of time for the courts to be included in the capital budget. In 1991 a 257,200 GSF court building was constructed in Phoenix at a final cost of \$23.7 million by the issuance of state general obligation bonds. The state court administrator was involved in an advisory capacity on the financing of the facility.

The building housed other state tenants that pay a percentage of costs based on square footage occupied. The supreme court was not happy with the maintenance provided by the Department of Administration and obtained a statutory exception and a budgetary appropriation to provide the internal housekeeping, security, and maintenance functions for the building (problems with executive branch maintenance of judicial buildings are not restricted to Arizona).

1. Persons Contacted

Name	Title	Phone Number
Bob Wininger	Director of Administrative Services, AOC	602-542-9333

D. ARKANSAS

Summary: Arkansas counties have used a variety of different methods for financing court facilities, including (1) lowering interest rates on bonds by pledging excess millage collections to redeem bonds prior to maturity date; (2) lowering interest rates by pledging sales and use tax revenue; (3) using both taxable and nontaxable bonds to finance renovation of a court facility where some building uses were not within the IRS definitions of tax-exempt purposes; (4) selling a hospital to fund construction of other public buildings; (5) using 1 mil addition to the property tax to raise up-front capital for construction; and (6) using a special court cost collected at the county level to fund renovation of a state justice building housing state-level courts.

¹¹⁴ Arizona Rev Stat Ann § 41-791(3)(a)

¹¹⁵ Arizona Rev Stat Ann § 12-119

¹¹⁶ Arizona Rev Stat Ann § 41-793

Arkansas courts are financed in large part by local government. Thus, counties are given responsibility for erecting courthouses.¹¹⁷ The state only finances state-level judicial facilities, primarily appellate court facilities.¹¹⁸ The Justice Building in Little Rock will undergo renovation using a court cost collected at the county level to produce a revenue stream to finance revenue bonds.¹¹⁹

Arkansas has been quite explicit about circumventing debt limitations inhibiting facility construction. The Revenue Bond Act of 1987 states that the legislative purpose is to permit capital improvements outside the debt limits.¹²⁰ The law is very broad in its empowerment and encompasses both state and local agencies. The law specifically includes courthouses and court facilities.¹²¹

Arkansas has encouraged the construction of juvenile detention facilities by the Juvenile Detention Facility Cooperation and Operations Act.¹²² The law encourages creation of regional facilities.¹²³ The financial mechanism is a capital grant to the fund which becomes a revolving loan fund for local governments engaged in constructing such facilities.¹²⁴

Arkansas has a large community which straddles the Texas border (Texarkana) and has passed some interesting legislation on an interstate judicial center to deal with the many jurisdictional problems of a border city.¹²⁵

Arkansas reacted to the 1988 United States Supreme Court decision in *South Carolina v. Baker*.¹²⁶ This decision called into question the privileged tax-exempt status of unregistered government bonds. The Arkansas legislature has enacted legislation permitting the issuance of taxable bonds.¹²⁷

1. Pope County Court House, Russellville

In 1988 the voters approved a \$2.8 million bond issue to finance an addition to the courthouse and renovation. A special tax of 0.6 mil was dedicated to paying this

¹¹⁷ Ark Stat Ann § 14-19-108

¹¹⁸ See Ark Stat Ann § 16-12-103, which states that the court of appeals be placed in Little Rock near the capitol.

¹¹⁹ Ark Stat Ann § 22-3-920

¹²⁰ Ark Stat Ann § 19-6-601

¹²¹ Ark Stat Ann § 19-6-604(c)(i)(ii)

¹²² Ark Stat Ann § 12-41-805

¹²³ Ark Stat Ann § 12-41-804

¹²⁴ Ark Stat Ann § 12-41-805

¹²⁵ Ark Stat Ann § 12-41-205

¹²⁶ 585 U.S. 505 (1988)

¹²⁷ Ark Stat Ann § 19-9-701

indebtedness. The amount from the tax was not enough at first to pay the debt service on the full amount, so Series A bonds were issued in the amount of \$1.6 million to finance the addition. In 1993, when the proceeds from the tax increased, the voters approved renovation to be financed by Series B bonds in the amount of \$1.2 million. Both issues were sold through underwriters at a discount.

The county got a very low rate of interest on its Series B bonds (4.35 percent) by promising up front to redeem the bonds early by applying all excess millage collections to this purpose ("mandatory redemption"). It is possible that another factor in the low rate was that the bonds were bought by interested local institutions, but the main inducement was the understanding that the bonds would be redeemed prior to the maturity dates.

2. Washington County Court House, Fayetteville

In 1989 the voters approved purchase of a fairly new building (less than ten years old) to be adapted for court and administrative purposes. Washington County then purchased the building and adapted it to court use for a cost of about \$7.8 million. This project is somewhat unique in that it was largely financed with a mix of taxable and nontaxable bonds. The reason for this was that the building was a commercial building with private tenants who had a right to be there. There are certain building uses that do not conform to IRS regulations governing the privilege of issuing tax-exempt bonds, meaning that if a building has a high percentage of noneligible usage, it may be necessary to issue taxable bonds to cover renovation. Although this use of taxable bonds increases the cost of borrowing, it is partially offset by the revenue stream from tenants.

Washington county issued two series of bonds, one taxable and one nontaxable. Series A bonds were taxable revenue bonds in the amount of \$965,000, with an interest rate of 9 percent. The bond proceeds were to be used to acquire that part of the building occupied by private tenants for later conversion to court use and parking. The bonds were secured by pledging revenue from a sales and use tax. There was a mandatory redemption provision requiring surplus revenues to applied in inverse order of maturity. These bonds were retired very quickly. Nontaxable Series B bonds in the amount of \$3,385,000 were also issued. These bonds were also secured by pledging sales and use tax revenue. The interest rates were in the range of 6.1 to 6.8 percent; total interest at maturity was estimated at \$2,317,928.

3. Craighead County Annex, Jonesboro

In 1995 Craighead County undertook a \$3.2 million addition to house courts. This construction was financed largely from the proceeds of a sale of another county-owned building. Craighead County sold a hospital ten years ago for several million dollars and banked the money. The county treasurer did a good job maximizing the county's return. Some years ago the county bought a jail and then the court facility from the hospital proceeds. The hospital money will be almost exhausted after the court project.

4. Pulaski County Court House, Little Rock

An \$8 million renovation of the Pulaski County Courthouse was completed in 1994. This cost was paid for up front. The Quorum Court, Pulaski County’s legislative body, designated 1 mil of the existing property tax to raise revenue for the renovation project. Over three years this money was placed in a trust account managed by the Worthen Bank, which invested it. With tax funds and the interest generated, the county had \$8 million after three years—enough to fund the project without a bond issue.

The courts had to use other space during the renovation. The rental costs were paid out of operating funds.

5. Persons Contacted

Name	Title	Phone Number
James Gingerich	Director of State Administrative Office	501-376-6655
Keith Caviness	Staff Attorney AOC	501-376-6655
Boyd Darling	Accountant, Washington County	501-444-1708
Patrick Campbell	911 Coordinator, Craighead County	501-933-4500
Joleen Menear	Assistant Comptroller, Pulaski County	501-340-8392
Donna Wall	Deputy Treasurer, Pope County	501-968-2194
Gail Lutrell	Treasurer, Pope County	501-968-2194
Jim Alexander	VP, T.J. Raney, Little Rock (underwriters)	800-758-4155

E. CALIFORNIA

Summary: California has very strict limits on local indebtedness. Court facility financing is therefore often handled by certificates of participation (COPs) in lease revenues. Payments on the COPs are often made from courthouse construction funds fed by earmarked court fees. Los Angeles County provides a primary example of the use of COPs and court construction funds in the financing of court facilities. California also provides a good example of assistance provided by an association of counties to localities in need of technical assistance and expertise in financing court facilities. Finally, Sacramento County provides an example of lease-purchase

financing and subsequent refinancing through a local public facility financing corporation.

Courthouse Construction Funds: Except for the few appellate judicial facilities, California relies on counties to fund the financing of court facilities. As there are strict limits on local government indebtedness and tax authority, the use of local bond issues to finance court facilities is quite limited. The principal vehicle for funding acquisition, rehabilitation, and construction of court facilities has been the use of courthouse construction funds that are fed by an additional penalty or surcharge imposed pursuant to a resolution adopted by the board of supervisors.¹²⁸ The special penalties or surcharges are deposited into a special fund in the county treasury to be used for the purposes of court facility construction or rehabilitation.¹²⁹ In addition to the general provision on court facility financing there is another section of the code containing county-specific laws on courthouse construction funds.¹³⁰

California law distinguishes between a Courthouse Construction Fund and a Criminal Justice Facilities Construction Fund.¹³¹ The latter is more inclusive and less court-specific, but it does include courtrooms,¹³² meaning that court facilities could be constructed from either fund. The funding mechanisms are essentially the same for both funds.

Courthouse Construction in Less Populous Counties: This legislation does not aid all counties equally. Those counties with a limited caseload and a relatively nonaffluent population do not find this law to be very helpful. California has considered creating a state courthouse construction fund to ensure that less affluent counties receive more funds for courthouse construction.

The California State Association of Counties (CSAC) used to create pools of counties to reduce borrowing costs, in particular the cost of front-end expertise from bond counsel and financial advisers. The Tax Reform Acts of 1986 and 1988 sharply limited the flexibility of borrowers in the issuance of tax-exempt bonds, specifically the length of time bond money could be held and the use of arbitrage to offset borrowing costs. Under the current laws there must be definite projects to fund, so the use of “blind pools” is no longer an option.

¹²⁸ Cal Gov't Code § 76106. These additional costs tend to be on criminal and traffic cases, but some counties impose additional civil fees (see § 76238 pertaining to San Francisco).

¹²⁹ Cal Gov't Code § 76105

¹³⁰ Cal Gov't Code § 76200 et seq. This article contains special county legislation for a number of counties, including a very detailed statute for Los Angeles County (§ 76219). Most of these laws place a time limit on the fund, particularly if the fund is for a single facility. The Los Angeles fund is structured to fund multiple facilities and to be ongoing.

¹³¹ Cal Gov't Code § 76101

¹³² Cal Gov't Code § 76101(b)

CSAC Finance Corporation can still provide help to counties that lack in-house expertise, specifically through technical assistance with lease-finance programs, aid in selecting bond counsel, financial advisers, investment bankers, and trustees, and help with the preparation of standardized documents. CSAC Finance Corporation can directly provide some of the front-end expertise, and although CSAC does not loan money, it can and does serve as a go-between with banks.

If counties would pool their bonding needs in an open pool, up-front costs could be reduced. However, counties find it difficult to mesh their timetable with another county and fear that they will pay more if the other county has a weaker bond rating or defaults, although the latter fear is unfounded because of the way the debt instruments are drawn up.

City-County Pools: California permits governmental bodies to pool their resources in the construction of facilities.¹³³ The City of San Diego and San Diego County have entered into a joint powers agreement creating an agency to oversee and finance the construction of a combined courthouse-criminal justice facility.¹³⁴ The statute creating the agency permits the transfer of existing court construction and criminal justice construction funds to be used for the new facility.¹³⁵ This type of approach provides flexibility and scope as it combines the fiscal authority of the city and county. It is one of a number of flexible funding arrangements under California law.

CSAC-League of Cities Joint Powers Agreement: CSAC has joint powers authority with the League of Cities, which sometimes allows for more favorable terms with a lending institution. They can, for example, be a conduit for economic development bonds for small industry. CSAC can also issue tax revenue anticipation notes (TRANS).

Regional Criminal Justice Facilities: California law permits a board of supervisors to establish a county regional agency to finance the construction of regional criminal justice facilities (including court facilities) pursuant to a master plan adopted by the board.¹³⁶ The legislation permits a referendum to institute a “transaction and use” tax to fund facility construction and may also include authority from voters to issue limited tax bonds secured from the special taxes.¹³⁷

Transition Financing: Prior to the issuance of COPs, some counties used short-term financing to cover construction costs, typically bond anticipation notes (BANs) and occasionally grant anticipation notes (GANs). Some California builders propose turnkey construction in which the cost of interim financing is borne by the builder, which is

¹³³ Cal Gov't Code § 6584 et seq. (local bond pooling); § 6500 et seq. (joint powers agreements)

¹³⁴ Cal Gov't Code § 6520

¹³⁵ Cal Gov't Code § 6520(d)

¹³⁶ Cal Gov't Code § 26299.000 et seq.

¹³⁷ Cal Gov't Code § 26299.044

sometimes an attractive arrangement for borrowers who, until the completion of the facility, assume no cost for capitalized interest. Generally, however, investors have been chary of such arrangements unless the county establishes an escrow fund to cover construction costs, thus eliminating any savings from a delay in borrowing.

Such arrangements also include a “fast track” feature. Once the general frame has been designed, the builder starts ordering materials and proceeds with exterior construction. Work on the interior proceeds as the designs are finalized. An occasional complaint of court managers in California and elsewhere is that “fast track” turnkey projects sometimes produce facilities that are not well adapted to court use or lack the symbolic touches of a court building.

1. Certificates of Participation: The Los Angeles County Experience

In 1969, COPs came into use in Los Angeles County and largely replaced lease-revenue bonds. Currently, COPs are being sold in negotiated sales. It is difficult to sell them based on a general prospectus. Investors and underwriters have to be convinced of the underlying credit of the borrower. Basically, the COPs are paid from dedicated courthouse construction funds and secured by the building. The county assumes no general obligation. Typically, COPs are sold up front, but if a developer bears up-front costs (some offer this as an inducement), COPs are sold at the end of construction.

Los Angeles County uses two principal types of courthouse Construction funds possible under California law: the Criminal Justice Facilities (Temporary) Construction Fund (CJFTCF)¹³⁸ and the Courthouse Construction Fund (CCF).¹³⁹ The latter is restricted to courthouse construction; the former includes operational and maintenance costs as well as construction costs. The two funds have the same source, a fine surcharge; each fund receives approximately \$15-16 million per year for a total of \$30-32 million combined. These funds have been used to finance the courthouse construction plan established by Los Angeles County.

Since CCF and CJFTCF were established in 1980, Los Angeles County has relied exclusively on the two dedicated funds for all court construction and renovation, as well as debt payments, in order to free general fund monies of other pressing needs such as health and welfare.

The CCF has provided the funds to build six courthouses with 61 new courtrooms at a total cost of \$170.1 million. All but one were financed over the long term, with debt service paid from the CCF. A \$64 million, 25-courtroom Children’s Court (for dependency cases) was completed in 1992, with long-term financing paid from the CJFTCF. For the most part, however, the CJFTCF has been used for renovation

¹³⁸ Cal Gov’t Code § 76101. The code section does not use the word “temporary.” This word is added to the title in Los Angeles County.

¹³⁹ Cal Gov’t Code § 76219

projects, approximately half of which involved long-term financing. A total of \$95.1 million was paid out of the CJFTCF through FY 1994-95.

The CCF and the CJFTCF will be supporting the debt service on many projects for 10 to 25 more years. Unfortunately, revenues to the funds have declined in recent years, thus reducing the amount available for future construction and debt service. The condition of the funds has also been adversely affected by the IRS reform laws of 1986 and 1988. Prior to these laws, it was possible to take greater advantage of revenue-producing functions in a facility, such as rented parking spaces and even general parking fees. The limitations imposed by federal law have placed even more burden on the two construction funds.

In response, the County Board of Supervisors revised its Master Courthouse Construction Program in January 1994, authorizing only two additional courthouses requiring long-term financing and deferring construction and renovation of eight remaining courthouses authorized by statute.

The funds have been used as sources to retire certificates of participation. The procedure for issuance of certificates of participation in Los Angeles County is outlined below. It should be noted that Los Angeles County uses a tax-exempt, nonprofit organization, the Courthouse Corporation, as the vehicle for construction and leaseback of court buildings. It should further be noted that COPs are used to fund both superior and municipal court facilities, including joint facilities.

2. Sacramento

The Carol Miller Justice Complex in Sacramento was completed in 1991 at a cost of \$23 million on a lease-purchase agreement with the developer. Every aspect of the cost was capitalized: land, furnishings, building, and up-front costs. The court occupied about 62 percent of the facility and shared proportionately in the lease payments.

Early in the course of the lease-purchase agreement, the county decided that it would be more economical to purchase the facility through the Sacramento County Public Facilities Finance Corporation, which could issue tax-exempt bonds. The 25-year debt has a fixed interest rate of 5.5 percent. The various agencies in the building budget for their pro rata share of the annual payment, which is channeled into a fund called the 1990 Facilities Borrowing Fund. Operating costs are also paid on a pro rata basis by the departments and not by the Finance Corporation.

The type of financing used in Sacramento County necessarily involved consultation with the court administrator because the court budget would have to bear the pro rata share of the payment for rental. One factor in the decision was the budget position of the court and its ability to bear the rental.

**Figure 6
Legal Structure
Los Angeles County**

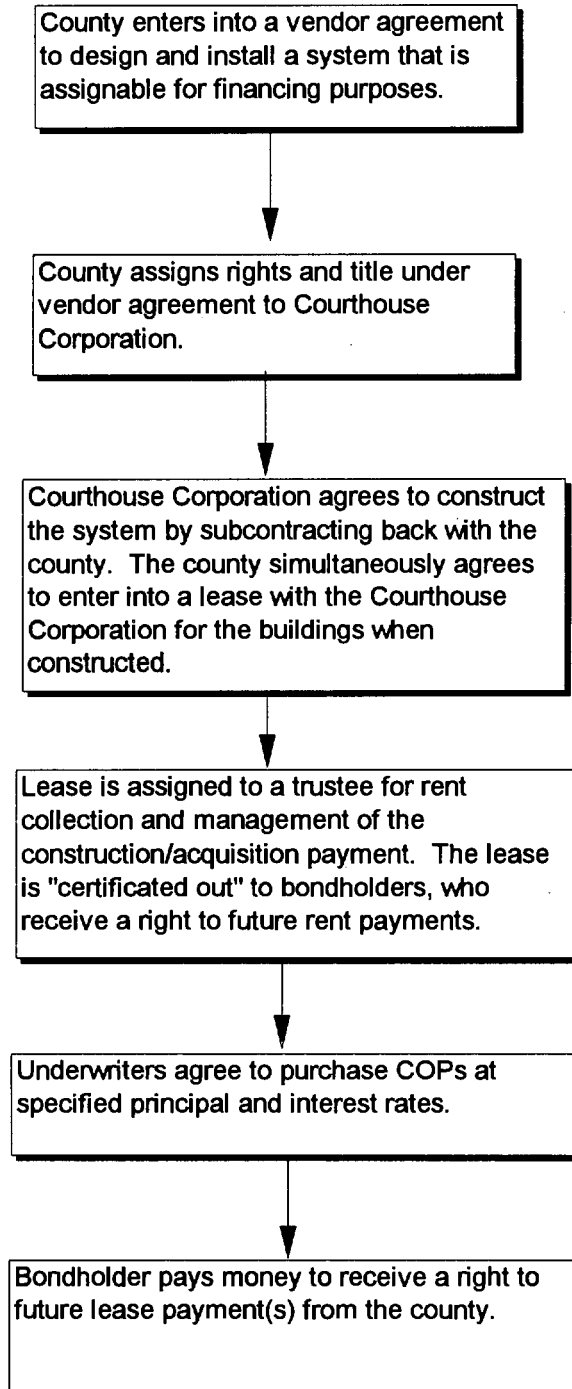


Figure 7
Long-Term Financing:
Flow of Funds at Closing and During Construction/Implementation
Los Angeles County

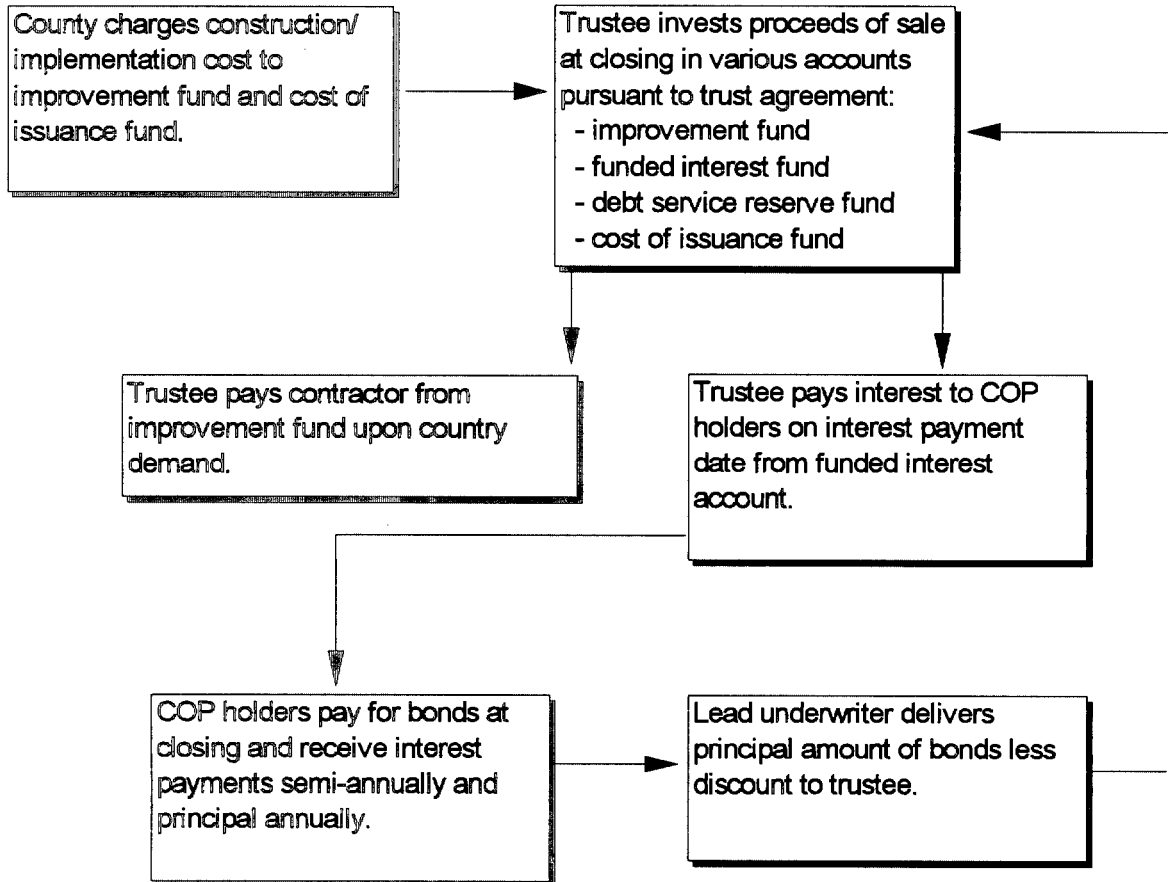
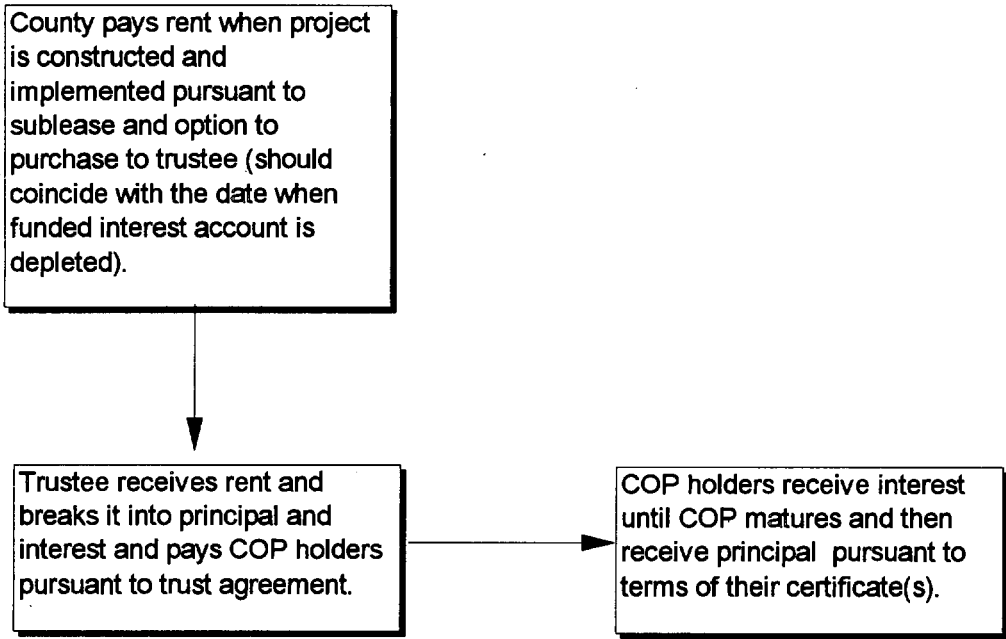


Figure 8
Long-Term Financing:
Flow of Funds to Trustee After Construction/Implementation
Los Angeles County



3. Persons Contacted

Name	Title	Phone Number
Norma Lamners	Director of Corporate Relations, California Association of Counties	916-327-7654
Sherri Camps	Court Administrator, AOC	415-396-9146
Julie Wheeler	Program Specialist, Chief Administrative Office, Los Angeles County	213-974-1131
Maureen Sicott	Director of Public Finance, Los Angeles County	213-974-7175

Name	Title	Phone Number
Linda Foster-Hall	Principal Administrative Analyst, Manager of Capital Construction Fund, Sacramento County	916-440-5256
Paul Knofler	Bond and Investment Analyst, San Jose	408-299-2541 x159

F. COLORADO

Summary: Colorado illustrates (1) some of the financial issues in a state where the state has principal responsibility for trial court financing but not facility financing; (2) use of COPs; (3) use of sales tax revenue to accumulate building funds before starting construction; and (4) donation of land to keep a court in the community.

The state administrative office of courts has facilities expertise and reviews courthouse construction and renovation projects. There are guidelines for court architecture that are used as a point of reference, but the AOC role is largely advisory and supportive inasmuch as counties provide the capital financing for trial courts. The state provides the furnishings and equipment in new courthouses and has to keep track of capital improvement programming for courthouses simply to ensure that the state operational budget of the judiciary reflects the added state cost related to courthouse construction and renovation. This is a phenomenon found in other states where the trial courts (except for court facilities) are state-funded.

1. Adams County

Adams County has initiated construction of a new 190,000 GSF courthouse due for occupancy in 1998. Construction will cost about \$25 million; with furniture, furnishings and equipment, it will cost about \$34 million. The land was donated by the City of Brighton in order to keep the court in the community. The site is northwest of Denver International Airport in Brighton.

The sales tax was increased by one-half cent in January 1995. By the fall of 1997 this tax will have generated \$34 million, which will provide enough money to stay on budget and on time without borrowing.

2. Jefferson County

Jefferson County is one of the major population centers of the state and in 1993 completed a county building that will allow for growth. The 580,000 GSF building includes 310,000 GSF for courts and 270,000 for county administration. The financing for the building took shape in 1988 through issuance of COPs. Construction began in 1991.

The COPs are issued by the Jefferson Finance Corporation, a three-person entity set up to avoid a general obligation bond issue by serving as a conduit for certificates of participation and as lessor to Jefferson County. The county writes its payment checks directly to the trustee bank, so the corporation is not in the stream of payment. The issue of COPs amounted to about \$87 million. The financing plan took into account that there were about \$16 million in outstanding COPs dating from 1985, which left \$71 million for the construction.

The county realized some increments to the basic construction funds: \$450,000 in liquidated damages for construction delay; \$5 million in county-paid capital improvements; and \$18 million in interest on investment of the proceeds. Tax-exempt COPs are within the IRS guidelines for arbitrage rebate. There is, however, no arbitrage liability if the interest rate earned does not exceed the interest rate being paid.

3. Persons Contacted

Name	Title	Phone Number
Ed Zimny	Director of Court Services, AOC	303-861-1111
Joe Lopez	Facilities Manager, AOC	800-888-0001 x732
Dave Strasburger	Director of Accounting, Jefferson County	303-271-8528
Bill Carpenter	District Administrator, 17th District	303-654-3205

G. CONNECTICUT

Summary: Connecticut provides a good illustration of a state-funded court facility program based on a capital improvement program financed by general obligation bonds. However, the projects cited in this monograph exemplify the design-build-finance and lease-purchase methods of financing, rather than more traditional methods of financing. Connecticut also provides an example of legislative reaction to financing methods that do not require public approval.

Connecticut courts are almost entirely state-financed. This includes a state responsibility for trial court facilities.¹⁴⁰ State law requires that there be "sufficient officers of the superior court for the efficient operation of the court,"¹⁴¹ with the number and location of such officers to be determined by the chief court administrator after

¹⁴⁰ Conn Gen Stat Ann § 51-27(a)

¹⁴¹ Conn Gen Stat Ann § 51-27b

consultation with the judges.¹⁴² Local governments (Connecticut abolished counties in 1961) have the option of assuming the costs for quarters and furnishings for the trial court serving their geographic area.¹⁴³

By statutory definition courthouses are considered “public buildings”¹⁴⁴ and fall within the general capital budgeting program of the state. The Secretary of the Office of Policy and Management is responsible for a state facility plan based upon submission and review of long-range facility plans prepared by the various state entities.¹⁴⁵ The Connecticut courts submit a capital budget. The chief court administrator is assisted by a facilities staff that oversees planning, design, maintenance, construction, and renovation of court buildings.

The Commissioner of Public Works is the state official responsible for implementing the facility plan and for providing help to state agencies in preparing cost estimates for their plans.¹⁴⁶ The Commissioner of Public Works, with the approval of the chief court administrator,¹⁴⁷ may also:

- lease court space from a municipality or other person;¹⁴⁸
- acquire courthouses;¹⁴⁹ and
- lease property for court purposes from a private developer.¹⁵⁰

It has been the traditional policy of Connecticut to finance major court facility construction through issuance of general obligation bonds. About 35 to 40 percent of the facilities are state-owned; the remainder are leased from private or municipal owners. The process of state bonding is very lengthy—five to eight years—so it is difficult to deal with situations in which a short time frame is required. The major alternatives to the traditional method of financing are lease-purchase and lease-financing. One example of a decision to use lease-financing is provided by the construction of a court facility in Middletown. An example of lease purchase is provided by the courthouse construction in Rockville.

¹⁴² Conn Gen Stat Ann § 51-27b

¹⁴³ Conn Gen Stat Ann § 51-27a(a)

¹⁴⁴ Conn Gen Stat Ann § 1-1(e)

¹⁴⁵ Conn Gen Stat Ann § 4b-23(a)

¹⁴⁶ Conn Gen Stat Ann § 4b-23(a)(e)

¹⁴⁷ Conn Gen Stat Ann § 51-27a(f)

¹⁴⁸ Conn Gen Stat Ann §51-27a(c)

¹⁴⁹ Conn Gen Stat Ann §51-27a(d)

¹⁵⁰ Conn Gen Stat Ann §51-27d

1. Middletown: Lease-Financing

A court facility was constructed in Middletown, Connecticut, on a design-build-finance program. The six-story, 131,000 SF facility, completed in 1994 at a cost of \$35.8 million, includes a 365-car parking garage. The project was completed ahead of schedule without cost-related construction change orders. The exterior of the building is precast concrete of two different colors. The interior houses arraignment rooms, criminal jury courtrooms, civil jury courtrooms, a family courtroom, hearing rooms, State Attorney offices, public defender offices, offices for the family division, bail commissioner's offices, adult probation offices (in Connecticut probation is within the judicial branch), a law library, and judges' offices. The construction was managed locally by the city, a departure from normal state practice.

The Middletown project was financed by COPs issued by a special purpose corporation that issued tax-exempt COPs at a rate somewhat above what the state would expect to pay on general obligation bonds. The method of financing differed from the lease-purchase method in the source of funds, the latter normally coming from a commercial loan, the former from the proceeds of the sale of certificates. Under both types of financing, the terms of the lease provide that the state will make payments that equal the principal and interest payments due on the lease security until the indebtedness is paid off and the title switches to the state.

2. Rockville: Lease-Purchase

The state used a lease-purchase arrangement to construct the Rockville Criminal Courthouse. The cost of the 75,000 GSF facility was \$21 million. The lease-purchase arrangement involved the state entering into a lease agreement with a developer that required the lessor-developer to obtain his or her own financing from a commercial bank. The state has all the responsibilities of ownership but leases the courthouse over a multiyear period, typically 20 years, with an option to purchase at any time for an amount defined in the lease agreement, with the amount declining over the course of the lease. Unlike bond-funded projects, ongoing lease payments are made from the annual operating budget of the judiciary.

The use of lease-purchase and lease-financing methods of financing attracted the notice of the legislature, which became concerned that these methods circumvented the legislature and the people. Moreover, they were concerned about the higher borrowing cost. The legislature requested a study by the treasury to determine if the Middletown project should be refinanced with general obligation bonds.

The treasury report indicated that this change would not be cost-beneficial because the interest rate on the COPs was only slightly higher than the rate on general obligation bonds, hardly enough to justify the cost of refinancing. An analysis of the Rockville financing structure revealed that it would be cheaper for the state to buy the facility by using general obligation bonds rather than to continue the lease-purchase arrangement.

3. Other Sites

One result of this reconsideration of financing methods was a reaffirmation of the state policy on using general obligation bonds. Facilities in Waterbury, New Britain, and Danielson are being built under design-build contracts with general obligation bond financing.

The Connecticut experience indicates that alternatives to traditional financing methods may become politically controversial even if there are sound reasons for their use in certain circumstances. In a strictly practical sense, the nontraditional alternatives have worked out well. The more fundamental issue is whether the control of the voters over incurring debt is weakened by such methods.

4. Persons Contacted

Name	Title	Phone Number
Joe McMahon	Director of Facilities, Administrative Office of the Courts	203-722-5812
Jim Cavanaugh	Executive Director, Administrative Services, AOC	203-566-4461

H. FLORIDA

Summary: In addition to bonding methods, Florida counties have frequently used sales tax revenue to fund court facilities. Florida also permits facilities to impose a facility fee on civil cases in circuit courts and county courts, but this fee is not earmarked for court facility construction. Some Florida courts have experienced “sick building” problems that have caused financial problems.

Florida law requires counties to provide facilities for trial courts.¹⁵¹ Florida law permits counties to impose facility fees in civil cases in circuit courts¹⁵² and county courts.¹⁵³ These fees are not earmarked for court use and usually go into the general fund. The amount raised by these fees is substantially less than the operating costs of court facilities and has little significance for court facility financing. In Pinellas County, where

¹⁵¹ West's Fla. Stat. Ann. § 42.28

¹⁵² West's Fla. Stat. Ann. § 28.241

¹⁵³ West's Fla. Stat. Ann. § 34.041

such fees exist by county ordinance,¹⁵⁴ the amounts raised represent roughly 15 percent of the cost of operating court facilities.¹⁵⁵

Florida has experienced a lot of facility construction, some of it financed by standard bonding and some financed in large part by sales tax revenue. Florida law permits counties to conduct referendums to approve the addition of a 0.5 or 1 percent surtax for some specific purpose such as a public building.¹⁵⁶ The add-on must be for a definite term, at which point the tax expires. When private space is leased, as it frequently is, courts may have the lessor make renovations and include the cost in the rental.

Some Florida counties, notably Palm Beach County and Polk County, have experienced major construction problems that have increased building costs. The “sick building” syndrome has proven to be very costly.

1. Polk County

Polk County completed a new court building in Bartow in 1987. This building is a ten-story structure containing approximately 500,000 square feet. It served as home to the court system, clerk of court, public defender, state attorney, and county probation. It soon became apparent that the building had a number of defects including water infiltration in the roof and walls and an air conditioning system of improper size. As a result, mold and mildew developed in the building, causing employees to become ill.

The repair of the building included removal of all the bricks to instill a vapor barrier and replacement of the roof, mechanical systems, ceiling, tile, and carpet. The estimated cost of the remedial repair was placed at \$36-38 million. The county has recovered \$12 million from the contractor and subcontractors and won a judgment of \$25.8 million against the contractor’s general insurer. The county failed to file a claim against the contractor’s public construction bond within one year of the project’s substantial completion. When the legal expenses are paid, Polk county will have a net loss of \$6-8 million.

County officials have identified three principal mistakes that led to the problem: (1) the design team was not familiar with courthouse construction, particularly the amenities and people flows (e.g., the building lacked a freight elevator and a loading dock, and the trash dumpster was one block away); (2) the contractor had a good reputation nationally, but the on-site representative simply executed the design, with all its flaws, and sometimes failed to follow the design at all; and (3) the responsibility for overseeing the construction was not clearly defined between the county and the design team.

¹⁵⁴ BCC ORD 87-56 (Pinellas County)

¹⁵⁵ A 1993 study by the National Center for State Courts fixed the annual operational cost for the 14 facilities housing court functions at \$4,784,317; facility fee revenue for the same period was slightly more than 10 percent of this amount.

¹⁵⁶ West’s Fla. Stat. Ann. § 212.055

2. Pinellas County

Pinellas County is creating a new criminal court complex . The project, which is phased, includes construction of a large 800-space parking area (\$4 million), construction of a new 340,000 GSF, 22-courtroom facility (\$30 million), and a renovation of the old courthouse's 160,000 GSF (\$8 million). Over and above the basic cost of \$42.2 million, there are a variety of other expenses for design, engineering, and contingencies that raise the cost to \$53.7 million. The new facility is scheduled for occupancy in early 1996.

To finance the construction, the county raised the sales tax from 6 to 7 percent for a ten-year period after approval in a referendum. The purpose of the tax was to avoid bonding and to set up an escrow account from which construction costs for roads and facilities could be paid. There will be sufficient funds in the escrow account, but short-term borrowing may be necessary from time to time to meet the actual monthly costs on an annual basis.

Officials in Pinellas County are aware of the problems in nearby Polk county and have themselves experienced a building health issue when it briefly appeared that fiberglass insulation in air handling units I and air conditioning ducts in the existing criminal courthouse might be causing Legionnaire's Disease. One ramification of the problem in Polk County is the perceived need for tighter control over construction. This militates against delegating broad authority to contractors under design-build contracts, particularly if the project is phased and complex.

3. Other Sites

There have been a number of recent examples of court facility financing in Florida, among them:

Dade County: The court arranged for purchase of a 29-story office building from the Resolution Trust Corporation. The court agreed with the county to raise filing fees to finance acquisition and renovation if the county would later fund the entire cost through general obligation bonds. County officials later decided to have the court finance the acquisition from fees and to use the bond financing for renovation. Unfortunately, the voters turned down the bond issue, leaving the courts to pay for both acquisition and renovation out of filing fees.

Palm Beach County: The county used revenue bonds to finance a major court facility that has some "sick building" problems. The county asked the citizens to approve conversion of the revenue bonds into general obligation bonds, a cheaper method, but the voters did not give approval.

Punta Gorda County: The county used a general obligation bond for facility construction and uses a one-half penny sales tax to support the bond.

4. Persons Contacted

Name	Title	Phone Number
Lisa Goodner	Deputy State Court Administrator	904-922-5082
Chuck Edelstein	Assistant Court Administrator, Dade County	305-375-5283
Donald Francke	Construction Administrator, Facility Management Division, Pinellas County	813-464-4418
Carl Barron	Director of General Services, Pinellas County	813-464-3494
Randy Oliver	Project Coordinator, Polk County	813-534-4045

I. GEORGIA

Summary: Georgia's experience illustrates how a state association of counties can provide assistance in court facility financing and the advantages of renovating buildings already owned by the county. Georgia also permits the imposition of an added 1 percent special purpose sales and use tax for courthouse construction, provided voters approve.

Georgia imposes upon counties the duty of providing court facilities.¹⁵⁷ Georgia permits a county commission to propose to the voters an ordinance that would add 1 percent to the sales and use tax for the purpose of capital outlay, including courthouses.¹⁵⁸ The tax is for a specified period. If debt is to be incurred, the voters must be so informed and also vote on that issue. Voter resistance has led some counties to use COPs (see below).

1. Dekalb County, Decatur, Georgia

Dekalb County has financed two court construction projects in recent years: (1) a new 17,000 GSF Recorders Court facility for \$2,615,000 financed by 15-year COPs with interest between 4.8 and 6.8 percent and level debt payments; and (2) a \$9.9 million renovation of a 120,000 GSF Callaway Square building for the State Court by issuing 20-year COPs with interest between 5 and 6.8 percent. The former was completed in 1993; the latter is scheduled for completion in 1996.

¹⁵⁷ Ga Code Ann § 36-9-5(a)

¹⁵⁸ Ga Code Ann § 48-8-111 (1) (B)

The renovation for the state court, now housed in the county courthouse with the superior court, is taking place in a freestanding office building built in the 1970s and owned by the county. The alternatives were to construct an annex or to purchase a vacant office building, both of which would have cost \$20-35 million, as opposed to \$9.9 million for the renovation of the existing county building. The renovation will require the modification of the HVAC and elevator systems to accommodate increased traffic flow in the building, as well as the remodeling of general office space to be used for court-related functions.

County officials did not feel voters were particularly sympathetic to incurring debt or taxation for construction and chose to issue COPs. The Association of County Commissioners of Georgia serves as a key party in the financing. The association purchased Callaway Square from the county for \$3 million, but because the proceeds could not be used for the renovation under IRS restrictions on pyramid bonds, the proceeds of the sale will be used on other capital improvement projects. The association handles the dissemination of COPs and takes title to the buildings until debt retirement. Normally, the county makes its COP payments to Wachovia Bank of Georgia, the trustee bank for the association.

This funding method is relatively expedient. It requires a vote of the county commissioners and requires no formal validation procedure. The cost of borrowing is, however, slightly higher, and the transaction may be more administratively cumbersome than the traditional bond sale.

2. Other Sites

There is a lot of court construction activity in Georgia, much of it in the Atlanta metropolitan area, where there has been an ongoing facility program since 1988 that includes various projects with various degrees of court occupancy.

County	Project	GSF	Date of Completion
Fulton	Fulton County Justice Center	401,276	7-93
Fulton	Fulton County Courthouse	256,724	2-95
Fulton	Justice Center Building	117,980	4-96 (est)

Courthouse construction has taken place in Cobb County and Cherokee County.

3. Persons Contacted

Name	Title	Phone Number
Bob Doss	State Court Administrator	404-656-5171
Renee Severson	Courts Designer, Duckett and Associates	404-435-8868
Dick Adams	Financial Management Analyst, DeKalb County	404-371-2763

J. IDAHO

Summary: Idaho has not had a lot of court construction activity in recent years but does provide some examples of putting together resources from multiple sources to fund court facility construction.

Idaho has a number of statutes relating to the construction of courthouses and court facilities. Idaho permits a special tax levy allocated to fund the district courts but does not allow expenditures from this fund for courthouse construction or remodeling.¹⁵⁹ However, county boards are required to provide court facilities and are provided many statutory options to achieve this purpose:

- enter lease-purchase agreements up to 30 years;¹⁶⁰
- seek voter approval of general obligation bond issues for purposes of construction;¹⁶¹
- create a County Building Construction fund fed by special tax levies approved by the voters, provided that the fund accumulates until it suffices to defray the entire cost of a building project, including equipment and furnishings (but the fund could be used to supplement bond issues);¹⁶²
- create a court facility fund fed by a \$5 fee on each civil case;¹⁶³ and
- create a county justice fund to accumulate money over a period of years to defray the cost of capital improvements.¹⁶⁴

¹⁵⁹ Idaho Code § 31-867

¹⁶⁰ Idaho Code § 31-1001

¹⁶¹ Idaho Code § 31-1002

¹⁶² Idaho Code § 31-1008

¹⁶³ Idaho Code § 31-3201(3)

¹⁶⁴ Idaho Code § 31-4602

1. Ada County, Boise

Ada County is contemplating the construction of a roughly \$50 million government and court building. County officials hope to finance the project without issuing bonds and have adopted a strategy of gradual accumulation of funds. Several years ago the county began appropriating \$1 million per year to buy the land for the building. The land acquisition is now completed, but the annual appropriation of \$1 million is continuing to cover project costs. The county is also planning to sell some buildings that now house offices that will be relocated to the new building. Other sources of revenue include court fees and costs, for example, a county justice fund that accumulates money from court fees (see legal section above).

The governmental entity that provides the courthouse receives all the fees. The City of Boise now provides the courthouse and receives about \$230,000 per year in court costs. This would go to the county if the county builds a courthouse.

2. Bingham County, Blackfoot

A new court facility was constructed in 1987 for \$5.2 million. The county acquired the land by a trade of parcels with the City of Blackfoot. The money came from federal revenue-sharing funds and federal PILT (payments in lieu of taxes) money that was saved and invested to fund capital projects. The revenue-sharing program is defunct, but the concept of advance saving is still pertinent. Moreover, the court building grosses \$400,000 per year from a jail in the building. When a jail serves a region or houses federal and state prisoners, it may produce a revenue stream to partially finance a facility.

3. Persons Contacted

Name	Title	Phone Number
Corrie Keller	Fiscal Officer, AOC	208-334-2246
John Traylor	Court Administrator, Fourth District Court	208-364-2100
Dave Arave	Chairman, Blackfoot County Board of Commissioners	208-785-5005 x211

K. ILLINOIS

Summary: Illinois permits court facilities to be financed by (1) revenue bonds issued by local building commissions that are established as separate government entities for the purpose of constructing, operating, and maintaining public buildings; and (2) adding millage to property taxes (with voter approval) to build regional juvenile justice detention facilities. Lake County provides an interesting example of a court

being integrated into a private sector setting near a shopping mall and leveraging a favorable lease because it increases foot traffic in the area.

The supreme court is given care, custody, and control of the supreme court building and implicitly the authority to maintain it.¹⁶⁵ The nonpersonnel expenses of the supreme court clerk are also provided for.¹⁶⁶ The state has a similar responsibility for the space needs of the appellate court.¹⁶⁷

The Illinois Supreme Court is permitted to set facility standards,¹⁶⁸ but counties bear the burden of furnishing trial court facilities.¹⁶⁹ As in most states, there are significant disparities in the affluence of counties and their ability to provide facilities. Illinois decided as early as 1955 that many local governments could not provide adequate facilities for governmental purposes. The legislature made the following finding:

It is hereby found and declared that there exist in many county seats and municipalities within the state inadequate and outmoded public improvements, buildings and facilities for furnishing of essential government services.¹⁷⁰

The legislative solution was a law authorizing local government bodies to establish public building commissions, which are municipal corporations separate from other municipal corporations. The Illinois legislation described the mechanism as follows:

A Public Building commission may be created for the limited purpose of constructing, acquiring, enlarging, improving, repairing or replacing a specific public improvement, building or facility.¹⁷¹

Public building commissions have been used to construct court facilities (e.g., a juvenile detention center in St. Clair County and renovation of the Lake County court facilities in Waukegan). A public building commission can issue revenue bonds¹⁷² and may be dissolved when its purpose is accomplished.¹⁷³ The revenues of the commission are rentals paid by the governmental entity occupying the facility.¹⁷⁴ Public building

¹⁶⁵ Ill Rev Stat ch 37 § 24a

¹⁶⁶ Ill Rev Stat ch 53 § 28.1

¹⁶⁷ Ill Rev Stat ch 37 § 42

¹⁶⁸ Ill Rev Stat ch 34 § 432(6)

¹⁶⁹ Ill Rev Stat ch 34 § 432(1)(6). See also ch 37 §§ 72.33, 72.34, which deal with temporary and emergency court facilities.

¹⁷⁰ Ill Rev Stat ch 85 § 1032

¹⁷¹ Ill Rev Stat ch 85 § 1034a

¹⁷² Ill Rev Stat ch 85 § 1044(m)

¹⁷³ 1980 Op Atty Gen N 80-038

¹⁷⁴ Ill Rev Stat ch 85§ 1044(h)

commissions in some counties are the vehicle by which public buildings are constructed, operated, and maintained. They are also the vehicle for financing capital improvements.

Illinois law also permits the use of special tax levies to construct juvenile detention centers.¹⁷⁵ The law requires that the voters of a county approve a special tax levy to construct a juvenile detention center.¹⁷⁶ If the construction is approved in a referendum, the legislation specifies the following implementation steps:

- imposition of a special tax levy to support the center's construction and operation;¹⁷⁷
- creation of a special fund in the county treasury to pay the expenses of the center;¹⁷⁸ and
- a tax levy to retire bonds issued for the construction of the center.¹⁷⁹

Juvenile detention centers have been erected under this Illinois law in several regions of the state (e.g., Sangamon County [Springfield] region). The host county may agree to accept minors from other counties.¹⁸⁰ The payments from user counties are normally treated as revenues to the Juvenile Detention Home Fund.

1. Lake County

There is a branch court located near a large Waukegan shopping mall in Lake County. This court, which handles a high volume of minor cases, illustrates an interesting example of public-private cooperation. The mall was not attracting as many shoppers as it desired and was amenable to a proposal to allow the establishment of a branch court in the environs of the mall. The mall operators selected a site that had been vacant for a number of years and was adjacent to the mall (the covenant limited the location of a noncommercial establishment in the mall proper). The court leased 8,000 square feet of space for courtrooms, clerical space, and public areas at \$4 per square foot for a five-year period; the rent goes up to \$6 per square foot after the initial lease period, but will still average \$5 per square foot. The court negotiated a favorable lease rate because it would draw 250 to 500 people daily to the mall area.

¹⁷⁵ Ill Rev Stat ch 23 § 2681

¹⁷⁶ Ill Rev Stat ch 23 § 2681. Counties with a population of more than 300,000 and less than 1,000,000 may establish a juvenile detention home without a referendum, as may other counties if they finance the home from the general fund rather than from a special tax levy.

¹⁷⁷ Ill Rev Stat ch 23 § 2685

¹⁷⁸ Ibid.

¹⁷⁹ Ill Rev Stat ch 23 § 2685.1

¹⁸⁰ Ill Rev Stat ch 23 § 2689

Lake County has also done extensive renovation of its main courthouse location in Waukegan (about \$26-27 million). This renovation was accomplished through the local Public Building Commission, which holds title to the county buildings in downtown Waukegan and receives rentals from the county for operating and maintaining the building. Apparently, for a number of years the rentals exceeded the actual costs, so the Commission accumulated a surplus of \$11-12 million that was available for capital purposes. This still left about \$15 million to be raised for renovation.

The county, like all Illinois counties, is struggling under a tax cap and undertook an analysis of its payments to the Commission. This took the form of a ten-year comparative projection of the operational and maintenance costs (including some major replacements and repairs) and the rentals that would be received. The projection, which was quite conservative, revealed that the Commission would have a surplus adequate to cover the full renovation. The Commission, which was given a high bond rating, issued limited revenue bonds with a ten-year maturity date. These bonds were purchased by local banks at very low interest rates, i.e., less than 4 percent. As is often the case, the analysis that led to the financing scheme was driven by economic necessity.

2. Other Sites

In 1992 Dupage County completed a roughly 362,000 GSF, \$45 million court facility project. In the same year Sangamon County (Springfield) completed a 321,000 GSF, \$33 million project to construct a county building including courts and detention facilities.

3. Persons Contacted

Name	Title	Phone Number
Mary Cary	Facilities Specialist, AOC	312-793-6207
James Janda	Facilities Manager, Lake County	708-360-5985
Bob Zastany	Court Administrator, 19th Judicial Circuit	708-360-6480

L. KANSAS

Summary: Kansas has not experienced much courthouse construction. The state has a few urban counties that are growing, but most counties are declining in population. Such construction as has occurred has been in counties that are relatively urban. The financing of courthouse construction and renovation has been characterized by use of dedicated tax revenues, either sales taxes or property taxes and short-term defeasance of bonds, sometimes in advance of the first call date.

Kansas counties have the responsibility for providing courthouses.¹⁸¹ Kansas law permits a variety of financing methods, most of them specific to certain counties. Among these are laws permitting certain counties to impose special sales tax levies with voter consent¹⁸² and to impose special property tax levies by resolution of the county commission.¹⁸³ In the latter case, the law restricts the millage and the percentage of total assessed valuation represented by the levy, and an election must be held if a petition of objection is filed and attracts sufficient signatures.

Kansas law also permits counties to create public building commissions empowered to construct court buildings and to rent them back to the county for use by the courts.¹⁸⁴ County commissions are empowered to pledge tax revenues to back up the rental payments that are the basic security for bonds issued by the building commission.¹⁸⁵

1. Montgomery County Judicial Center

The new Montgomery County Judicial Center, located in Independence, Kansas, was started in 1988 and completed in 1990 at a cost of about \$6 million. The court occupies about 30 percent of the building, which also houses the jail, sheriff, county attorney, and emergency preparedness.

To finance the courthouse, the county increased the sales tax by one cent with the approval of the voters in 1987. The proceeds went into a special fund with the condition that the tax would lapse when the building was paid for. Tax revenue bonds were issued through a local bank. It took only two and a half years to generate the \$6 million, and there was a \$40,000–50,000 surplus. In fact, when the bonds were issued in November 1988, the special fund contained ten months of sales tax collections. The county always had money to invest in government securities and was able to use this revenue to pay debt service.

The first interest payment was in June 1989 (interest was payable semiannually), and the first principal payment was in November 1989. The bonds had a seven-year maturity period with an interim call period. The bonds were defeased in three and a half years as the amount of money in government securities was then enough to retire the bonds.

This form of financing proved popular. Sales tax revenue is generated not only from county residents but transients and visitors from other counties. By paying the

¹⁸¹ Kan Stat Ann § 19-104. Courthouse construction is exempted when computing bonded indebtedness for purpose of debt limitation. Kan Stat Ann § 10-307.

¹⁸² Kan Stat Ann § 12-187(b)(2)

¹⁸³ Kan Stat Ann §§ 19-1572(c); 19-1573

¹⁸⁴ Kan Stat Ann § 12-1757

¹⁸⁵ Kan Stat Ann § 12-1758

bonds quickly, the county realized great savings in interest. There was a very positive feedback on paying off the debt quickly and ending the special tax levy.

2. Johnson County

Johnson County is within the Kansas City metropolitan area and is one of the fastest-growing areas in the United States. It is in the process of extensively renovating a court facility at Olathe. Six floors of the current courthouse will be affected at a cost of about \$7.6 million. The court will occupy about 75 percent of the facility.

The renovation will be done in three phases, the first to start in December 1995. The renovation is scheduled for completion in 1998. The renovation is being financed through a public building commission. The county commissioners serve as the public building commission, so that there is a totally interlocking control. The public building commission can issue lease revenue bonds, but the public building commission is simply a conduit for county rental payments to the trustees. The use of the commission circumvents the need for a referendum and has the advantage of speeding up the process of renovation.

The bonds are marketed competitively and have a very high bond rating (AA1) because the county has pledged property tax revenue to back up the rental payments. The county is authorized by law to add up to 1 mil to the property tax for this purpose. The current millage for public building construction is 0.6 mil. The levy is reviewed every four years. The maturity period will be 20 years, with variable interest (4.87 to 8 percent) and level principal payments, so the payments will decline over time.

The key to this financing is the use of the building commission and the special tax levy.

3. Persons Contacted

Name	Title	Phone Number
Fred Jamison	District Court Administrator	913-764-8484 x5468
Ron Cousino	Finance Officer for Public Building Commission and Director of Financial Management, Johnson County	913-764-8484 x5534
Glenda Hubbard	Clerk of Court, Montgomery County	316-331-2550
Jerry Sloan	Financial Officer, AOC	913-296-2256

M. KENTUCKY

Summary: Kentucky illustrates (1) state subsidization of court facility construction and renovation by counties; (2) tying local government subsidies to facility standards and state-wide approach to facility financing; (3) use of an association of counties to assist smaller counties to obtain capital financing; and (4) county use of local holding companies to issue tax-exempt revenue bonds for construction.

Kentucky was one of the first states to undertake financing of trial court facilities, largely through state payments to counties for judicial occupancy of county-owned facilities.¹⁸⁶ Kentucky legislation has an extremely detailed definition of the obligations of local governments to provide facilities.¹⁸⁷

Within Kentucky's Administrative Office of Courts a Facilities Management Section works with county officials to determine space requirements for courts and to design occupied space. A Court Facilities Standards Committee is responsible for reviewing and approving all court capital expenditures.¹⁸⁸ Each biennium, the Facilities Management Section submits a six-year capital plan for the judicial branch to the Capital Planning Advisory Board.

In determining court facility payments to counties, the state uses two types of reimbursement: (1) operating cost allowances and (2) use allowances.

"Operating cost allowance" means compensation equivalent to the annual expenses borne by the unit of government for utilities, janitorial service, rent, insurance and necessary maintenance, repair and upkeep of the court facility, which do not increase the permanent value or expected life of the court facility but keeps it in efficient operating condition, and at the election of the administrative office of courts, capital costs of interior or mechanical renovations for the benefit of the court.¹⁸⁹

"Use allowance" means compensation equal to four per cent (4%) annually of the total original capital costs and the cost of capitalized renovations of the court facility, except that if indebtedness has been incurred in respect to such capital costs at a constant annual interest rate equal to or greater than seven per cent (7%), compensation shall be at a rate of eight per cent (8%) annually of that portion of the capital costs for which the rate applies: Except that in the case of court facilities renovated or constructed after July 1, 1994, "use allowance" means the court's proportional share of the annual principal and interest cost in connection with the renovation or

¹⁸⁶ Ky Rev Stat Ann § 26A.115(1)

¹⁸⁷ Ky Rev Stat Ann § 26A.100

¹⁸⁸ Ky Rev Stat Ann § 26A.107

¹⁸⁹ Ky Rev Stat Ann § 26A.090(1)

construction, but not to exceed eight per cent (8%) annually of capital costs, or, if there is no debt, four per cent (4%) annually of capital costs.¹⁹⁰

The computation of the use allowance is based on percentage of occupancy and the following steps: (1) find original cost and capital value; (2) ascertain major changes in the physical plant and ascertain current capital value; and (3) multiply the current capital value by the percentage of occupancy by 4 percent. This use allowance is paid out quarterly at the beginning of each quarter. If there is major renovation, the state annually pays the court's proportionate share of principal and interest, not to exceed 8 percent, until the bonds are retired, at which point the state drops back to a 4 percent payment as long as they occupy the building. Based on the statutory formula, the state pays a large portion of the debt service on new construction.

Many Kentucky courts are located in county government buildings occupied by various county agencies. Thus, the precise amount of the allowances for operational costs and for the debt service incurred by counties for court facilities is determined by having courts pay their proportionate share based on the percentage of space occupied by the court in the facility,¹⁹¹ excluding common space such as halls and bathrooms. No use allowance is paid unless prior approval of the construction or renovation was obtained from the Court Facilities Standards Committee, with permission of the chief justice, to acquire or lease privately owned facilities if the local government cannot provide adequate facilities.¹⁹² Courts may also contract for "extraordinary specialized facilities."¹⁹³ A court facility entirely dedicated to court purposes can be transferred to the Commonwealth provided that the Kentucky Administrative Office of Courts certifies that it will maintain the facility.¹⁹⁴

In actual practice, trial court facilities are county-owned, so that any construction or renovation must involve county cooperation, which is usually pretty good if the state pays its share. If the county chooses not to fund construction, the state administrative office of courts may seek help of another local government (e.g., a city), lease space from the private sector, or handle the construction directly. Roughly 13 percent of the state operating budget for courts (\$101 million in FY 94) was attributable to facility costs, primarily operational costs.

Because of the state's involvement, new construction or major renovation projects must be approved by the legislature. The Court Facilities Standards Committee reviews schematic design and full projected costs of proposed facilities. This nine-person body includes the chief justice or an appointee, a court of appeals judge, a circuit judge, a

¹⁹⁰ Ky Rev Stat Ann § 26A.090(2)

¹⁹¹ Ky Rev Stat Ann § 26A.115

¹⁹² Ky Rev Stat Ann § 26A.100(5)

¹⁹³ Ky Rev Stat Ann § 26A.120(2)

¹⁹⁴ Ky Rev Stat Ann § 26A.130

district judge, a county judge appointed by the governor (in Kentucky this term "county judge" applies to an official with executive authority in the county government), president of the circuit clerks association, secretary of finance of the executive branch, and chairmen of the senate and house judiciary committees. If this committee approves a project, there is a good chance that it will be approved by the legislature. In 1992, however, ten projects were proposed and none approved because of the budget situation. More typical was 1990, when five of eight projects were approved, and 1994, when eight of nine projects were approved. The Kentucky Administrative Office of Courts has eight people in the facilities area and often has a waiting list of projects waiting for review and approval. In March 1995, there were 18 projects awaiting approval.

The system works best when small capital projects are involved. Pending are proposals for \$40-50 million projects in Fayette County (Lexington) and Jefferson County (Louisville). If these are funded, it might make it difficult to obtain approval of other requests for a while. One possibility to increase the level of funding is to maintain the appropriation level at 8 percent of cost after bonds are retired, using the excess above 4 percent to provide a sustaining basis for court facility construction. Another possibility is that the state will enter into lease-purchase agreements and take title to court buildings when bonds are retired, thus avoiding the unending payment of a 4 percent use allowance. But generally, counties do not want to have the state take title because they have a pretty good deal under the present system of financing. Some counties report that the rental from the state exceeds the operational cost of the facility, creating a small surplus for the general fund.

Another problem, which is common to other states with many nonpopulous counties, is a constitutional requirement that every county must have a circuit court. Financial pressure may lead to a situation in which a number of counties will be treated as something less than full service courts and video arraignments will transcend county lines.

Many Kentucky counties have trouble with capital financing. Kentucky's Constitution does not permit general obligation debt, unless voted upon by taxpayers, and so local officials often bypass the referendum process by adopting an ordinance which covenants that the county will dedicate a portion of its budget each year towards meeting the rental payments of the facility being constructed. These rental payments are used to pay the principal and interest on tax-exempt revenue bonds issued through a holding company set up by the county. The holding company issues the revenue bonds, holds title to the courthouse, and then leases it back to the county. In order to improve the marketability of the revenue bonds, the Kentucky Administrative Office of Courts may sublease all or a portion of the space from the county and make the rental payments directly to the trustee for the bondholders.

Counties are permitted by the Administrative Office of Courts to arrange their own mode of financing. Counties can either employ a financial advisor and publicly bid their bonds, awarding the issue to the lowest and best bidder, or they can turn to a pool

financing arrangement administered through the Kentucky Association of Counties (KACO).

KACO has been active in helping counties, particularly small counties without a strong financial posture. By securing loans of small counties, KACO has helped these counties receive bond ratings similar to those of the larger more urbanized counties. KACO has created a County Leasing Trust (COLT) that leases buildings to counties, allowing counties to avoid bond referendums and limits on borrowing. The use of COLT also increases speed to completion and avoids the costs of bond counsel, underwriters, and closing costs. The normal COLT schedule is based on amortization over 20 years with monthly interest payments and annual principal payments. Title reverts to the county at the end of the period.

Kentucky law permits interlocal agreements under which KACO, as the sponsoring agency, arranged for a \$200 million bond issue in the name of Pendleton County on behalf of all Kentucky counties. This arrangement was secured by a letter of credit from the Commonwealth Bank of Australia, which holds title to all the property until the debt is paid off. The bond issue had a 20-year maturity date and a rate of 5.85 percent. Because the bond issue was in process prior to the 1986 federal legislation curbing arbitrage on tax-exempt bonds, the bond issue was exempted for three years from the 1986 tax code (PL 100-647, adopted November 10, 1988). The actual interest rate was 1 percent lower because of three years' positive arbitrage.

In 1993, \$100 million of the \$200 million was refinanced to take advantage of the unusually low rates. The original bonds were short-term variable bonds to take advantage of anticipated interest declines. The new issue was for 25 years at a fixed rate. There were no arbitrage provisions. Court facilities in Caldwell County are being financed through COLT.

1. Miscellaneous Sites

County	Type of Facility	Type of Construction	Date of Completion	GSF (% Court Space)	Estimated \$ (000)
Ballard	Main Courthouse	Renovation	Jan. 1997	18,639 (100%)	\$2,100
Floyd	General Government	New	June 1997	60,000* (100%)	\$8,740
Lincoln	Annex	New	July 1996	18,854 (63.4%)	\$1,495
McCracken	Main Courthouse	Renovation/ Addition	April 1997	84,000 (65.3%)	\$8,565

Maine

County	Type of Facility	Type of Construction	Date of Completion	GSF (% Court Space)	Estimated \$ (000)
Union	Annex	New	March 1996	15,170 (68.8%)	\$2,035
Franklin	Main Courthouse	Renovation	Oct. 1995	18,482 (89.5%)	\$2,288

* Includes a parking garage with 20,000 square feet.

2. Persons Contacted

Name	Title	Phone Number
Harry Hoffman	General Manager for Facilities, AOC	502-573-7486
Leesa Thompson	Facilities Review Officer, AOC	502-573-2350
Duane Ellis	Franklin County Treasurer	502-875-8747
Van Knight	County Judge Executive, Caldwell County	502-365-6660
Johnda Billiter	Pike County Treasurer	606-432-6260
Todd Switzer	Assistant Administrator of County Leasing Trust, Kentucky Association of Counties	502-875-3222
Bob Harrod	Administrator of County Leasing Trust, Kentucky Association of Counties	502-875-3222

N. MAINE

Summary: Maine has undergone severe budget problems and yet has managed to continue a program of facility construction and renovation. The state illustrates (1) the pooling of state and county resources in facility construction; (2) the use of a judicial building authority to facilitate court facility financing; (3) the use of lease-purchase agreements to fund facilities; and (4) the conversion of privately owned property to court use.

Maine has a largely state-financed court system. The state is responsible for providing district court facilities, and counties are responsible for providing superior court facilities.

The Maine Court Facility Authority was established to finance court facilities by issuing revenue bonds payable through a debt service item in the operating budget of courts.¹⁹⁵ The bonding authority is \$25 million aggregate outstanding.¹⁹⁶ The intent of the legislation was to help construct relatively small facilities of the type used in the limited jurisdiction courts (district courts) rather than major general purpose facilities. Because the facility needs of the judicial branch would not warrant an entirely separate judicial building authority, the executive branch building authority also serves as the judicial building authority.

1. Cumberland County

Cumberland County is the most populous county in the state, containing Portland, the state's largest city. The trial court facility in Portland was the site of a project to build an approximately 40,000 GSF annex (excluding the parking garage) for the district court and superior court at a cost of \$12 million, of which \$9 million was for the district court. Under Maine law, the district court facilities are provided by the State of Maine and those for the superior court are provided by the counties. The project thus became an interesting exercise in pooling state and county financing. The district court share was financed through revenue bonds of the Maine Judicial Building Authority; the county share was financed through a general obligation bond issue. The ownership issue was resolved by having the state and county enter into a condominium arrangement. The project was completed in 1989. The project worked out well in the end, but participants felt that the difficulty of negotiations and design issues was greatly complicated by having two government entities involved.

2. Waterville

A new 10,000 GSF district court facility in Waterville was constructed on a lease-purchase, build-to-specifications basis from a contractor as part of a general government complex. The lease was for 20 years, with the first two years of payment set at half the remaining payments. The cost of construction was considerably less than that for other district court facilities built through the building authority, but it was a "plain vanilla" facility, i.e., much more functional and less "judicial" than the other facilities. The project represents an interesting trade-off between cost and speed on the one hand and style and appearance on the other.

¹⁹⁵ Maine Rev Stat Ann § 601 et seq.

¹⁹⁶ Maine Rev Stat Ann § 1606

3. York County

A District court facility in the town of York was purchased from the Resolution Trust Corporation for \$543,863, the equivalent of two and a half years of rent. The sale price was sufficiently low that there was an obvious cost benefit to the court in acquiring rather than renting the facility.

4. District Court Facilities Financed Through the Judicial Building Authority in the Last Five Years

Maine has very severe budget problems but has, nonetheless, managed to maintain some regular facility construction, as indicated in the grid below.

Data Items	Presque Isle	West Bath	Skowhegan	Biddeford
Type of construction (new, renovation, annex, etc.)	New	New	New	New
Gross Square Feet	10,000	10,000	8,000	8,000
Estimated Project Cost	\$3,300,000	\$3,100,000	\$3,000,000	\$3,000,000
Actual Project Cost	\$3,300,000	\$3,700,000* (overrun)	Not yet constructed	Not yet constructed
Amount of Bond Issue	\$6.9 million**	Included in Presque Isle bond issue	\$7,000,000	Included in Skowhegan bond issue
Type of Bonds	Revenue Serial	Revenue Serial	Revenue Serial	Revenue Serial
Period of Indebtedness	25 years	25 years	30 years (tentative)	30 years (tentative)
Interest Terms	5.4%	5.4%	6.3% (tentative)	6.3% (tentative)
Method of Sale or Underwriting	Underwritten by Prudential Bache	Underwritten by Prudential Bache	Unknown	Unknown

* There were overruns on this contract and major disputes with the contractor, who sued the court for his inability to live within the contract and won. The judgment was appealed. In 1995 the court was facing major losses, \$600,000 or more from the litigation.

** In 1993 the bond issue was refinanced along with the bonds for the district court in Portland.

5. Persons Contacted

Name	Title	Phone Number
Robert Freeman	Director of Finance, AOC	207-822-0792

O. MARYLAND

Summary: Maryland is one of a small group of states where the state has assumed financial responsibility for the facilities of limited jurisdiction courts (district courts)

but not general jurisdiction courts (circuit courts). In financing district court construction, Maryland provides a good example of pragmatic and flexible use of financing methods, applying, as required, a mathematical model to help make decisions on whether to rent or to construct facilities.

Using an Industrial Development Authority, Prince George's County has constructed a major circuit court facility that has some income streams from the state that reduce the cost of borrowing for the county. The original bonds were refinanced in 1993 at a considerable saving.

The District Court of Maryland is managed on a statewide basis, so its facility decisions normally involve the chief judge for the statewide court. The financial planning is done by the Chief of Master Planning and Assessments for the Maryland Department of General Services, an executive branch agency. This official has a major role in determining whether it makes dollar sense for the state to lease a court facility or to construct it.

The state capital plan for district courts calls for reducing the number of leased facilities and creating, when cost-beneficial, state-owned facilities. In 1995 there were 11 state-owned, multi-service facilities and 5 leased facilities. The concept of "multi-service facilities" is part of an overall state effort to consolidate state service functions in regional centers rather than have a proliferation of facilities where state services are provided to the public. Under this concept, district court facilities in many parts of the state are in multi-service facilities shared with other state agencies that deal with the public.

The state uses economic modeling to determine whether it is financially preferable to rent or acquire property. In recent years, there has been an oversupply of commercial rental space, which raises the attractiveness of rental. Rental costs and construction costs vary by county, so that modeling produces different conclusions on the best financing approach. The model used by the state to determine life cycle costs uses the following factors:

Existing Rental Costs

- 1) base rental rate
- 2) escalation and other costs not in base lease
- 3) inflation
- 4) increase of lease rate to market value at time of renewal

Acquisition Costs and Recurring Cost of Operations

- 1) base building acquisition and construction costs
- 2) land acquisition costs
- 3) annual operating expenses
- 4) annual maintenance expenses
- 5) unique tenant requirements beyond basic facility

- 6) inflation
- 7) debt service, cost of capital, and related finance charges

Using these factors in its model, the state determines total annual expenditures to maintain a lease portfolio and to acquire and operate comparable facilities on a nominal, future dollar basis. For each alternative, annual costs are determined for the various factors described above and summed as totals for each year. Based on these annual totals, a net present value is determined over a 40-year term and compared on a unit area basis.¹⁹⁷

The assumptions underlying the model are:

- all costs accrue at the end of the fiscal year;
- fiscal year assumed to start on July 1 and end the following June 30;
- annual inflation rate for variable expenses assumed to be 5 percent;
- net present value calculated using a 6 percent discount;
- base rental rates assumed not to escalate during lease term and are increased by 15 percent every five years to reflect market factors at renewal. For a given county portfolio, the first escalation factor is applied at the end of the third year and then every five years thereafter;
- data provided assumed to accurately reflect market conditions at time of acquisition, rehabilitation, and throughout lease terms;
- all operating costs are fully subject to inflation;
- debt structure based on the following factors: employment of a Maryland 15-year bond at 5.8 percent interest; interest on outstanding principal paid in equal semiannual disbursements over bond term; principal amortized in annual disbursements over last 13 years of bond term; and interest and principal paid in continuous amounts and not in discrete \$5,000 increments;
- proposed facilities are physically adequate for proposed functions; and
- termination charges for leases not considered.

The interesting feature of the financing of district court facilities is the variety of approaches that have been taken. Based on separate assessment of each local facility, a decision is made on state ownership, location in county facilities, or private sector rentals.

Because the state has primary responsibility for financing district court facilities, the state normally acquires or builds facilities and finances the acquisition through state general obligation bonds that have a rating of AAA. Access to this funding is through the

¹⁹⁷ See *District Court/Multi-Service Center Program, Long Term Strategic Planning for Additional Centers*, State of Maryland, 1993, pp. 35-36.

state capital financing process, so that if a court project is approved by the General Assembly and the State Board of Public Works approves issuance of bonds, the court may proceed to draw down capital funds as needed. No public approval is needed. If, however, the court is not faring well under the capital plan (i.e., its projects are given low priority by the Department of Budget and Fiscal Planning)¹⁹⁸ and some compelling urgencies of time exist, other methods are employed, although these may be more costly than general obligation bond funding. The variety in financing methods is illustrated below.

State G/O bonds: A new facility for the Annapolis District Court is in the early stages of implementation. The 75,700 GSF, \$16,470,000 building (land, furnishing, and design costs are capitalized) will be completed in 1997 and will be financed with state general obligation bonds, as will a district court facility being planned for Baltimore at about the same time.

Lease-purchase arrangement financed through a county building authority: A 78,000 GSF, roughly \$8 million facility in Hyattsville will be financed through the Prince George's County Revenue Authority, which entered into a lease-purchase contract with a contractor according to court specifications. The money for the court facility was covered by a \$30 million bond issue including other buildings. The payments made by the authority are reimbursed by the state, thus providing the underlying security for the bond. The AA rated bonds of the county authority are more expensive for the government than the state AAA bonds, but the fast retirement of the debt—15 years—and the level debt payment made the arrangement advantageous.

A similar arrangement was made for a court facility in Towson, except that the bond issue was solely for the court facility, not part of a larger bond issue.

Operating lease: Unlike the capital-lease arrangement in Hyattsville, an operating lease is less binding and more short-term. In Ocean City the court rented space renovated according to court specifications. The term of the lease is five years. The lease payments in this five-year period are high to repay the capital costs (\$1.5 million), but the payments drop after five years. The court could move out at any time by covering the unamortized capital costs. This type of arrangement is appropriate when it is likely that facility needs will change in the near future.

1. Prince George's County

In 1991 a major additional court facility was constructed in Upper Marlboro for about \$80 million, including some capitalized furnishing and up-front costs. The building has 365,650 GSF, of which 137,742 is occupied by state agencies that pay about 10 percent of the debt service under a 30-year lease that is renewed in 10-year increments. The state

¹⁹⁸ There is a prioritized list of 15 district court facilities to be developed over the next five years.

also made an \$18 million up-front payment. The facility has some 985 parking spaces that are free and not used as a revenue stream.

The project was financed primarily through the county's Industrial Development Authority, which issued about \$56 million in lease-revenue bonds in three series (serial, capital appreciation, and term bonds). These were sold through underwriters as is common with revenue bonds that issue in a complex package. Serial and term bonds in the amount of \$47 million (the capital appreciation bonds amounted to \$8 million) were refinanced in 1993 at a great saving in lease payments, which are about \$4.6 million per year.

Court officials played a large role in the struggle to obtain financing for the facility.

2. Persons Contacted

Name	Title	Phone Number
Joe Rosenthal	Former AOC Fiscal Officer	410-333-8274
Suzanne James	Court Administrator, 7th Circuit	301-952-3708
Pran Katyal	Administrative Specialist, Prince George's County Office of Finance	301-952-5356
Mark Pleskow	Chief of Master Planning and Assessments, Maryland Department of General Services	410-225-4157
Neil Bergsman	Director of the Capital Budget, State of Maryland	410-225-4530

P. MASSACHUSETTS

Summary: Massachusetts, one of the minority of states that has assumed responsibility for financing all court facilities, provides experience on the financial difficulties of making a transition from local to state ownership of court facilities and the role of state in the capital financing of court facilities.

In 1978 Massachusetts assumed the costs associated with operating its trial court system.¹⁹⁹ At the time, trial court facilities were provided by counties, cities, towns, and occasionally private owners; there were over 100 trial courts. The concept underlying the 1978 legislation was that the Commonwealth would compensate facility providers for

¹⁹⁹ Mass Gen Laws Ann ch 29 A § 1 et seq.

operating costs by paying rent,²⁰⁰ but that the responsibility for capital improvements would continue to fall on local governments. It was anticipated that the Commonwealth might take title to some court facilities, and therefore the chief justice of the supreme judicial court, upon recommendation of the chief administrative judge for the trial court, was authorized to make recommendations to the legislature on the acquisition of facilities.²⁰¹

Most court facilities remained locally owned. Moreover, there was a general tendency not to spend much money on facilities, in part because local governments felt no great inclination to fund a state agency; in part because voters had imposed a tight lid on taxation and spending. In 1988, after various reports were received on the deterioration of court facilities, Massachusetts enacted the Courthouse Improvement Act.²⁰² One purpose of this law was to speed the transition of ownership to the Commonwealth.

The law made a number of changes in government administration of court facilities.

- The commissioner of the Division of Capital Planning and Operations (DCPO) was given primary responsibility for overseeing the planning, design, and construction of state court facilities on behalf of the chief justice of administration and management of the trial court;²⁰³
- An office of court facilities was created in the DCPO, the head of which was to be appointed by the commissioner with the advice of the chief justice of administration and management of the trial court and the approval of the secretary of administration and finance;²⁰⁴ subsequently, a similar unit, called the Court Capital Projects Unit, was established in the Administrative Office of the Trial Court;²⁰⁵
- The chief justice of the administration and management of the trial court was charged with the operation and maintenance of court facilities, and a court facilities bureau was created within his office;²⁰⁶ and
- A court facilities council (largely composed of judges, but including county officials) was created to give advice on facilities to the commissioner of Capital

²⁰⁰ Mass Gen Laws Ann ch 29 A § 4

²⁰¹ Mass Gen Laws Ann ch 29 A § 5

²⁰² 1988 Mass Acts Ch. 203

²⁰³ Mass Gen Laws Ann ch 7 § 41C

²⁰⁴ Ibid.

²⁰⁵ St 1988 c. 203 § 27

²⁰⁶ Mass Gen Laws Ann ch 211B § 17

Planning and Operations and the chief justice of administration and management of the trial court.²⁰⁷

The Courthouse Improvement Act also contained the following provisions:

- authorization of bond issues up to \$320 million to construct, renovate, and repair state-owned court facilities;
- immediate Commonwealth ownership of facilities in very poor condition;
- choice given to city and county officials to keep ownership of remaining facilities or to turn them over to the Commonwealth;
- in the event of local surrender of ownership, Commonwealth assumes not only operating costs but outstanding debt service;
- in the event of local retention of ownership, the local government must comply with statewide standards for court facilities; and
- in the event a local government issues bonds to comply with standards, debt service on the bonds is included in the Commonwealth rental payment for the facility.

The Massachusetts judiciary originally hoped to set up a judicial building authority. The legislature did not approve this proposal, in part because it was considered poor policy to have multiple building authorities. There was also some question about what revenues could be obligated by a judicial building authority. The legislature chose to give the DCPO in the executive branch control over all state construction projects.

The authorization of \$320 million for constructing or upgrading facilities was not all earmarked for court facilities; \$20 million was set aside to finance relocation of county agencies that might be displaced when a court building passed to Commonwealth ownership. Massachusetts counties have very few remaining functions and have been reluctant to relinquish control of facilities; therefore, there has not been much transfer of ownership. Issues of employment control also inhibit transfer of ownership. Only Middlesex County has taken major advantage of the opportunity to transfer court buildings to the state, turning ten courthouses over to the Commonwealth. Of the 96 court buildings in the state, only 26 are owned by the Commonwealth. Fifty-nine are county-owned, five are leased from private landlords, and six are owned by cities or towns. The number of court facilities in the state is quite high for the size of the state, but proposals for elimination or consolidation of facilities have not fared well.

The legislature retains control over the allocation of the \$320 million, which is administered by the DCPO. The legislature has made some miscellaneous appropriations

²⁰⁷ Mass Gen Laws Ann ch 29 A § 6

above the \$320 million, some earmarked for specific courts (e.g., Lawrence). Funds have been allocated for a number of court facilities.

1. Miscellaneous Sites

New Construction	Major Renovation/ Expansion	Repair
Newburyport	South Boston	10 courts in Middlesex
Western Worcester (newest of 26 state-owned courts)	Roxbury	Charlestown
Lawrence Court Complex	West Roxbury	East Boston and various other courts
Court facility in downtown Boston	Dorchester	
Chelsea	Brighton	
Fall River, actually a major refit of a high school which is virtually a new building	Newton	
	Lawrence Superior Court	
	East Cambridge	
	Suffolk County Courthouse	

The Commonwealth reimburses counties for any bonds that they issue to construct or renovate court facilities. There is not much court building activity among counties, except in Hampden County. The Palmer District Court was built there in 1991, and the state legislature has recently authorized a \$6 million bond for a court facility in Westfield.

The Commonwealth pays not only debt service but also pays a rental on buildings not owned by the Commonwealth. This rental approximates the operating cost of the building. The annual appropriation for rental is about \$23 million—\$4 million for the six facilities owned by cities or towns, \$3 million for leases with private landlords, and the rest for counties. The arrangement with counties is not a straight lease, as it is with the first two categories. It is more in the form of a reimbursement and is usually less than the amount claimed by the counties. Basically, the Commonwealth takes the remainder of the \$23 million and prorates it among the counties in the form of quarterly payments. The most recent rate of reimbursement was 92 percent.

2. Persons Contacted

Name	Title	Phone Number
Kelly Quinn Popejoy	Director of Court Facilities Unit, DCPO	617-727-8085
Mark Greeley Steve Carroll	Lease Attorney, AOC Director of Court Facilities Bureau, Massachusetts Trial Court	617-742-8575 617-725-8787
Thomas Begley	Hampden County Superintendent of Buildings	413-748-8600
Margaret Cavanaugh	Facilities Division, AOC	617-742-8575

Q. NEW JERSEY

Summary: New Jersey is included to illustrate an unusual condominium arrangement wherein a trial court and private corporations will share ownership of a building. There is also an interesting use of a local building authority to finance a state justice center, a reversal of the usual relationship.

1. Gibraltar Building, Newark, New Jersey, Essex County

Although New Jersey has gone to state financing of trial courts as of January 1, 1995, counties are still responsible for providing court facilities. There are some exceptions. The state has for many years provided space for chancery courts and a tax court.

When an old courthouse in Newark had to be vacated for renovation, the court sought temporary space in the vicinity of the court complex. The Family Court Division did not anticipate returning to the renovated courthouse, as it had a need for expanded and more suitable space; therefore, court officials started searching for an appropriate space. At first, it was hoped that this space might be in a newly constructed facility, but this was not feasible in economically hard-pressed Essex County. An appropriate site was located in a private commercial building, the Gibraltar Building (so named because its former owner was the Prudential Insurance Corporation), but the county refused to provide funding. A lawsuit ensued, resulting in an October 1993 judgment of the New Jersey Supreme Court that the county would have to provide capital funding and specifically designated the Gibraltar Building as the site inasmuch as the building met the principal criteria established by the court. Because the county was not willing to construct a new building, Gibraltar became a long-term solution rather than a temporary solution to the space needs of the court.

Essex County ultimately purchased 40 percent of the 15-story Gibraltar Building to house various components of the superior court: equity, tax, special civil, family, and a major part of child support enforcement. The court is to occupy part of the first floor, part of the eighth floor, and all of floors 9 to 13, a total of over 270,000 GSF.

Prudential, the former owner, retained a reversionary interest as the building is connected by tunnel to other Prudential buildings. Prudential has the rights of approval over tenants and security and, primarily for security reasons, was not enthusiastic about the court as a tenant, although the court components were not criminal courts. Essex County is providing tight security, bombproof mail rooms, sophisticated electronics, and screening. Security is still an issue, as the governor has a regional office in the building, but court officials state that the court will have state-of-the-art security.

The purchase of space in a condominium is to be handled by a \$27 million bond issue by the Essex County Improvement Authority. This bond issue will cover the purchase cost of \$13.3 million. The remainder will be for financial charges, construction, and architect fees to prepare the space. A major problem with the HVAC has been resolved, but discovery of lead has slowed down the renovation effort. The financial plan called for a second bond issue of \$15 million, which was recently approved. A delay in getting the approval worked to the advantage of the county because interest rates went down, which saved the county a substantial sum in projected debt service. This was very important in a county where bond ratings have not been high.

The condominium arrangement (the condominium title will belong to the county when the bonds are retired) has some interesting features. Because other tenants are in the building, running cables, elevator security, and other aspects of joint occupancy add some complications to design. There appears to be, however, general satisfaction with the ultimate design and the type of facility that the courts will have. From every perspective, the facility is seen as state-of-the-art, indicating that this is not a temporary holding operation but a long-term commitment to function in a condominium mode.

2. Richard J. Hughes Justice Complex

In Trenton there is a large modernistic building housing some appellate courts, the administrative office of courts, and various state-level criminal justice agencies. This building, which was built in the mid-1980s, was financed by revenue bonds issued by the Mercer County Building Authority. The AOC has a lease with the county. The term is 40 years, an unusually long lease-purchase agreement. It is interesting that the state acted through a local government agency.

3. Persons Contacted

Name	Title	Phone Number
Frank Farr	Director, Management Services, AOC	609-292-2166
Carol Hatcher	Division Manager, Family Division, Superior Court	201-621-2578

R. NEW YORK

Summary: New York illustrates (1) the advantages and disadvantages of using state building authorities to help local governments finance court facilities; (2) the use of general bond issues to finance multiple projects pursuant to a capital improvement plan; (3) land contributions by a state agency to enhance development of the area around the courthouse; (4) impetus provided by a state court facilities plan; and (5) partial subsidization of debt service and operational costs from a state fund fed by earmarked court fees.

Legislation on Court Facilities: In 1986 the New York legislature found that court facilities in the state were in need of upgrading. Although the problem was statewide in scope, the initial state effort was focused on the tenth judicial district (Suffolk County and Nassau County). The legislature described the problem as follows:

It is hereby found and declared that there exists a severe lack of adequate judicial facilities in certain counties within the tenth judicial district. . . . The provision of adequate judicial facilities is a matter of substantial state concern.²⁰⁸

The legislative remedy for this problem was to permit the development and construction of court facilities through a state building authority known as the Dormitory Authority (hereafter Authority),²⁰⁹ originally established to finance residential facilities at educational institutions. The Dormitory Authority Act was systematically amended to include reference to judicial facilities (also mixed occupancy structures).

In 1987 the facility program was expanded beyond the tenth judicial district to the whole state by a comprehensive law that called for the construction and improvement of court facilities.²¹⁰ This statute called for a capital improvement program for courts and permitted all local governments to enter into a lease, sublease, or other agreement with the Authority for principal and interest on the bonds issued by the Authority to cover

²⁰⁸ 1986 NY Laws c. 499 § 1

²⁰⁹ NY Public Authorities Law § 1677 et seq.

²¹⁰ 1987 NY Laws c. 825

the cost of design, construction, reconstruction, or improvement of judicial facilities.²¹¹ The statute required planning for court facilities and has provided impetus to court facility construction.

The Dormitory Authority: The authority is empowered to take the following steps to assist local subdivisions with court facility financing:²¹² (1) to fix and collect rentals and other charges for the use of judicial facilities; (2) to contract with holders of its bonds to fix such rentals and charges at rates at least sufficient to pay for all costs of operation, maintenance, and repairs of judicial facilities, and the interest on and amortization of, or payment of its bonds issued to finance judicial facilities; (3) to acquire real property for construction of court facilities; (4) to prepare plans, specifications, and cost estimates for construction or improvement of court facilities and their equipping and furnishing; (5) to prepare a facility design and performance plan with each participating local government for which the Authority and the local government have agreed, subject to review by the state court administrator, that the Authority will award contracts for design and construction; and (6) to design, construct, or improve court facilities and to enter into contracts for these purposes. The Authority is considered to have considerable expertise in dealing with the complexities of public building construction in New York and is therefore helpful not only as a financing vehicle but as a provider of skills for managing the details of construction and renovation. Moreover, the Authority is not subject to some of the cumbersome laws on public contracting that are binding upon local governments (see Wicks Act reference below).

The Authority was authorized to issue up to \$1.25 billion in judicial facility bonds.²¹³ The legislation established 30 years as the life of a judicial facility and limited the life of lease or sublease to that period.²¹⁴ The law called for passage of title from the Authority to the local government upon discharge of all bond obligations.²¹⁵

The judiciary demanded and received an important voice in facility funding decisions which is essentially trilateral: the Authority, the local government, and the judiciary. No court construction bonds can be issued by the Dormitory Authority unless the state court administrator certifies that the facility proposal is consistent with the capital plan for courts.²¹⁶ Court capital planning was placed under the aegis of a court facilities capital review board, consisting of four voting members and two nonvoting members, all of whom are appointed by the governor subject to the following conditions:

²¹¹ NY Public Authorities Law §§ 1680-a.1(a)(1); 1680-b.1

²¹² NY Public Authorities Law § 1678

²¹³ NY Public Authorities Law § 1680-b.1. As of March 31, 1993, the Authority had outstanding court bonds in the amount of \$140,496,000.

²¹⁴ NY Public Authorities Law § 1680-a.1(c)(1)

²¹⁵ NY Public Authorities Law §§ 1680-a.1.(a)(6); 1680-b.5.

²¹⁶ NY Public Authorities Law § 1680-b.2(a); see also NY Judiciary Law §§ 39(3),219, which outlines the relative roles in court facility planning of the state court administrator and local government chief executives.

(1) temporary president of the senate recommends one voting member; (2) speaker of the assembly recommends one voting member; (3) chief judge of the court of appeals recommends one voting member; (4) minority leader of the senate recommends one nonvoting member; and (5) minority leader of the assembly recommends one nonvoting member.²¹⁷

The state court administrator submits to the board the court capital building plans received from the political subdivisions, initiating a series of board actions.²¹⁸ The board determines if these plans are “suitable and sufficient for the transaction of the business of the unified court system.” If the state court administrator disagrees with the chief executive officer of the political subdivision over the adequacy of the capital plan, it takes a unanimous vote of the board to approve it. If the state court administrator agrees with the plan, then there must be two votes to disapprove it. The legislation permits the board to take into account the “fiscal capacity” of the political subdivision.

County General Obligation Bonds: The use of the Authority is not the only option for local subdivisions or even the primary option. Subdivisions with good bond ratings save money by issuing general obligation bonds. These bonds are very often handled by local banks without underwriters and frequently cover a number of capital projects of which court facilities may be just one.

A recently adopted constitutional amendment will further increase reliance on conventional bonding methods because the amendment gives counties more flexibility in structuring bonded indebtedness, specifically more flexibility in figuring the period of indebtedness and more fluctuation in the installment payments on debt service, including the power to issue debt that does not pay interest annually.²¹⁹

The courts have less control over facility financing through the issuance of general obligation bonds by counties. Counties are obligated to have their court facility plan approved at the state level. But as a practical matter, the only sanction that can be imposed on a county that initiates court construction without approval is to deny access to a court facilities incentive aid fund that subsidizes interest payments on court bonds issued by counties to finance court facilities.

Incentives for Undertaking Court Facility Construction: New York’s court facilities incentive aid fund was designed to encourage local governments to finance court facility construction and renovation.²²⁰ The fund is fed by a variety of court fees authorized by state law. Within this account there is a special account for each participating local subdivision for apportionment of the fund receipts.

²¹⁷ NY Public Authorities Law § 1680-c

²¹⁸ NY Public Authorities Law § 1680-c(3)

²¹⁹ NY Const, Art 8, § 2

²²⁰ NY Finance Law § 94

The allocation can be diverted to the Dormitory Authority if the local subdivision is delinquent in rental payments to the Authority.²²¹ This allocation legislation permits payments from the fund to defray a percentage of the interest paid on notes and bonds and a percentage of the expenses incurred for operation and maintenance of court facilities. Both payments are based on “taxing capacity,” so that the percentage reimbursement ranges from 25 to 33 percent for interest and from 10 to 25 percent for operational payments. For the latter payments, the local subdivisions must submit a detailed cost breakdown to the state court administrator. The payments are limited by the amount of money in the fund, so the state assumes no general obligation.

Experience with Certificates of Participation: For a brief period New York authorized the issuance of certificates of participation,²²² in large part because the New York Constitution had stringent requirements on debt. The above-referenced amendment of the Constitution to provide more borrowing flexibility led to a repeal of the COP legislation. But even in the brief period when COPs were an option, they were used for courthouse construction in three counties: Franklin, Clinton, and Cattaraugus.

1. New York City

A primary user of the Authority for court facility construction is New York City, which has found it advantageous to use state revenue bonds. For a number of years the Authority bonds have enjoyed on average a 30-35 basis point advantage over the city’s bonds. The Dormitory Authority bonds are not, strictly speaking, city bonds but provide required diversity to the city portfolio and enhance the attractiveness of the offerings.

The city has done very well on marketing Dormitory Authority bonds through underwriters. The first offering was 48 basis points below what the city would pay on its own bonds and saves the city as much as \$12-18 million per year over what it would pay in interest on city G/O bonds.

The complexity of revenue bond issues and the requirements of debt funds require a much higher level of expertise in finance and marketing. The heavy and fixed front-end costs for revenue bonds are not prohibitively expensive when spread over very large bond issues, such as those of New York City. Smaller counties with relatively small bond issues have much less incentive to use revenue bonds of the Dormitory Authority.

New York City has an ambitious long-range court facility improvement plan projected out to 2008. There have been some piecemeal changes and about a three-year delay in implementation of the plan. The cost estimate in 1990 was \$1.76 billion. With an assumption of 4 percent annual inflation, the cost of the plan came to \$2.77 billion in actual dollars at the time of construction. But, in fact, there has been no increase in

²²¹ NY Finance Law § 54j

²²² NY State Finance Law § 66-a et seq.

construction costs in the New York Metropolitan area between 1991 and 1995, so the delays have not been particularly costly in terms of construction costs. However, facility space limitations did have some adverse effects on operational budgets, in particular an increase in overtime.

The plan has three stages of construction (Types 1, 2, and 3). Those facilities in Type 3 were based on needs projected in 1985. The city has lost population since the plan was drawn and may have to revise it in the light of the demographic changes. Table 1 summarizes the plan as of 1990.

Table 1
Summary of New York City Court Facility Plan

Full or Basic*	New or Rehab	Project	1990 Project Cost \$ (000)	Est. Cost 1990 to mid-pt. Const. \$ (000)	Start Design	Start Const.	Complete
B	N	QN Crim KEW -1	49,412	49,412	1/89	4/92	10/94
B	N	BX Housing	36,880	41,441	6/89	6/92	6/94
B	N	BX Superblk 1	94,831	125,801	9/92	4/95	4/98
B	N	QN Crim KEW 2	42,806	56,225	1/93	1/95	1/98
B	A	QN Fam Annex	30,992	40,210	1/93	1/95	7/97
B	R	BX DA to CRI	7,211	9,471	1/95	1/98	1/97
B	N	BX Superblk 2	83,481	122,370	4/95	4/97	4/2000
B	U	BK Family Agy	10,667	15,829	4/96	1/98	1/2000
B	U	Rec Storage	38,098	65,453	1/99	1/2001	1/2003
B	R	MN Ren Civil	31,237	53,670	1/2000	1/2002	1/2004
F	N	QN Civil/Hsg	65,000	82,301	1/90	1/94	7/97
F	N	BK State Street	60,000	76,428	10/91	4/94	7/97
F	N	BK Family	100,383	128,657	4/92	4/94	10/97
F	R	MN 30 Center	200,000	269,188	9/92	1/95	1/99
F	R	BK 360 Adam 1	12,000	14,295	1/93	1/94	1/95
F	A/R	BK App Div	22,669	28,702	1/93	1/95	7/98
F	N	BK Smith Street	36,557	48,017	1/93	1/95	1/98
F	U	QN Fam Ax-Agy	28,571	42,398	1/95	1/98	1/2000
F	R	QN Ren SP Civil	3,333	54,539	1/96	1/2000	1/2002
F	U	SI Crim. Ct.	44,975	70,084	7/96	1/99	1/2001
F	U	SI Ct. Complex 2	97,775	178,285	7/98	1/2001	1/2005
F	R	BK Conv Fam/Hsg	25,714	42,073	1/98	1/2000	1/2002
F	N	BK Sup Crim	128,372	243,184	1/98	1/2002	1/2006
F	R	MN Ren Family	66,667	111,774	1/98	1/2000	1/2003
F	U	MN Ren Hsg	36,750	64,700	1/99	1/2001	1/2004
F	R	BX Conv Cri	26,666	45,815	1/2000	1/2001	1/2003
F	R	BX Merola	49,523	91,553	1/2000	1/2002	1/2005
F	N	QN Crim KEW 3	106,344	211,527	1/2000	1/2003	1/2007
F	R	BK 360 Adam 2	47,819	92,435	1/2001	1/2003	1/2006
F	N	BK Superblk 3	89,285	184,197	4/2001	4/2004	4/2007
F	R	MN Sup Crim	9,523	17,804	1/2002	1/2003	1/2004
F	R	BK Ren Crim	47,819	103,157	4/2003	4/2005	4/2008
		TOTAL	\$1,760,050	\$2,778,887			

* "Full" means that the Authority is providing not only the financing but the architect, contracting, and other forms of expertise. "Basic" means that the Authority is providing only the basic financing.

It appears that all of the construction costs (about \$2.77 billion) will be financed through the Authority. The first phase of implementation is underway and is being funded by a \$417 million bond issue by the Authority. Some aspects of the plan are being accomplished. For example, the \$38 million Bronx Housing Court is under construction, and the first stage (\$106 million) of the three-stage Bronx Supreme Criminal Court is being designed. A \$40 million extension to the Kew Gardens Courthouse in Queens is completed, and an \$8 million new lobby is under construction. A new \$70 million court building in Queens is under construction. Three other projects are in the preliminary stages of design: State Street Annex to the existing Criminal Courts Building (\$60 million); 80 Centre Street Courthouse (\$177 million); and a second annex to the Kew Gardens Courthouse (\$45 million).

State financial aid in the construction of court facilities is limited to space occupied by courts and court-related agencies (e.g., prosecutors, police central booking, and corrections). The interpretation of "court-related" is strict.

One problem in New York City is that as a condition of contract approval, residents affected by the court construction must be consulted. Some negotiations may be required to placate residents, perhaps by some public expenditures. New York City is generally unable to make such expenditures, meaning that there is great difficulty in winning project approval.

New York City is, like other local governments, subject to the Wicks Act, a state law that requires that specifications and awards on public contracts be separated into specified functional areas (electrical; plumbing and gas fitting; and heating, ventilating and air-conditioning).²²³ This requirement greatly complicates contracting and construction and has increased interest in using state building authorities that are used to managing complex contracts and using multiple contractors.

2. Suffolk County

The first county to avail itself of the Authority financing was Suffolk County, New York, which constructed a court complex of about 500,00 GSF to house civil supreme, district, and family courts and related functions. Twenty-five percent of the space in the building was dedicated to court-related functions.

The construction started in 1986, when the Authority sold judicial lease revenue bonds through underwriters that included major investment houses in New York City (e.g., Paine Webber, Lazard Freres, Smith Barney, Merrill Lynch, etc.). The building was completed at a cost of \$111,187,597, but the actual indebtedness incurred was \$128.9 million because the county wanted to capitalize the interest paid out during construction (the hard costs amounted to \$90 million). The cost included the building, capitalized up-front costs, and a modest cost for land. Actually, the land was practically donated by the

²²³ NY State Finance Laws § 135

New York Institute of Technology, which owned much of the land in the courthouse area. The donation was part of a general program to develop Central Islip. A federal courthouse is also being built in the area. The equipment in the building was provided by the county and was not included in the building cost, as it frequently is in other courthouses.

The original bond issue was in two parts: (1) \$9,945,000 in variable-rate (6.25 percent low and 7.35 percent high) bonds beginning in 1991 and running to 1999, the rate to increase 0.25 percent in the first four years, then to go up by 0.10 percent; and (2) \$118,955,000 in 7.375 percent fixed-rate term bonds due in 2016. The semiannual payments were sent directly to the trustee, Marine Midland Bank.

In 1991 Suffolk County was in financial trouble and required an infusion of cash. The debt was restructured through a consortium of underwriters led by Paine Webber, so that the county could make savings of \$51 million in FY 1991 and FY 1992. This was done largely by recapturing previously paid interest, deferring lease payments, and deferring a payment into a building and equipment fund. The result was that the lease payments to maturity increased from \$257 million to \$348 million, excluding a deferred \$500,000 payment into the building and equipment fund and the annual \$480,000 per year for administrative fees and Authority fee and expenses. (One argument against use of the Authority is the fee requirement). The net increase in lease payments, after allowing for the \$51 million cash recovery, was \$52.5 million.

There were some pros and cons in Suffolk County's use of the Authority. The positive points were the following: (1) the Authority was not subject to some of the debt restraints, local charter provisions, and public building contracting procedures applicable to the county (e.g., the legislation permitting courts to use the Dormitory Authority included a waiver of the Wicks Act and waiver of some debt limitation provisions);²²⁴ (2) the state subsidizes about 25 percent of the interest payments and 10 percent of the operating costs; (3) the Authority handled all the technical details of construction and construction management; (4) the county was accorded more leeway to structure its debt; and (5) a simple majority of the Suffolk County legislature was needed to enter into a lease with the Dormitory Authority, whereas a G/O bond would have required approval by two-thirds.²²⁵ The downside was essentially cost. The fees to the Authority and the interest rate on revenue bonds made borrowing more expensive.

3. Persons Contacted

Name	Title	Phone Number
Prakash Yerawadekar	Chief Architect, Unified Court System of the State of New York	212-417-4926

²²⁴ NY Public Authorities Law § 1680-a 1(a)(2)

²²⁵ The law included the provision that principal payments could not vary by more than 50 percent, a protection against large balloon payments. Suffolk County chose to use level debt service.

Name	Title	Phone Number
Pat Weber	Supervising Project, New York Dormitory Authority	212-356-0651
Noel Adler	Executive Assistant, Suffolk County	516-853-7742
Tom Devane	Deputy Executive Director for Planning and Financial, Dormitory Authority	518-475-3115
Bill Brina	Coordinator of Capital Planning and Finance, OCA	518-473-8253
Nick Capra	Director of Court Facilities Management, OCA	518-473-6087

S. NORTH CAROLINA

Summary: North Carolina law permits assessment of a facility fee that is remitted to the local governments that have responsibility for court facility financing. By law these funds are to be used for facility purposes and the counties must account to the judiciary for how these funds are used. The purpose of the fees is to “assist” local governments, not to totally cover their facility costs.

North Carolina places the primary burden of trial court facility financing on counties, but municipalities may also provide court facilities with the approval of the administrative officer of courts and after consultation with county officials.²²⁶ To encourage local governments to provide adequate facilities, North Carolina imposes the following court costs “for the use of the courtroom and related judicial facilities”:

- Criminal actions—\$6 for district court; \$24 for superior court²²⁷
- Civil actions—\$10 if before judge; \$6 if before magistrate²²⁸
- Special proceedings in superior court—\$4²²⁹
- Costs in administration of estates—\$4²³⁰

²²⁶ NC Gen Stat § 7A-302

²²⁷ NC Gen Stat § 7A-304(2)

²²⁸ NC Gen Stat § 7A-305

²²⁹ NC Gen Stat § 7A-306

²³⁰ NC Gen Stat § 7A-307

These costs are remitted to the county, except that the fee is also remitted to those municipalities that provide court facilities. The use of these funds is governed as follows:

Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including adequate space and furniture for judges, district attorneys, public defenders, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.²³¹

The counties annually account to the administrative office of courts for their expenditures of these funds, and occasionally there are differences of opinion over whether a particular fee expenditure is truly court-related. Some counties build up a contingency fund with these fees, and it is possible to apply these amounts to capital expenditures.

The above system does not, as the statute indicates, provide any exact correlation between fees remitted and facility needs. In many counties the amounts collected do not amount to much. In 1993-94 Camden County and Currituck County received only \$10,687 and \$1,254, respectively; populous counties, on the other hand, received sizable sums: Mecklenberg County \$631,201, and Wake County, \$618,648.

1. Persons Contacted

Name	Title	Phone Number
James Drennan	State Court Administrator	919-733-7107
Rick Kane	Administrator of Research and Planning, AOC	919-733-7107

²³¹ NC Gen Stat § 7A-304(2)

T. OHIO

Summary: Ohio has a great deal of construction activity, but only two aspects of this are emphasized here: (1) the use of large donations from nonprofit affiliates of private corporations and (2) state grant programs to support construction of court-related facilities.

In Ohio local governments provide court facilities.²³² There are, however, some state programs to support construction of court-related facilities. Counties are eligible to receive state financial support for community-based correction facilities,²³³ district detention homes for juveniles,²³⁴ and family centers.²³⁵ Courts of common pleas (Ohio's general jurisdiction trial courts) are state agents for all three facility-support programs.²³⁶ Moreover, a court of common pleas can create a judicial construction board for the construction of community-based correction facilities.²³⁷

The Ohio Department of Youth Services administers a capital grant program for juvenile programs, specifically detention facilities and community-based juvenile rehabilitation programs. The Department has a long-term facility plan and includes its annual funding request in the state budget. In recent years the Department has placed high priority on local rehabilitation facilities. In the fiscal year ended in 1995, the Department received appropriations of \$50 million, most of which was expended on two state institutions, but some of which went to counties for local facilities. The counties must meet standards set by the state to qualify for the funds. In addition to the capital grants, the Department subsidizes the operating costs of juvenile detention facilities and juvenile rehabilitation centers. The former are subsidized at the rate of \$156,000 or half of the operating cost, whichever is lower; the latter are subsidized at the rate of \$540 per month for each occupied bed. Ohio provides a good example of state facility grants.

1. Stark County

In the late 1980s an effort to consolidate judicial functions of the city of Canton and Stark County in a building project failed. The \$80,000 study financed by the city and county failed to obtain support for funding the estimated \$430 million project. Elected officials for the city and county felt there was no citizen support to raise the funds. A state building authority plan for financing would have resulted in a building for which the state would charge \$17 per square foot in a downtown area where the going rate was \$11-15 per square foot.

²³² Ohio Rev Code Ann §§ 307.01A(counties); 1901.36(municipalities)

²³³ Ohio Rev Code Ann § 307.021

²³⁴ Ohio Rev Code Ann § 5139.271

²³⁵ Ohio Rev Code Ann § 307.021

²³⁶ Ohio Rev Code Ann §§ 5139.271(detention houses); 307.021(community-based corrections facilities, family centers)

²³⁷ Ohio Rev Code Ann § 2301.51

In the early 1990s the county commissioners were faced with a condemned office building and a dilapidated courthouse that was in violation of numerous city code provisions. Foundations affiliated with corporations that were major employers in Stark County quietly hired an architect to estimate the cost of restoring the courthouse because it was a community embarrassment. The foundations quietly met with the county commissioners and offered \$6.5 million on two conditions: first, that the county would pay the balance of the estimated \$10.5 million; second, that the judges would agree to use the courthouse as a courthouse (the courthouse had historic significance, a factor in fund-raising).

Source of Funds

Timken Foundation	\$4,000,000
Hoover Foundation	1,250,000
Stark Foundation	750,000
Deuble Foundation	500,000
Sub-total Foundation Support	\$6,500,000
Stark County Debt	\$4,000,000
Total	\$10,500,000

The courthouse debt of \$4 million was handled by bond anticipation notes having the full faith and credit of the county. The notes were short-term, one year or less to maturity, and subject to being rolled into a long-term bond issue at the option of the county.

The benefit of this arrangement was that private money funded much of the project and expedited the process. Some fears were voiced over conflict of interest problems, given that the foundations are affiliated with major business concerns in Stark County, but the connection is relatively indirect and does appear to be a realistic ethical barrier. The condition on preserving the original courthouse location imposed some inefficiencies in design and use but were minor inconveniences compared to continuation in the crumbling facility.

2. Persons Contacted

Name	Title	Phone Number
John Haas	Presiding Judge, Court of Common Pleas, Stark County	216-438-0847
Steve Stover	State Court Administrator	614-466-2653
Jeff Spears	Grant Coordinator, Department of Youth Services	614-466-8947

U. OREGON

Summary: Klamath County, Oregon, provides an example of Federal Emergency Management Agency (FEMA) grants to repair a courthouse damaged in a major disaster, in this case an earthquake.

1. Klamath County

The Klamath County Courthouse was seriously damaged by an earthquake, raising the issue of whether to build a new courthouse or renovate the existing courthouse. Important to this decision is the availability of federal money. If the cost of repair is over 50 percent of the cost of new construction, FEMA will pay 75 percent of replacement. If the cost of repair is under 50 percent of the cost of the new construction, FEMA will pay 75 percent of the repair cost. (See 44 CFR 206.226(B); 42 USC § 5121.)

Klamath County estimates its replacement cost at \$6.8 million and its repair costs at \$5.6 million and is studying its options. In all likelihood, the county will have to have a bond issue to make up the difference between the federal grant and the final cost.

2. Persons Contacted

Name	Title	Phone Number
Jef Faw	Director of Budget and Finance, Oregon Judicial Department	503-378-6046
Nick Francis	County Commissioners' Chief of Staff	503-883-5100

V. RHODE ISLAND

Summary: Rhode Island is one of the states where the state has a direct responsibility for trial court financing and has phased out a number of city-based facilities in favor of a few regional facilities. The state illustrates the use of state building authorities and the trade-offs between using revenue bonds and design-build-finance.

Court facility construction in Rhode Island (where the state funds facilities) revolves around a state building program operated by the public building authority (PBA).²³⁸ This entity, upon request of an agency of government, can acquire, lease, or construct facilities, and its mandate explicitly includes the "judicial functions of government."²³⁹ The authority may issue revenue bonds²⁴⁰ repayable from rents paid by

²³⁸ RI Gen Laws § 37-14-1 et seq.

²³⁹ RI Gen Laws § 37-14-2(b)

²⁴⁰ RI Gen Laws § 37-14-3(a)

the government agency requesting the facility.²⁴¹ State courts are generally in state-owned buildings. However, during the pendency of a bond issue, the PBA holds title.

The judiciary has been quite pleased by the operation of this funding vehicle and has managed to make major improvements in court facilities, although the general financial position of the state has not been strong. The court complex in Providence was constructed through the PBA, but the courts played a major role in design, employing their own consultants. The Garrahy complex in Providence, the first major courthouse construction in 50 years, was completed two months ahead of schedule and \$2 million under budget. The courts have been moving towards a few regional facilities to serve the whole state, which is quite small in area, but political controversy over the issuance of bonds through the PBA and the circumvention of voter control has caused the judiciary to consider other methods of financing court facilities.

1. Joseph Garrahy Complex, Providence

The Garrahy Complex is the main judicial building in the state. It is a 200,000 plus GSF building constructed in the early 1980s for \$19.5 million. It was financed through the PBA, the main vehicle for financing state buildings, and is generally regarded as a major success story, particularly from a financial perspective.

The PBA has come under political fire and has, in recent years, been in a relatively inactive mode. This has been a concern to court officials who feel that the Authority provides a lot of building expertise, a means of avoiding a voter referendum, and reasonable financing (particularly in comparison to a private design-build-finance method). The problems of the Building Authority are creating a problem in Kent County, as noted below.

2. Kent County Courthouse Project, South Kingston, Rhode Island

Rhode Island, which once had many court facilities located in various cities and towns throughout the state, has been in the process of consolidating court facilities. There is a large central complex in Providence and regional facilities in three counties. There is a plan to build a \$25-30 million facility in Kent County to replace a facility that had to be vacated because of HVAC problems. Under court order, the state spent \$1 million on air quality under five-year specifications. State officials have obtained variations on some electrical and fire code violations but in 3 to 4 years, they will have code problems. A plan for a \$25-30 million building will be ready by late 1995.

From the perspective of court officials, the issue is clear. Given the problems with the current facility and the cost of renovating it, there has to be a new facility soon. For a variety of political reasons, the financing of the court facility through Building Authority revenue bonds may not be possible. There has been some political criticism of bypassing

²⁴¹ RI Gen Laws § 37-14-3(b)

the electorate by using revenue bonds rather than seeking voter approval for general obligation bonds. The principal alternative is the use of design-build-finance with a private contractor, an option estimated to be much more costly than the issuance of either general obligation or revenue bonds. The next possible time to obtain voter approval for the issuance of bonds is in 1996, but the existing facility is so seriously defective that time is of the essence.

3. Persons Contacted

Name	Title	Phone Number
Bob Harrall	State Court Administrator	401-277-3266

W. SOUTH DAKOTA

Summary: South Dakota has made use of beneficial interest rates to facilitate financing at two locations. The state also provides examples of COP financing.

South Dakota has a largely state-funded court system, but counties have the responsibility for providing facilities.²⁴² Counties therefore own the facility and the land on which it is located. The state does, however, pay for furnishings, a not uncommon arrangement in states where the state has assumed the cost of trial court expenditures except for facilities.

1. Minnehaha County, Sioux Falls

A new, 80,950 GSF county courts building is being constructed in Sioux Falls for \$11.6 million. It will be completed in 1996. The court facility was financed as part of COP financing covering several projects. The COPs were issued in two stages—a 1992 issue and, two years later, 1994A and 1994 B issues. The 1992 COP was issued by the county commissioners well before they needed the money to take advantage of then prevailing low interest rates. The 1992 bond issue covered not only project costs but capitalized front-end costs for architects, site development, and other professional fees. Positive arbitrage was involved.

The 1994 series was timed to beat the 1994 elections, because it was feared that the voters would pass an initiative slashing the property tax rates and severely limiting future increases (the initiative was narrowly defeated). The commissioners could not very well leave their 1992 projects half funded and hoped that indebtedness incurred prior to the initiative would be exempt from the levy limits imposed by the new law. The commissioners added two projects to the 1994 bond issue, one of them a nonsecure juvenile detention facility.

²⁴² SD Cod Laws §§ 7-25-17, 16-6-7, 16-2-25.1, 7-25-1, 7-25-3, 7-25-4, 7-25-5

2. Pennington County, Rapid City

Pennington County completed a 16,564 GSF, \$5.2 million courthouse annex in 1990. The project was completely funded through the refinancing of a jail bond. The refinancing was not done for the purpose of refinancing the facility, but the moneys saved as the result of the new financing were ultimately applied to the court facility construction. Citizens tried unsuccessfully to force a referendum on the ordinance of the County Commission authorizing construction of an annex from the accumulated capital funds. The issue was whether the act of the commission was an administrative or legislative act. The court held that the act was administrative in nature and not subject to referendum.²⁴³ The issue was not unique to South Dakota. The treatment of refinancing under state law frequently raises similar problems.

3. Persons Contacted

Name	Title	Phone Number
Dan Schenk	Acting State Court Administrator	605-773-3474
Bill Dougherty	Circuit Administrator, Sioux Falls	605-367-5920
Sue Roust	Minnehaha County Auditor	605-367-4220
Corinne Ausmann	Circuit Administrator, Rapid City	605-394-2571

X. UTAH

Summary: Utah provides an illustration of facility financing in a largely state-funded system in which considerable authority resides in the Judicial Council and Administrative Office of Courts. Utah also provides an example of (1) construction of a large court complex in Salt Lake City through revenue bonds issued by a state building authority with repayment coming from a mix of increased court fees dedicated to bond payment (with a sunset provision) and state general fund appropriations; (2) construction of a courthouse by use of lease-purchase bonds issued by a local building authority (the state has ultimate financial responsibility); and (3) strong judicial involvement in conceiving the financing plan for the Salt Lake City complex and advocating its adoption by the other branches of state government.

Utah is one of a few states that has directly assumed the responsibility for financing trial court facilities. State law permits both leases and reimbursement as means

²⁴³ 1989 Memorandum Decision, Circuit Court, Eighth Judicial Circuit, File No. 89-227

of paying counties for facilities.²⁴⁴ The state also has assumed responsibility for the circuit court facilities, which are subject to standards of the state building board.²⁴⁵

Utah has used its administrative rules to lay out responsibilities for capital expenditures on facilities. The state court administrator is given authority to “establish and manage a court facility program.”²⁴⁶ Court executives at the trial court level are given authority for “planning and management of facilities.”²⁴⁷ Rule 3-409 of the Utah Code of Judicial Administration sets forth a detailed approach for judicial branch participation in the state’s capital development program. The intent of the rule is:

To provide for the effective planning of court capital facilities.

To provide the efficient use of new and existing courthouses through application of collocation and multi-use court facility concepts.

To establish a framework for the conceptual, planning, developmental, and implementation phases of court capital facilities.

To provide a council review and approval of all proposed court capital facilities.

To ensure adherence to the space guidelines, design criteria, and other requirements of the Utah Judicial System Capital Facilities Masterplan.

Applicability

This rule applies to all court facility projects for courts of record regardless of funding source.

The rule states:

(1) There shall be a facilities masterplan which shall include design criteria, space guidelines and standards, workload forecasts and a ten-year capital priority list. This Code and the masterplan will direct and control all capital facility projects, including those implemented on behalf of the judicial branch by the Division of Facilities, Construction and Management (DFCM). Design criteria, space guidelines and standards shall be adhered to by local government in the provision of space for courts of record. Exceptions to court design criteria and space guidelines require approval of the Administrative Office and notice to the Council which may rule on the propriety of such exceptions.

²⁴⁴ Ibid.

²⁴⁵ Utah Code Ann § 78-4-20-1(b)

²⁴⁶ Utah Code of Judicial Administration, Rule 3-301(3)(B)(xiv)

²⁴⁷ Utah Code of Judicial Administration, Rule 3-301(5)(B)(iii)

The rule goes on to establish the respective roles of the judicial council, administrative office, and the local judges and court executives.²⁴⁸ The responsibility for seeking funding is left up to the administrative office.²⁴⁹

Utah accords its courts an unusually high degree of autonomy and responsibility in relation to facility financing.

1. Salt Lake Judicial Complex

The Utah Judicial Council and the court managers played an active and innovative role in developing support for the financing of a 420,000 GSF Complex in Salt Lake City at a cost of \$74 million. The chief justice also played an active role in urging the other branches to finance the complex.

The land acquisition was authorized in 1993. The financial package was still under final consideration in 1995. This package has the following features:

- It is to be financed by 20-year revenue bonds issued by the State Building Ownership Authority at a rate of 6.4 percent based on a rating of AA for revenue bonds (G/O rate is 6.15 percent, meaning that total cost to maturity will be \$132 million rather than \$112 million);
- Sixty-three percent of the cost of the bond payments will be covered by an increase in fees for filing civil complaints, filing small claims, traffic bail forfeiture and fine, writs of replevin, abstracts of judgment, and tax liens (if won by state);
- The fees will go into a dedicated account of the State Treasurer and be remitted to the State Building Ownership Authority;
- Despite the difference in bond rates there was still a saving of \$40 million over issuing a straight G/O bond and paying all the interest from the general fund, so the state preserved some borrowing flexibility by not obligating its general fund and yet had a projected net saving of \$20 million because of the fee revenue;
- The project could not be financed entirely by court fees because of concern among court users; moreover, the increases lapse in 20 years; and
- The annual debt service is higher at the start, averaging roughly \$6 million per year. The earmarked fee increases will rise annually by about 2 percent so that over 20 years the fees will generate \$83 million, leaving about \$49 million to be paid from the general fund.

²⁴⁸ Utah Code of Judicial Administration, Rule 3-409(2-12)

²⁴⁹ Utah Code of Judicial Administration, Rule 3-409(8)

The Utah experience in this project is a prominent example of a proactive court role in financing.

2. Other Sites

In Sevier County a courthouse was constructed with lease-purchase bonds (not COPs) issued by a local building authority.

3. Persons Contacted

Name	Title	Phone Number
Ron Gibson	State Court Administrator	801-578-3800
Fred Jayne	Finance Manager, AOC	801-578-3800
Gordon Bissegger	Director Of Administrative Services (AOC)	801-578-3800 or 3882

Y. VERMONT

Summary: Vermont provides examples of counties giving up their responsibility for court facility financing to the state.

Vermont's trial courts are largely state-funded, but the responsibility for financing trial court facilities is divided: the state funds district and family court facilities and the counties fund superior court construction and fixtures. There has been a gradual assumption by the state of all court facility financing, which appears to be quite possible under Vermont legislation:

Unless a suitable courthouse is provided by the state, with the approval of the assistant judges concerned, each county shall provide and own a suitable courthouse together with the necessary land adjacent thereto and keep such courthouse suitably furnished and equipped for the use only as chambers for a justice of the supreme court and superior court judge who may reside in the county, for the superior court, the probate court, the family court, the district court and the Vermont Traffic Bureau, together with suitable offices for the county clerk and probate judge or by rental elsewhere.²⁵⁰

Vermont has not relied on lease-purchase and is careful about voter approval. Thus, general obligation bonds are commonly used at both the state and county level. Counties can obtain special legislation to issue bonds without voter approval, but this can be controversial. The state issues 20-year G/O bonds for its capital projects, which

²⁵⁰ 24 V.S.A. § 71 (1993)

include court facilities for which the state assumes responsibility. This means that courts are part of the state's annual capital budget bonding package and are lumped with many other state capital expenditures. It appears that over time the state will assume total responsibility for trial court facility financing, as indicated by the state role in recent court facility financing.

1. Frank G. Mahady Courthouse, Middlebury

This new \$4.5 million building will be Vermont's first state-built, all-inclusive courthouse, including family, district, superior, and probate courts. This building will incorporate technology features to minimize facility use and reduce future need for new construction.

Addison County turned the housing of the superior court over to the state because the existing superior court facility would have required over \$1 million in mandated expenses under the Americans with Disabilities Act. The county would have needed voter approval for the renovation, whereas the state does not require voter approval. The county will close the old superior court courthouse when the superior court moves into the new building, but the county will furnish the superior court.

2. Caledonia County Courthouse, St. Johnsbury

A construction project for a \$5.9 million addition to the courthouse is in the final design phase and provides another example of a county turning over the financial burden of courthouse construction to the state. Twenty percent of the building will be occupied by the Community College of Vermont, another state entity. The college, as a state entity, pays no rent, but the plan is that the college will move at some time, making room for court expansion without further new construction.

3. Other Sites

A \$13-14 million 1994 addition to the courthouse in Bulington, Chittenden County is also state-funded.

4. Persons Contacted

Name	Title	Phone Number
Thomas Lehner	State Court Administrator	802-828-3276
Robert Greemore	Director of Administrative Services, AOC	802-828-3278
James H. Douglas	State Treasurer	802-828-2301

Z. VIRGINIA

Summary: Virginia's local governments have been active in facility construction and have used a broad variety of means to finance these facilities. Some counties have used traditional general obligation bond funding for courthouse construction, but this has not been the norm. Other counties have used revenue bonds issued by industrial development authorities, certificates of participation, refinancing of outstanding indebtedness to fund courthouse additions, and accelerated tax collection to raise capital funds.

Virginia, by reason of its local government structure, has a great number of trial court facilities. The legal responsibility for providing these facilities falls upon city and county governments.²⁵¹ This responsibility is discharged in numerous ways, some quite conventional, such as the financing of the Arlington County Courthouse through general obligation bonds, and some unconventional, as noted below. Local governments are empowered to add court costs for the purpose of financing facility construction and maintenance.²⁵²

1. Virginia Beach Judicial Center

Virginia Beach constructed a 319,000 GSF court facility on a 21-acre lot for about \$44 million (about \$7.8 million for land, \$29.5 million for building costs, \$3.2 million to expand heating facility, and \$3 million for debt service reserve). The project started in 1989 and was completed in 1993. The principal method used was issuance of certificates of participation. The land was purchased for \$7.8 million in 1987 with COPs and a little cash. In 1990 an additional \$33 million in COPs was issued to cover construction (the city came up with about \$4 million in cash). The city council increased the real estate tax in 1990 by 0.6 cents per \$100 valuation and dedicated all proceeds to cover the cost of debt service. In 1993 the whole project was refinanced for \$36.7 million with an average interest rate over 20 years of 5.33 percent, as opposed to 7.3 percent for the 1990 issue. Level debt payment was used. Some minor revenue is received from state rental of some space in the building.

The use of COPs was dictated largely by the state laws pertaining to bonded indebtedness.²⁵³ Virginia Beach had largely exhausted its general obligation bond authority on schools. Moreover, the city charter prohibits increasing the city's indebtedness under bonds and notes by more than \$10 million in one year. The choice was also dictated by the fact that voter approval of bonds was not certain and by the desire to expedite the timing of construction. COPs were, however, seen as a mixed blessing because of their complexity and the consequent increase in up-front costs to bond counsel and financial advisers and a higher interest rate.

²⁵¹ Va Code § 15.1-257

²⁵² Va Code § 14.1-133.2

²⁵³ See Va Const, Art VII, § 10

2. York County/Poquoson Courthouse

In York County, construction of a new 50,000 GSF courthouse was approved in 1994. It will house both the district court (JDR and general), the circuit court, and a variety of court-related offices, such as the Commonwealth Attorney. The cost of \$8.4 million included \$400,000 for land acquisition and \$500,000 for architectural and engineering assistance, both of which were paid directly from general fund tax revenue. The remainder was paid through a one-time tax windfall, specifically an accelerated tax collection that took in 18 months of property taxes in one year, raising an additional \$13 million. The shift to semiannual payments is an option that can be exercised only once. A government unit that chooses to exercise this option no longer has the ability to access this one-time reserve to help deal with emergencies. York County reviewed its financial position and determined that reserves and cash balances were sufficient to deal with any emergency that might arise.

The City of Poquoson pays a proportionate share of the construction (\$119,000 per year at 6.5 percent over a 20-year period). Under Virginia law, a city of the first class must elect its own set of court officers whereas cities of the second class can share them with the county. Although Posoquon is well above the population level to become a city of the first class, the legislature has not moved it to this category. The city is therefore able to share the costs of the court with the county.

3. Chesterfield County

In 1990, Chesterfield County completed a 139,910 square foot courts facility (including 4,000-5,000 square feet of unfinished shell space). The facility houses the circuit court, general district court, the commonwealth attorney, sheriff, and various other court-related offices, some of which, like the Community Diversion Incentive Office, pay rent.

The courts facility was financed in 1985 as part of a package that included the county's Human Services Building and Information Systems Technology Building. The financing method was certificates of participation under which the county entered into a lease-purchase agreement with a commercial leasing corporation that appointed the county its agent for carrying out project construction.

The courts facility comprised approximately 60 percent of the \$21.7 million original 1985 financing package (which included \$900,000 in capitalized interest for 6.5 months and \$2.43 million for a debt service reserve). Debt service payments over the 16-year period were level semiannual installments.

In 1987, the total package was refinanced by issuance of \$23.37 million in COPs primarily to provide additional funds (\$4.2 million) to complete the courts facility. In 1993, in order to take advantage of favorable interest rates, the county put together a \$17.5 million package of COPs to refinance the existing debt.

4. New Kent County

New Kent County completed a 22,000 GSF courthouse in 1992 at a cost of \$1.7 million. There were no land costs, but up-front costs and some equipment were included. The financing was handled through the county's Industrial Development Authority with level payments over a 20-year period. The Industrial Authority issued revenue bonds and received a 0.10 percent fee on lease payments. The county commissioners appoint the seven members of the IDA board pursuant to state law.²⁵⁴ IDA holds title until the debt is retired.

The county found that the use of the IDA was a time-saver, permitting the county to take advantage of a low cycle in construction costs. The estimated cost was \$2.2–2.3 million, but the final cost was \$1.7 million, a significant saving. Cost of a referendum was also saved, but mainly, the risk of voter rejection was bypassed.

5. Persons Contacted

Name	Title	Phone Number
Rob Baldwin	Court Executive	804-786-6455
Patricia Phillips	Director of Finance, City of Virginia Beach	804-427-4681
Becky Dickson	Capital Finance Administrator, Chesterfield County	804-748-1548
James J. L. Stegmaier	Director, Budget and Management, Chesterfield County	804-748-1548
R. J. Emerson	New Kent County Administrator	804-966-9695
Bob Kraus	Director of General Services, York County	804-890-3808
James McReynolds	Director of Financial and Management Services, York County	804-890-3670
Bill Hackworth	York County Attorney	804-890-3340

²⁵⁴ Va Code § 15.1-1373 et seq.

AA. WEST VIRGINIA

Summary: The relatively small renovation in Morgantown, West Virginia, is presented as an illustration of using commercial space and tapping into accumulated court fees that could be used for court facility construction.²⁵⁵

1. Morgantown Courtroom Renovation

In Monongalia County, West Virginia, Chief Judge Larry Starcher took an active role in developing about 11,200 square feet of renovated space in a partially deserted commercial building to house part of the court system. The facility is thoughtfully designed and has excellent security provisions and provisions for the handicapped. The building was opened for occupancy in November 1994 with a remarkably small expenditure of \$300,000 to house four magistrates, a family court commissioner, and a staff of about 23 people. It included three courtrooms.

The site of the renovation was a four-story Montgomery Ward Building purchased by the county. The first floor was renovated at a cost of \$1 million as a senior center; the second was a mezzanine converted into a senior center kitchen and eating facility; the fourth floor was used as a storage area; and the third floor was vacant (about 11,200 square feet). The judiciary urged the county to use the vacant third floor to house the lower court, but county officials were reluctant to incur debt. The judiciary identified the existence of \$175,000 in a jail improvement fund fed by a fee assessed in magistrate court for jail maintenance. The State Tax Commissioner approved the use of this money for court facilities renovation. This money covered the front-end costs and some of the early renovation; the rest was paid on a pay-as-you-go basis, making use of county staff and jail labor, although the area has a strong union tradition.

The building's worth is estimated at about \$2 million, of which the court section is worth about \$750,000 (net value added of \$450,000).

2. Persons Contacted

Name	Title	Phone Number
Ted Philyaw	State Court Administrator	304-558-0145
Larry Starcher	Judge, 17th Judicial Circuit	304-291-7265

²⁵⁵ Not included in the write-up was information on a jail in Cabell County. The jail finances were not directly court-related but illustrated the possibilities of developing an income stream from housing state and federal prisoners in a court-jail complex. The federal prisoners were a sure source of income; the state had problems in meeting its full payments for state prisoners. The county found that it was hurt by its contractual medical liability for prisoners, which proved to be expensive.

BB. WISCONSIN

Summary: Wisconsin illustrates (1) the use of a jail within the court building as a revenue-producing agent to reduce the cost of capital financing and (2) the use of a county sales tax “piggy-backing” on a state sales tax to help defray the cost of courthouse construction.

1. Chippewa County Courthouse

In 1992 a 150,000 GSF addition to the Chippewa County Courthouse was completed for a cost of \$7 million. The money was borrowed in two installments from a Milwaukee Bank; in 1993 the county refinanced the loan with a Green Bay bank.

A very small portion of the addition was occupied by the court, but the financing technique is applicable to any courthouse in Wisconsin. The county issued general obligation bonds to finance the construction, the debt service to be paid from a 0.5 percent sales tax superimposed on the basic state sales tax of 5 percent.²⁵⁶ The county share of the tax is collected by the state and held in an interest-bearing account for the benefit of the county. The bank holding the debt instruments bills the county, which draws down from its state sales tax fund. Under state law the proceeds of the tax cannot be dedicated nor can the tax law be “sunsetting.” It must be repealed when it has served its purpose. The interest yield runs about \$100,000 per year; the state receives an administrative fee for handling the sale tax.

The period to maturity for the bonds was ten years, but the bonds were callable after six years. Because of the sales tax, it appears that the bonds will be paid in 1997. The financing method has worked out well. The quick repayment on general obligation bonds yielded a low cost of borrowing.

2. Outagamie Justice Center

The justice center was built at a cost of \$27.4 million; the debt was incurred in 1988. The courts in Outagamie County share a facility with a jail that occupies three of the five floors of the building. Initially, the plan called for only two floors for the jail, with a shell for the third. Then, a decision was made to complete the third floor to create an income stream by housing state prisoners and a few prisoners from other counties. The state penal system needs room, and the county made an initial annual contract with the state for \$2 million to house state prisoners. In short, the county deliberately overbuilt its jail to earn state money to finance the justice center. The jail has a capacity of 510, but, as a matter of management policy and in compliance with correctional guidelines, keeps some empty beds.

²⁵⁶ Wis Stat Ann § 77.70; see § 302.46(1) on surcharge on traffic and ordinance violations for jail facilities and operations. The latter can be useful to courts sharing a facility with a jail.

The county averages 220 state prisoners at \$59 per day. There are only a few additional variable costs for adding more prisoners (roughly \$5 per prisoner) when the prison is fully staffed, so the addition of each new prisoner is lucrative. Out-of-county prisoners, though few in number, add to the income stream.

Part of the jail space has been set aside as a juvenile detention facility. The facility, through charges for services to out-of-county juveniles and state grants, covers some of the costs for juvenile detention.

Overall, the jail and detention section of the courthouse produces an income of about \$5.5 million annually, including some state grants for juvenile detention. This keeps the net operating costs of the facility, including debt service, at about \$1.5 million. County financial officials estimate that a smaller prison would have reduced the net capitalized annual cost by about \$500,000 per year and reduced operating costs by about \$2 million per year but that the net cost to the county without the prisoner income stream from the larger jail would have been \$4.5 million. This net figure exceeds the current net cost by about \$3 million annually.

The good side of the arrangement is that a court sharing a courthouse with a jail may obtain some financial benefit in facility financing from the income stream obtained from housing prisoners. The down side is that prisoner housing is very volatile because the county contracts with the state on a yearly basis and has no long-term guarantees. Moreover, the types of prisoners being held require a more secure environment than is normally required in a county jail.

An interesting revenue feature of the jail is a charge of \$1 per call for phone calls. The phone company remitted \$138,000 to the county in the most recent year.

3. Persons Contacted

Name	Title	Phone Number
Kathleen Murphy	Director of Court Services, AOC	608-266-3121
Jerome Dachel	County Clerk, Chippewa County	715-726-7980
Harold Froehlich	Judge, Outagamie County	414-832-5602
Ed Czaja	Finance Director, Outagamie County	414-832-1674

PART III

THE BASIC ELEMENTS OF COURT FACILITY FINANCING

Financing the construction and renovation of court facilities is, for the most part, similar to capital financing of other public buildings. Part III provides a general background on the capital financing of court facilities, pointing out, where applicable, the distinctive features of court facility financing.

A. SCOPE OF TERM *COURT FACILITY*

The term *court facility* covers a wide variety of structures, depending on how *court* is defined. Any definition would include the traditional courthouse containing courtrooms, judges' chambers, and a clerk's office, but there are a great variety of other buildings housing court-related functions, among them courthouse annexes, government administrative buildings, privately owned buildings, juvenile detention facilities, and various branch office buildings used by geographically diffused courts. More often than not, courts share space with non-court agencies, raising the question of whether the term *court facility* can be applied to a mixed-use building (some courts take the position that if the court occupies 75 percent or more of a building, it is a court facility). When a building is a *court facility*, it is, or should be, included in the capital financing plan of the judicial branch.

An obvious prelude to any consideration of court facility financing is preparation of a facilities master plan that addresses the nature and scope of existing court facilities. Such plans normally include:

- an inventory of buildings housing court functions;
- estimates of the amount of court space in each building;
- a description of the type of space provided, e.g., court rooms (jury, nonjury, appellate, and ceremonial); judicial chambers; clerical offices; probation offices; jury and witness waiting rooms; and jury deliberation rooms; and
- a description of the nature of court occupancy in each facility.

B. NATURE OF COURT OCCUPANCY

Courts use space under a variety of legal arrangements, each of which has special legal and financial implications. Courts may occupy:

- a court-owned building;
- a facility owned by some other governmental agency at no cost to the court (a common arrangement for trial courts in county courthouses);

- a government-owned facility where the occupancy is based upon some sort of a charge-back arrangement to cover the court's share of the facility's operating costs;
- a facility owned by a building authority that has financed the construction of the facility;
- private commercial space rented by the court; or
- a privately owned building that the court occupies under a lease-purchase agreement or condominium arrangement.

C. TYPES OF FACILITY FINANCING NEEDS

1. Maintenance of Existing Facilities

Courts use various methods to finance the operation of their existing facilities. This need may take various forms:

- The courts may pay for facility operational costs because they own the building or have principal responsibility for its management;
- The courts may pay another governmental agency or any other title-holder for the operating costs of the building by a budgetary charge-back (perhaps in the form of an intergovernmental transfer), reimbursement of actual operating expenses by a budget item, or payment of a use fee; or
- The courts may pay a rental fee to use privately owned property.

2. Renovation of Existing Facilities

Probably more common than the construction of new facilities is the renovation of existing facilities. These needs may or may not fall into the category of major capital expense. If the renovation is relatively minor, it may be picked up in the operating budget as an operating expense or funded from some small pot of available money. Often, however, renovation is of such a dimension that it must be treated as a major capital expense and included in long-term capital planning and debt management. It would, for all practical financial purposes, be treated as new construction. In these instances, renovation would be treated as new construction for financing purposes.

3. Construction of a New Facility or Annex

People often assume that the term *facility financing* refers only to the capital expenses of the building itself. As used here, this is not true. Operating expenses are included because they may be built into the rental fee under a lease-purchase agreement. Capital expenditures to furnish and equip a building are included because they are often capitalized. Land is included when it must be acquired. There is, however, no doubt that

the financing of major new court facilities is focused on construction costs and therefore involves financial complexities requiring a special definition of need. Planning and architectural studies should reliably estimate the financial need; the estimate should then be included in the capital budgeting plans and in the debt management strategies of the responsible government agencies.

D. DETERMINING FACILITY FINANCING NEEDS

1. Use of Facility Standards

At some point, facility financing must be reduced to a specific dollar amount for operational and capital budgeting, and sometimes for bonding. Determining need is made easier by the existence of facility standards or guidelines for measuring the adequacy of existing facilities or designing new facilities. Most court systems, however, lack such standards (see Table 2).

Table 2
Number of States Having Facility Guidelines

Type of Guideline	Yes	No	No Data
Space Needs	19	26	5
Maintenance	11	34	5
Security	19	26	5
Light	20	25	5
Acoustics	20	25	5
HVAC	16	29	6
Furniture	17	28	5
Fixtures	12	33	5
Other	10	32	8

Source: National Center for State Courts, Judicial Facilities Project, 1989

2. Use of Court Facility Master Plans for Capital Budgeting

Major court facility needs are sometimes incorporated into some statewide plan to facilitate coordinated capital budgeting and to estimate capital expenditures. Such a master plan may be required as a condition of participating in a state capital budget and sharing any bond proceeds. Ideally, these plans should contain cost estimates. However, a 1989 survey by the NCSC revealed that only ten states had facility master plans, five of which had never been updated. The states with active facility plans tend to be those that are highly unified and largely state-financed, even if this financing does not extend to facilities. Thus, for example, Colorado, Connecticut, Hawaii, Rhode Island, and Utah reported the existence of facility plans that were periodically updated. New York City has a long-term capital improvement program for court facilities around which a financial plan is organized. In a few other locations, courts are included in a local capital

improvement program. But, in general, courts do not do much master planning for facilities.

3. Estimates of Operating Costs for Inclusion in Budget

Facility operating costs may appear in a court budget in various ways, each involving a different way of defining financial need (see Table 3).

Table 3
Estimates of Operating Costs for Budget

Type of Facility Financial Need	Description of Facility Financial Need	Estimate of Need
Utilities, maintenance, security, insurance, etc.	In a court-dedicated building, basic facility costs are budgeted directly.	Based on historical costs plus inflation and planned increases, current insurance premiums, current salaries of custodial and security personnel, contracts for maintenance.
Reimbursement of operating expenses	Used by one government entity to compensate another for occupancy of its facility, after the expenditures have been made. Can cause friction, if audits cannot determine true operational costs.	Difficult to anticipate. Usually based on historical pattern of facility operational costs included in reimbursement agreement.
Space allocation chargeback, intergovernmental transfer	Often used when the court has partial occupancy of a building. Usually, a formula allocating facility operating costs on a square-footage basis. Costs may include utilities, security, maintenance and custodial costs, insurance, and perhaps even debt service.	These costs are “out front” costs negotiated by examining validity of cost figures and space estimates. Costs may be more or less imposed by executive branch agency.
Rent	Normally associated with court use of private commercial space.	Rental item in budget may be determined by existing lease or, if it is to be negotiated later, it can be based on existing commercial rental rates.

4. Estimates of Capital Expenditures for Budgeting

The most difficult cost determination is associated with capital expenditures. These tend to be large in amount, financially complex, and subject to change because of the longer time frame for facility construction. Usually, court facility construction takes

place on land owned by the governmental entity funding the project, but there is occasionally a need to build in a site acquisition step. Ordinarily, however, governments estimate costs with the following process:

- consultation with an engineer, who prepares a preliminary report that includes estimates of construction cost, site review, future operating costs, and project drawings, which is designed to determine if the court wishes to proceed;
- detailed design and refinement of cost estimates;
- determination of funding strategy, which may involve a financial advisor to determine a bond-marketing approach and to estimate the annual cost of the bonds based upon the going interest rate for the particular type of bond; the bond rating of the responsible government; the use of bond insurance or pledges; and the reduction of capital needs by developing revenue streams in the facility;
- preparation of a request for bids that reflects the design specifications (requests for bids could be for a design-build or design-build-finance proposal that transfers some of the above steps to the bidder); and
- evaluation of bids and possible adjustment of estimates.

The costs listed in Table 4 are those that might appear in a court operating budget or capital budget in relation to facility construction or renovation.

Table 4
Estimates of Capital Costs for Budget

Type of Facility-Financing Need	Description of Facility-Financing Need	Estimate
Direct operational budgeting for minor capital expenditures on facilities	This would typically be a small courthouse renovation, which would not require long-term financing and could be financed through the operating budget.	Normally based on bids and price, later incorporated in contract of successful bidder.
Facility planning and design	These are the “front end” costs for engineering and architectural help and are normally paid out of the operating budget, a special revolving fund, or line of credit. Sometimes, the costs are later capitalized when long-term financing is arranged.	If the study is done by a consultant, there is normally a contract based on competitive bids. If study is done by a government agency, there may be an intergovernmental charge, which is sometimes hard to estimate unless there is a firm agreement.

Type of Facility-Financing Need	Description of Facility-Financing Need	Estimate
Debt service	This is the repayment of scheduled interest debt incurred from government's debt instruments for facility construction. These costs are reflected in the operating budget, usually in the budget of the agency occupying the facility.	Often a regular periodic payment under a debt schedule, but there a number of exceptions: e.g., variable rate or zero coupon bonds, level principal payments. Moreover, revenue bonds often issue in two or more series, each with its own debt plan.
Interest on line-of-credit loan	A line of credit permits a government to incur construction costs and then later seek long-term financing based upon the actual cost, as opposed to an estimated cost.	The interest is specified in the loan document.
Rental on a lease-purchase	With many governments at the legal debt limit, facility construction may be accomplished by a lease-purchase with funding secured by revenue bonds based on general tax revenues or on special funds. The indebtedness is retired with interest by rental payments, ultimately leading to transfer of title.	No problem of estimation, since rental payments are computed for the length of the lease. However, some jurisdictions use variable-rate, lease-purchase bonds requiring annual adjustments, usually with the option to go to a fixed rate.
Land acquisition	In the event that a site had to be acquired, the cost could be included in the capital cost.	The estimate would be based on fair market cost according to the criteria for condemnation.
Construction	Actual construction costs are usually paid from bond money on a draw-down basis, although they occasionally are paid from annual appropriations or line-of-credit loans.	Construction costs are normally set by contract according to a payment schedule.
Design/Build	Funded like construction costs but contract includes design costs, focusing responsibility upon the contractor.	Costs are set by a single bid amount and are less subject to change than projects for which there are separate bids for design and construction. Sometimes the bidder also handles the financing through non-profit corporations that issue bonds at private sale (design-build-finance).
Reimbursement of capital costs	Some states compensate local governments for court facility construction by payments that defray debt service on local bond issues based on bond issues and long-term debt service. State budget may include money to defray this debt service.	This type of repayment is creature of state law and must be computed by reference to the law, for example, the "use allowance" in Kentucky.

E. GOVERNMENT RESPONSIBILITY FOR FINANCING COURT FACILITIES

1. Relative State and Local Responsibilities for Financing

Traditionally, state governments have assumed responsibility for financing the facilities of the court of last resort and, to a slightly lesser extent, the facilities of intermediate appellate courts. In some states, intermediate appellate courts use trial courtroom space that is paid for by county or city governments. Table 5 shows the number of states that have responsibility for financing their appellate court facilities.

As indicated in Table 6, the financing picture is very different at the trial court level, where funding remains largely a local government responsibility, even in states where the state pays most of the operational costs of trial courts. The table also indicates that states are somewhat more likely to fund limited jurisdiction court facilities than general jurisdiction court facilities. The historical reason for this is that state financing sometimes accompanied a reform of the lower court structure and involved a much closer relationship with that court component than the existing general jurisdiction courts.

Actually, the mix of governmental authority is much more complex than indicated in Table 5 because the state often lends its credit to counties and helps them in a variety of ways, such as by making state building authorities available, permitting special tax levies for court facilities, permitting courts to earmark certain court-collected fees for facility construction, creating judicial building authorities, giving courts access to bond banks, or giving courts access to local public building authorities.

There is also some privatization occurring. Some jurisdictions are entering into design-build-finance contracts under which the winning bidder handles the facility financing, normally by issuance of tax-exempt bonds through a 501(c)(3) corporation that

Table 5
Government Responsibility for Financing
Appellate Court Facilities

Financial Responsibility	Court of Last Resort	Intermediate Appellate Court
State	43	31
State/Local	1	2
Local	0	3
Not Applicable	0	8
No Data Obtained	6	6
Total	50	50

Source: National Center for State Courts, Judicial Facilities Project, 1989

Table 6
Government Responsibility for Financing
Trial Court Facilities

Financial Responsibility	General Jurisdiction Courts	Limited/Special Jurisdiction Courts	JP/Municipal Courts
State	8	10	1
State/Local	2	3	0
Local	40	29	28
NA/No Data	0	8	21
Total	50	50	50

Source: National Center for State Courts, Judicial Facilities Project, 1989

takes title to the facility and maintains it until the bonds mature. The government entity pays a rent that includes interest, operational costs, and a contribution to a sinking fund used to pay off the principal on the bonds at maturity (or some other form of debt retirement). Another aspect of privatization is the creation of revenue streams within a court facility, such as parking garages, rental of retail sales space, or rental of office space to government agencies or private organizations. The revenues from these sources can be used to reduce financing costs, subject to IRS regulations on the percentage of space that can be dedicated to revenue-raising uses.

2. Limits on State and Local Authority to Incur Indebtedness

One of the facts of life in facility financing is that governmental entities have, over the years, been subjected to a series of constraints on incurring debt. Facility construction accounts for much of any public debt and is therefore particularly affected by limitations on indebtedness. Local governments, in particular, have been limited by law, but state governments are also subject to a variety of legal constraints on their ability to incur indebtedness.

A common means of restricting state indebtedness is to require a balanced budget and to restrict the carryover of deficits into the next fiscal year or biennium. In addition, many state constitutions impose some limit on incurring general obligation debt, either by using an explicit dollar limit or by simply forbidding it. There are a variety of other devices for controlling general obligation indebtedness: (1) restricting it to a set percentage of the prior year's revenues; (2) restricting it to a set percentage of the general fund; (3) restricting it to a set percentage of expenditures; or (4) restricting it to a percentage of property value. Some states require voter approval to incur debt, but bond referendums are much more common at the local government level.

Table 7 uses fairly generic classifications to illustrate the legal restrictions on state indebtedness and does not attempt to reflect all of the above variations.

Table 7
Legal Constraints on the Authority of States to Incur Debt

State	Gov. Must Submit Bal. Budget	Legis. Must Pass Bal. Budget	Gov. Must Sign Bal. Budget	Cannot Carry Over Deficit	Constitution Limits G/O Debt
Alabama	✓	✓	✓	✓	✓
Alaska		✓			Vote
Arizona	✓	✓	✓	✓	✓
Arkansas	✓			✓	
California	✓		✓	✓*	✓
Colorado	✓	✓	✓	✓	✓
Connecticut	✓	✓	✓		
Delaware	✓	✓	✓	✓	
Florida	✓	✓		✓	
Georgia	✓	✓	✓		✓
Hawaii	✓		✓		✓
Idaho	✓	✓			✓
Illinois	✓	✓			
Indiana	✓	✓	✓	✓	✓
Iowa	✓	✓			✓
Kansas	✓	✓		✓	✓
Kentucky	✓	✓	✓	✓	✓
Louisiana	✓	✓	✓		✓
Maine	✓				✓
Maryland	✓	✓		✓	
Massachusetts	✓				
Michigan	✓	✓	✓	✓	✓
Minnesota	✓	✓	✓	✓	
Mississippi	✓				✓
Missouri	✓	✓	✓	✓	✓
Montana	✓	✓		✓	
Nebraska	✓	✓	✓		✓
Nevada	✓	✓			✓
New Hampshire	✓		✓	✓	
New Jersey	✓	✓	✓	✓	✓
New Mexico			✓		✓
New York	✓		✓		Vote
North Carolina	✓	✓	✓	✓	✓
North Dakota	✓	✓	✓	✓	
Ohio	✓	✓	✓	✓	✓
Oklahoma	✓			✓	Vote
Oregon	✓	✓	✓		✓
Pennsylvania	✓	✓	✓		✓
Rhode Island	✓	✓	✓	✓	Vote
South Carolina	✓	✓	✓	✓	✓
South Dakota	✓	✓	✓	✓	✓
Tennessee	✓	✓	✓	✓	
Texas	✓	✓	✓		✓
Utah	✓	✓		✓	✓
Vermont					
Virginia	✓			✓	Vote+
Washington	✓			✓	✓
West Virginia		✓		✓	
Wisconsin					✓
Wyoming	✓	✓	✓	✓	✓
Total	45	36	30	30	36

* Can be carried over with legislative concurrence.

Source: National Association of State Budget Officers, *Budgetary Processes in the States*, 1987

Local governments have numerous limits on their ability to incur general obligations debt. Some of the more common limits are indicated in Table 8.

Table 8
Limitations on the Debt of Local Governments

State	Debt Limit Cities	Debt Limit Counties	Debt Purposes Specified	Local Bond Refer- endum	Maximum Bond Life	Legal Limit on Interest
Alabama	✓	✓		✓	✓	
Alaska	✓	✓	✓	✓	✓	
Arizona	✓	✓		✓	✓	
Arkansas	✓	✓	✓	✓	✓	✓
California	✓	✓	✓	✓	✓	
Colorado	✓	✓		✓	✓	
Connecticut	✓		✓	✓	✓	
Delaware	✓	✓	✓		✓	
Florida			✓	✓		✓
Georgia	✓	✓		✓		
Hawaii	✓	✓	✓		✓	✓
Idaho	✓	✓	✓	✓	✓	✓
Illinois	✓	✓		✓	✓	✓
Indiana		✓	✓	✓	✓	✓
Iowa	✓	✓	✓		✓	✓
Kansas	✓	✓		✓	✓	✓
Kentucky	✓	✓		✓	✓	✓
Louisiana	✓	✓	✓	✓	✓	✓
Maine	✓		✓	✓	✓	
Maryland	✓	✓			✓	
Massachusetts	✓		✓			
Michigan	✓	✓		✓	✓	✓
Minnesota	✓	✓	✓	✓	✓	
Mississippi	✓	✓	✓	✓	✓	✓
Missouri	✓	✓	✓	✓	✓	✓
Montana	✓	✓	✓	✓	✓	
Nebraska	✓	✓		✓	✓	
Nevada	✓		✓	✓	✓	✓
New Hampshire	✓	✓	✓	✓	✓	
New Jersey	✓	✓	✓	✓	✓	✓
New Mexico	✓	✓	✓	✓	✓	✓
New York	✓	✓	✓	✓	✓	✓
North Carolina	✓	✓	✓	✓	✓	✓
North Dakota	✓	✓	✓	✓	✓	✓
Ohio	✓	✓	✓	✓	✓	✓
Oklahoma	✓	✓			✓	✓
Oregon	✓	✓		✓		✓
Pennsylvania	✓	✓	✓	✓	✓	
Rhode Island	✓				✓	
South Carolina	✓	✓	✓	✓	✓	
South Dakota	✓	✓		✓	✓	✓
Tennessee	✓			✓	✓	
Texas	✓		✓	✓	✓	✓
Utah	✓	✓	✓	✓	✓	
Vermont	✓		✓		✓	✓
Virginia	✓		✓	✓	✓	✓
Washington	✓	✓	✓	✓	✓	
West Virginia	✓	✓	✓	✓	✓	
Wisconsin	✓	✓	✓	✓	✓	
Wyoming	✓	✓	✓	✓	✓	
Total	48	40	32	39	41	24

Source: U.S. Advisory Commission on Intergovernmental Relations, *State Laws Governing Local Government Structure and Administration*, March 1993

In addition to debt limitations, state constitutions and state laws sometimes impose restrictions on the types of bonds that can be issued, the variation in payments from year to year, and the deferral of interest payments. Such limits make it difficult for government borrowers to achieve any flexibility in the financial markets. Governments need the ability to adjust the payment level and the timing of interest payments to take advantage of the current and projected rates of borrowing. The use of serial bonds that mature at various times over the period of indebtedness or the use of sinking fund bonds that retire a debt at the end of a term are among the options that should be available.

There may also be restrictions on the power of a government to engage in lease-purchase arrangements shifting certain responsibilities to a developer or public authority. Key to this type of financing are the laws pertaining to certificates of participation. These instruments, which are, in effect, a participation in the proceeds of a lease, are used widely when the law provides some realistic security to lenders and much less frequently if state law places such lenders at high risk. Governments may also lack the legal authority to pledge general tax revenues to capital purposes, for example, the levy of a special property or excise tax pledged to capital purposes in order to facilitate the sale of bonds.

F. BASIC METHODS OF CAPITAL FINANCING

1. Tax-Exempt Bonds

Fundamental to the strategy for financing court facilities and all public buildings is the federal tax-exempt status of state and local government bonds that permits these issues to be sold at interest rates lower than those for taxable instruments. Tax-exempt bonds are appealing to persons or organizations in a high income bracket, in particular wealthy individuals, commercial banks, and casualty and property insurance companies. The demand for municipals tends to run counter to the demand for business loans and is strongest in and shortly after a recession and weakest in boom times. This is particularly true of short-term municipals.

Because the use of tax-exempt bonds is a revenue loser for the federal government, attempts go on at the federal level to restrict this benefit by IRS interpretation or by amendments to the tax laws. In *Baker v South Carolina*, 485 U.S. 505 (1988), the United States Supreme Court upheld the constitutionality of § 310(b)(1) of the Tax Equity and Fiscal Responsibility Act of 1982, which removed the federal tax exemption for interest earned on publicly offered long-term bonds issued by state and local governments unless the bonds were registered. Some states have authorized public instrumentalities to issue taxable bonds should this become necessary or if this would make the bonds more marketable.²⁵⁷

The difficulty of obtaining conventional financing has increased interest in creative use of nonprofit corporations empowered to issue tax-exempt bonds under Section

²⁵⁷ For example, the Arkansas legislature has enacted legislation permitting the issuance of taxable bonds (Ark Stat Ann § 19-9-701 et seq.).

501(c)(3) of the Internal Revenue Code. The use of such corporations as a vehicle to finance public buildings is becoming fairly common, inasmuch as such privatized financing permits a governmental entity to circumvent legal constraints imposed on governmental entities and often expedites the time to completion.

Governmental entities have also been more creative in setting up revenue streams within a bond-financed building to reduce debt service and in using limited forms of arbitrage, specifically the investment of tax-exempt bond proceeds in securities with a materially higher yield rather than spending the bond proceeds for the exempt purpose of the borrowing. Congress and the Internal Revenue Service have placed restrictions on some of these “creative” uses of the privilege to issue tax-exempt bonds (see Sections 145, 147, and 148 of the Internal Revenue Code). Only 5 percent of a bond's proceeds may be used for a nonexempt purpose, such as rental of space to private parties. Tax arbitrage must be rebated to the federal government, but there are some exceptions to the restriction: (1) if either the lesser of 5 percent of the proceeds or \$100,000 are spent for the tax-exempt purpose of the issuance within six months, no rebate is due and the issuer/developer has another six months to spend the remainder of the bond proceeds; and (2) if the proceeds for construction are expended according to a schedule that generally does not exceed two years, no rebate is due.

For over a decade the tax-exempt bond market has been quite volatile. The swings in interest rates have been substantial, causing borrowers to shy from long-term commitments at high rates and to seek relatively flexible means of financing. Investors have also been less willing to lock into fixed returns, leading to various innovative methods of capital financing designed to attract investors and to provide flexibility to borrowing entities.

2. Long-Term Financing

While it is theoretically possible to finance facility construction from annual appropriations, rarely is this possible in practice. For the most part, facility construction involves incurring a long-term debt. This can take an infinite variety of forms, but there are some standard approaches that are frequently used. The common types of long-term indebtedness, as viewed from the perspective of the governmental agency contracting the debt, are listed in Table 9.

Since laws pertaining to indebtedness vary so widely, only a few general comments can be made about the relative advantages and disadvantages of general obligation and limited liability bonds. The strong and weak points about general obligation bonds, as compared to limited obligation bonds, are featured in Table 10.

Table 9
Common Types of Bonded Indebtedness

Type of Bond	Description of Bond
General Obligation Bonds	These bonds are based on the full faith and credit of a governmental unit and involve an unconditional commitment to pay the interest and retire the principal, pledging the general tax revenues of the unit. Such bonds usually require voter approval and may be in the form of a general bond issue (law permitting) or may be specific as to the type of facilities.
Limited Obligation Bonds	These are bonds for which the funds to retire principal and interest come from rental revenue or user fees. They do not involve a pledge of the general credit of the government. (See variants below.)
(1) Enterprise Revenue	These bonds finance projects that generate revenue to pay the debt. Courts seldom have revenue-producing facilities, but there are some court facilities that serve persons from outside the county (e.g., regional juvenile detention facility) and thus generate revenue.
(2) Lease-Rental Bonds	These bonds finance construction of facilities that are leased under contract to a local government. The governmental unit pays rent sufficient to retire the debt and meet operating costs. Unlike lease-purchase bonds, there is not necessarily a transfer of title to the government unit when the debt is retired.
(3) Special Revenue Bonds	These bonds finance facilities for which principal and revenues are paid from special revenues, such as the proceeds from a special sales tax or special ad valorem tax on property. Both devices have been used to finance court facilities.
(4) Lease-Purchase Bonds	This type of bond (or certificate of participation) is used when a government agency develops specifications for a facility and has it constructed by a private developer or public authority. This facility is then leased by the local government at an annual or monthly rate sufficient to pay the principal plus interest and perhaps operating costs. At the end of the lease period, the title is transferred to the government agency. Normally, the rental payments are derived from general fund tax revenues.

Table 10
Advantages of Different Types of Bonds

**Advantages of General
Obligation Bonds**

- (1) Lower interest rates
- (2) Administrative aspects of preparing to borrow are simpler and normally cost less
- (3) Lend themselves to public sale (as opposed to privately negotiated sales), generally making them more competitive and producing lower interest rates

**Advantages of Limited
Obligation Bonds**

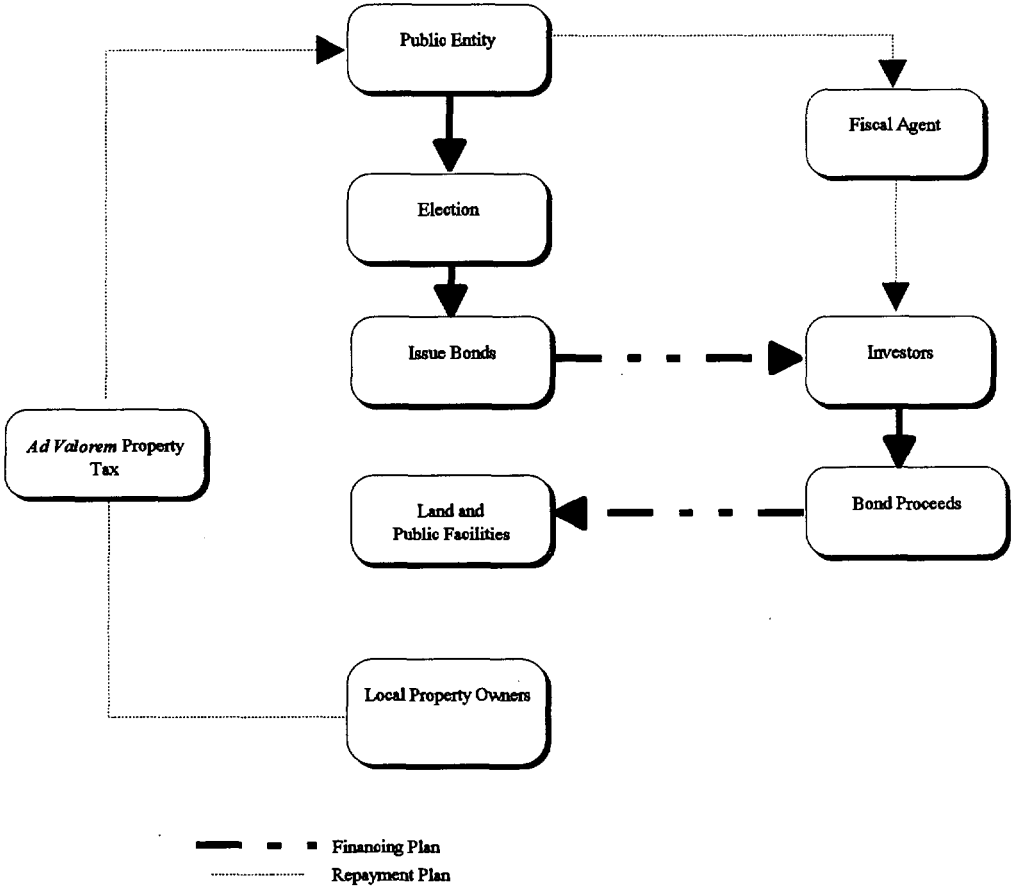
- (1) No necessity for vote and thus less delay in capital financing; most states require a vote of approval for general obligation bonds
- (2) Do not reduce overall borrowing capacity, an important factor if there is a legal limit on the amount of indebtedness
- (3) If use fees are involved, the burden falls on the people who use the facility rather than the general public

Each basic method of long-term financing has a unique financing plan and a unique repayment plan. General obligation bond issues are often serial bonds that consist of a series of separate bonds maturing at various intervals, as opposed to a term bond with some sort of sinking fund. The different categories of bonds in the same issue may be broken out and sold separately by underwriters. In virtually any type of bond issue, including general obligation bonds, there is a fiscal agent or trustee who serves as the intermediary for receiving payments from the issuer and distributing the payment as required by the terms of the indebtedness. As illustrated in Figure 9, the fiscal agent is a key component of the repayment plan.

Revenue bonds are subject to coverage requirements that ensure that the anticipated revenues exceed the scheduled debt payment by some multiple. Revenue issues may be in serial form or partially in serial form with some large term bonds that mature as balloon payments on specific dates. The role of a trustee in relation to investors and the requirement of pledged revenues distinguish this type of bond process, as illustrated in Figure 10.

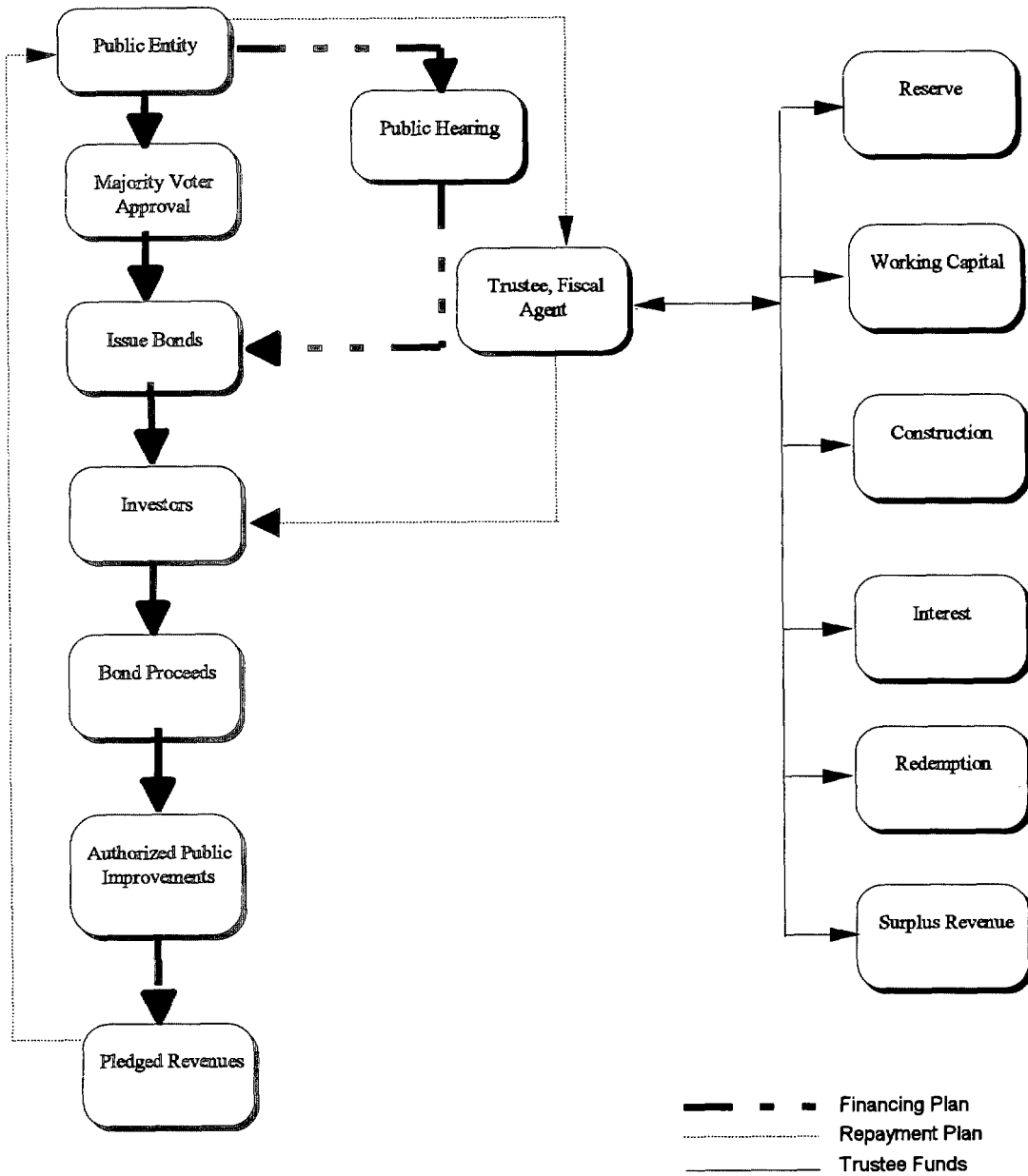
A limited tax bond issue based upon a sales tax levy has its own dynamics, as illustrated in Figure 11. The figure uses an example from a sales tax, but there can also be special real property tax levies. Special levies often have sunset provisions ending the tax when the facility debt has been paid.

**Figure 9
General Obligation Bonds**



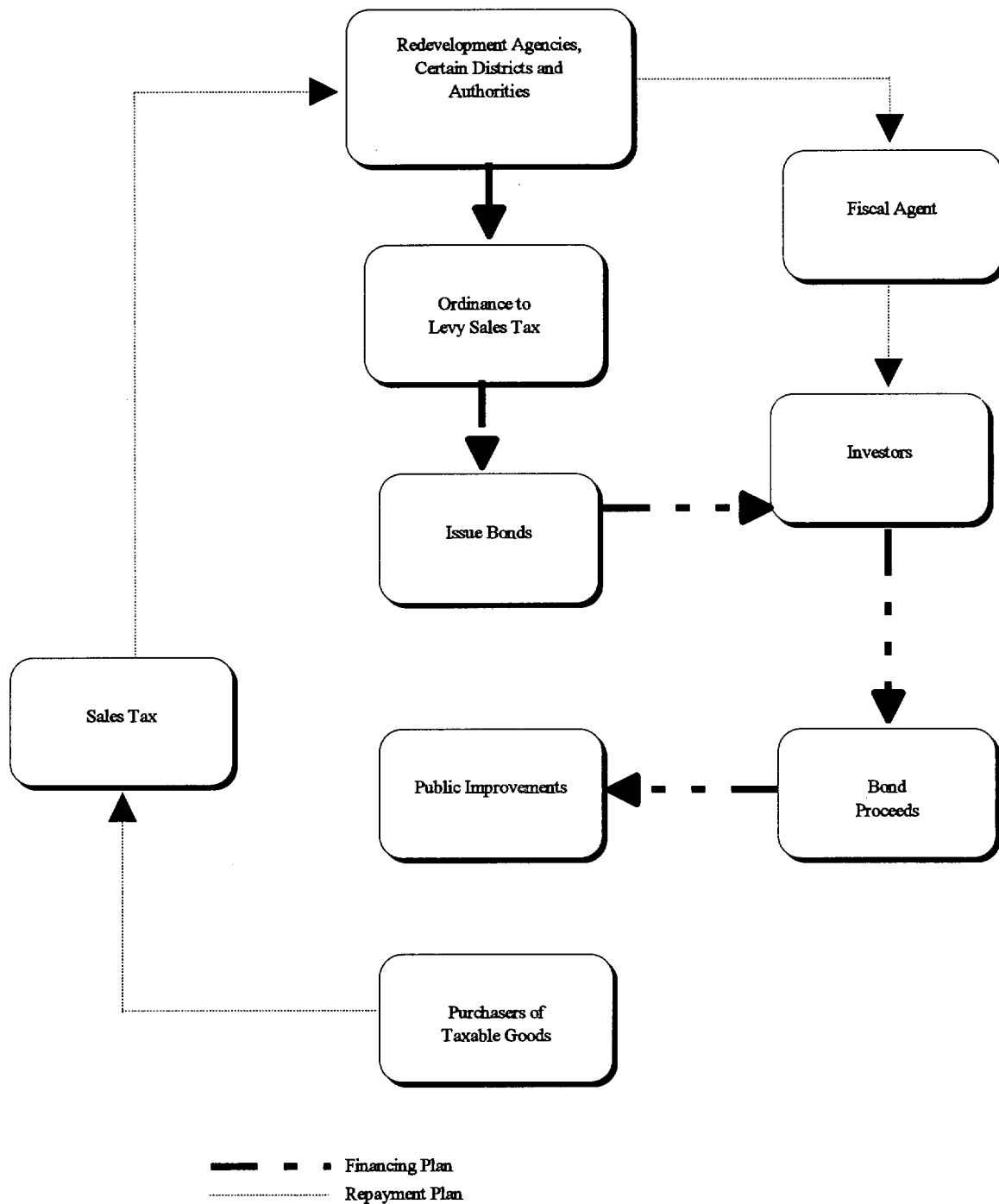
Source: John Peterson, Court Finance Group

Figure 10
Revenue Bonds



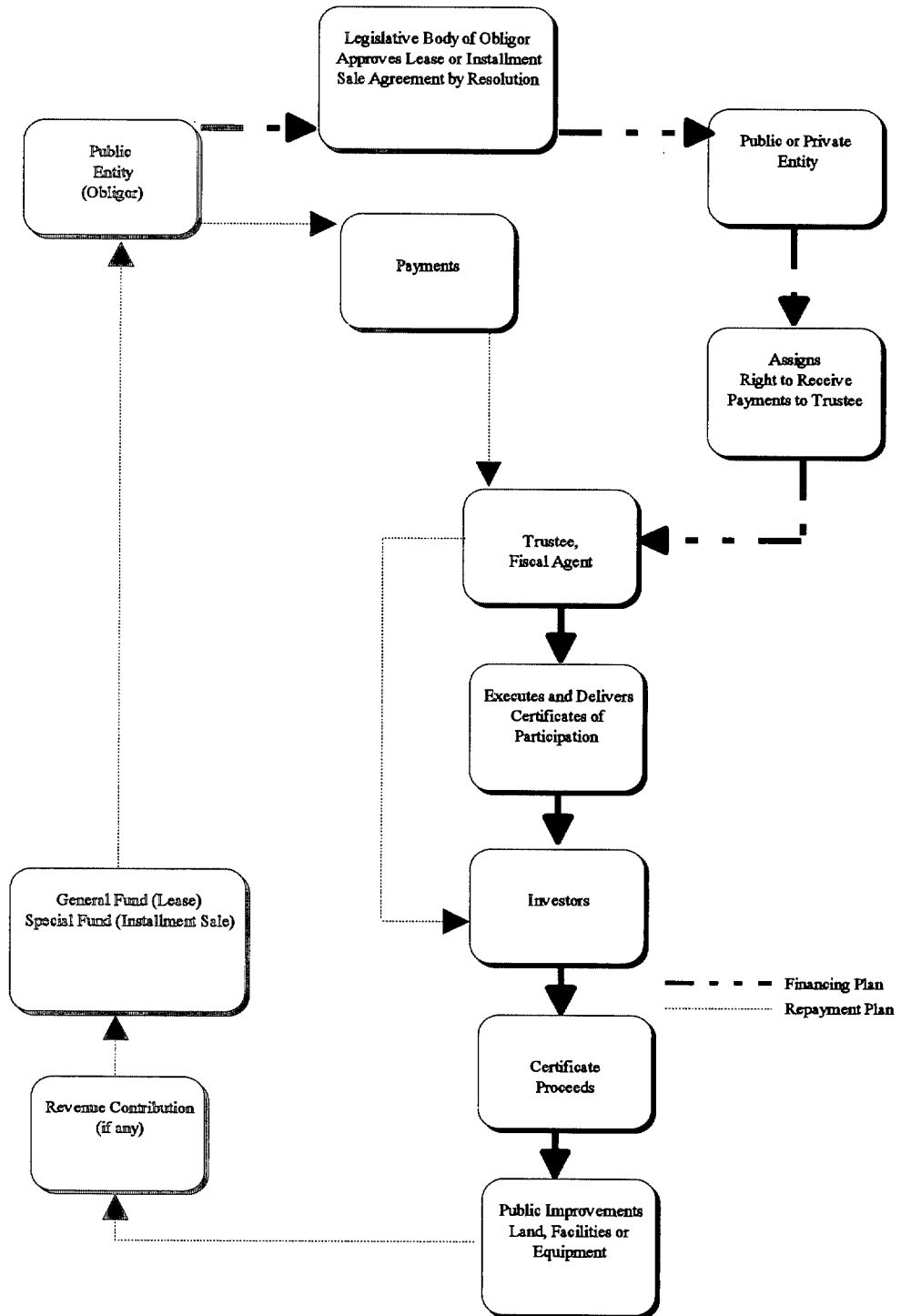
Source: John Peterson, Court Finance Group

**Figure 11
Limited Tax Bonds**



Source: John Peterson, Court Finance Group

Figure 12
Certificates of Participation



Source: John Peterson, Court Finance Group

Issuance of certificates of participation involves a financing plan and a repayment plan particularly suited to lease-purchase arrangements with either a public or private entity (see Figure 12). Certificates of participation are a form of lease financing whereby investors purchase a share in the revenues of a long-term lease on a building being constructed or renovated. The proceeds from the sale of the certificates finance the construction, usually through a special purpose corporation that holds title to the property until the certificates are retired.

The standard types of debt issues described above have been supplemented and embellished by a variety of other financing options. The variations have become more widely used because of the volatility of the market. Table 11 lists some of the principal options.

Table 11
Recent Variations in Debt Financing

Floating-rate instruments	Floating-rate instruments place the risk of interest rate fluctuations on the borrower, protecting buyers from the loss of market value reflected in the face amount of debt instruments. This fluctuation may permit issuers of tax-exempt bonds to attain lower interest rates and attract more lenders into the long-term bond market. These instruments are being used by a number of government entities, both for general obligation bonds and revenue bonds, usually with some ceiling and floor above or below which the interest rate can not drop.
Put option bonds	A “put option” enables the purchaser of bonds to tender them back at par value at the end of a specific period. This creates risks for the lender and may require a line of credit to support the option, but it reduces interest rates substantially.
Zero coupon bonds	These bonds pay no interest prior to maturity and are offered at a discount to compensate the investor for giving up immediate interest payments. The issuer accepts a steep discount to defer interest payments.
Special features	Some bond issues have a “call” feature that permits issuers to retire bonds after a fixed period by payment of a premium. This feature may be advantageous when the cost of borrowing drops to a point where it is worthwhile to pay the premium. Some bonds have a “convertible” feature that permits the issuer to convert from variable-rate to fixed-rate bonds. Some variable-rate bonds have an “interest index” keyed to some market measure, commonly interest on U.S. Treasury bills. So-called double barrel bonds permit a revenue bond to revert to general obligation status.

Bonds with warrants	A warrant entitles the possessor to purchase additional bonds at a fixed discount price during a specified period. The warrants yield no interest and have no worth unless the market price of the bond rises above the fixed price. Yet, such instruments save interest for the borrower because the warrant feature enhances the value of the issue.
Bonds issued by bond banks	Some states (e.g., Maine, North Dakota, Alaska, and Vermont) have set up bond banks to assist small local governments to float issues at reasonable rates. The bond bank aggregates small capital requests and issues its own bonds at rates below those available to localities unable to use underwriters or deal directly with major bond purchasers. Sometimes on small issues, bond denominations are made small enough for direct sale to individual investors (mini-bonds).
Bond insurance	Some specialized insurance companies will issue insurance against bond default. Possession of insurance affects bond ratings and interest.
Moral obligation bonds	This type of bond is backed by a nonbinding governmental pledge to use appropriated funds, if necessary, to prevent default. It lacks the certitude of a general obligation bond, but, in a way, makes the bonds appropriations-based.
Stepped coupon bond	A stepped coupon bond uses a serial maturity schedule with coupon rates that start at lower levels and progressively increase to higher levels. The bonds are sold at par. The stepped approach protects principal of the investor and gives low interest rates in the early years, usually lowering the average coupon rates to maturity. These bonds are useful for revenue bonds issued to finance projects with capitalized interest.
Pledge of general tax revenue	Some jurisdictions stabilize their capital budget by dedication of general tax revenues to the capital budget. Some courts benefit from special tax levies, (either sales taxes or real property taxes) dedicated to facility construction.

3. Overview of Bond Market

Municipal bonds (the term includes state and county bonds) are, for the most part, long-term bonds. The dollar value of long-term issues has been roughly four times the dollar value of short-term issues in recent years.

The sharp increase in the volume of bond issues in the period 1992-1993 is attributable to refinancing issues to take advantage of low interest rates. The 1994 volume will drop back to levels below those of 1991, reflecting the recent increase in interest rates.

Table 12
Comparative Volume of Short-Term and Long-Term Municipal Bonds,
1989-1993
(in billions)

	1989	1990	1991	1992	1993
Long-Term	\$125.0 (81%)	\$128.1 (79%)	\$174.1 (80%)	\$235.0 (85%)	\$291.0 (86%)
Short-Term	\$29.5 (19%)	\$34.5 (21%)	\$43.0 (20%)	\$42.2 (15%)	\$46.2 (14%)
Total	\$154.5	\$162.6	\$217.1	\$277.2	\$337.2

Source: Bond Buyer 1994 Yearbook

Over 90 percent of long-term municipal bonds are tax-exempt. The remaining issues are divided between taxable issues and those issues, primarily residential housing bonds, that are subject to an alternative minimum tax. Over 90 percent of long-term municipal bonds are fixed-rate bonds despite the volatility in the market. More than two-thirds of long-term municipal bonds are revenue bonds. These characteristics are reflected in Table 13.

Table 13
Principal Characteristics of Long-Term Municipal Bonds in 1993

Characteristics	Percentage Distribution
Tax Status	
Exempt	92.5
Alternative Minimum Tax	4.5
Taxable	3.0
Type of Interest	
Fixed Rate	92
Variable Rate	8
Type of Security	
General Obligation	32
Revenue	68

Source: Bond Buyer 1994 Yearbook

Most long-term municipal bonds issued for construction of court facilities are classified as "general purpose" bonds. As indicated in Table 14, most municipal bond issues fall in the "general purpose" category.

Table 14
Distribution of Long-Term Municipal Bonds by Purpose in 1993

Purpose	Percentage of Total
General Purpose	23
Education	16
Utilities	13
Health Care	11
Transportation	10
Electric Power	9
Other	18

Source: Bond Buyer 1994 Yearbook

Table 15
Comparative Bond Yields as of November 3, 1994
(in percent)

Term in Years	Insured Non-AMT	General Obligation				Treasury Yields
		Aaa	Aa	A	Baa	
1	4.50	4.35	4.50	4.55	5.25	6.31
5	5.70	5.45	5.55	5.75	6.35	7.65
10	6.30	6.05	6.15	6.35	6.70	7.96
15	6.80	6.55	6.65	6.85	7.10	
20	6.90	6.85	6.90	7.05	7.40	8.24
25	7.00	6.95	7.00	7.10	7.70	
30	7.10	7.00	7.10	7.25	7.85	8.11

Illustrative Revenue Bond Yields:	
Health Care—25 years, A rated	7.50
Electric Utility—40 years, A rated	7.20
Water and Sewer—30 years, A rated	7.10

Source: Provided by John Peterson, Government Finance Group

The cost of borrowing is greatly affected by the bond ratings of Moody's and Standard and Poor's. Some bonds do not achieve ratings because of the financial status of the borrowing entity and are sometimes referred to as "junk bonds." Despite the inglorious name, defaults of unrated bonds are relatively rare and defaults of rated bonds even rarer. In the period 1986-1991, the average annual default of unrated bonds was only 1.1 percent in terms of issues and 2 percent in terms of sales volume. Moreover, these

defaults included technical defaults based on failure to perform some obligation other than payment.

The fact that a government has a good bond rating does not preclude the possibility of default, as exemplified by the problems of double-A rated Orange County, California, in 1994. Nonetheless, the borrowing costs on unrated bonds can run 25 to 50 basis points above the lowest rated bonds (Baa by the classification of Moody's). Table 15 reflects bond yields by rating and term of bond on November 3, 1994.

Bond insurance reduces the rate of borrowing. Three companies dominate the bond insurance market: Municipal Bond Investors Assurance Corporation, AMBAC Indemnity Corporation, and Financial Guaranty Insurance Company. In 1993 these three companies had \$90 billion in policies covering 3,690 issues of fixed-rate bonds.

4. Short-Term Financing

The references above are to long-term construction financing. However, it is very often advisable to have some interim means of financing, since there may be some uncertainty about the final total cost of the project and the schedule for completion. Short-term financing is also important for tactical purposes to take advantage of market conditions. Thus, for example, if the yield curve is sharply upward, short-term money may be so much cheaper than long-term money that it would be wise, if possible, to arrange financing through short-term loans with the intention of refinancing with long-term debt at some later date.

Some courts may have a discretionary fund fed by some court cost or fee. This fund may provide short-term financing for front-end expenditures such as master planning, programming, and architectural design. If the front-end costs are capitalized, the fund can be used as a revolving fund. Generally, however, courts do not have access to interest-free internal funds and must seek loans.

Short-term financing is usually limited to one year, although some states permit the issuance of tax or revenue anticipation notes or bond anticipation notes for more than one year. A loan against a line of credit is another frequently used device for short-term financing. Some states (e.g., Connecticut and Kentucky) have made use of tax-exempt commercial paper. These short-term unsecured debt instruments require a special credit rating and a bank line of credit in the event that the paper cannot be rolled over at maturity (usually 30 to 90 days). Even allowing for costs of brokerage, credit lines, and legal fees, commercial paper is less costly than publicly sold notes of similar maturity. Moreover, the money is quickly available. Ultimately, short-term financing must be weighed against the rate that would be paid on long-term bonds less the interest earned on the bond funds through investment.

5. Debt Management

The structuring of major capital indebtedness can be highly technical and complex. Most executive branch financial managers do not have to deal with this issue at regular intervals and do not, on the whole, feel a compelling need to master the intricacies of such financing. Court managers are even further removed from this area of management.

Revenue bonds often issue in two or more series; moreover, the method of payment may also vary, ranging from fixed level payments to various types of staggered or deferred payments. The variations are often designed to be attractive to investors, including those in the secondary bond market, or to take advantage of anticipated changes in the interest rate. Sometimes, the debt structure is heavily influenced by the cash flow position of the borrower.

Because of this complexity, heavy reliance is placed on bond counsel, financial advisors, and underwriters. Bond attorneys are required to certify that the bonds qualify for tax-exempt status and to ensure that the debt issue itself and the process of debt issuance and sale are legally correct. The financial advisor assesses the financial condition of the issuer and advises on the time, the likely revenue flows (for revenue bonds), marketing strategy, interest payment dates, and call features. Underwriters may have a large role in structuring debt in a negotiated sale, playing an intermediary role between the issuer and likely investors. In a competitive sale, the debt structure is set before the underwriters get into the action and make their bids, which are normally evaluated by the lowest interest rate bid or by the highest bid on the price of the bonds. Underwriters, who frequently operate as syndicates, receive a “spread” for their efforts, that is, the difference between the amount paid by the underwriters and the amount paid by the secondary purchaser. Because of the special expertise required in this area, use of state building authorities is attractive to many governments that want some knowledgeable governmental intermediary. Associations of counties and bond banks also provide help to government borrowers.

Suffice to say, public administrators, including court managers, have to understand how to deal with capital financing and to make informed decisions.