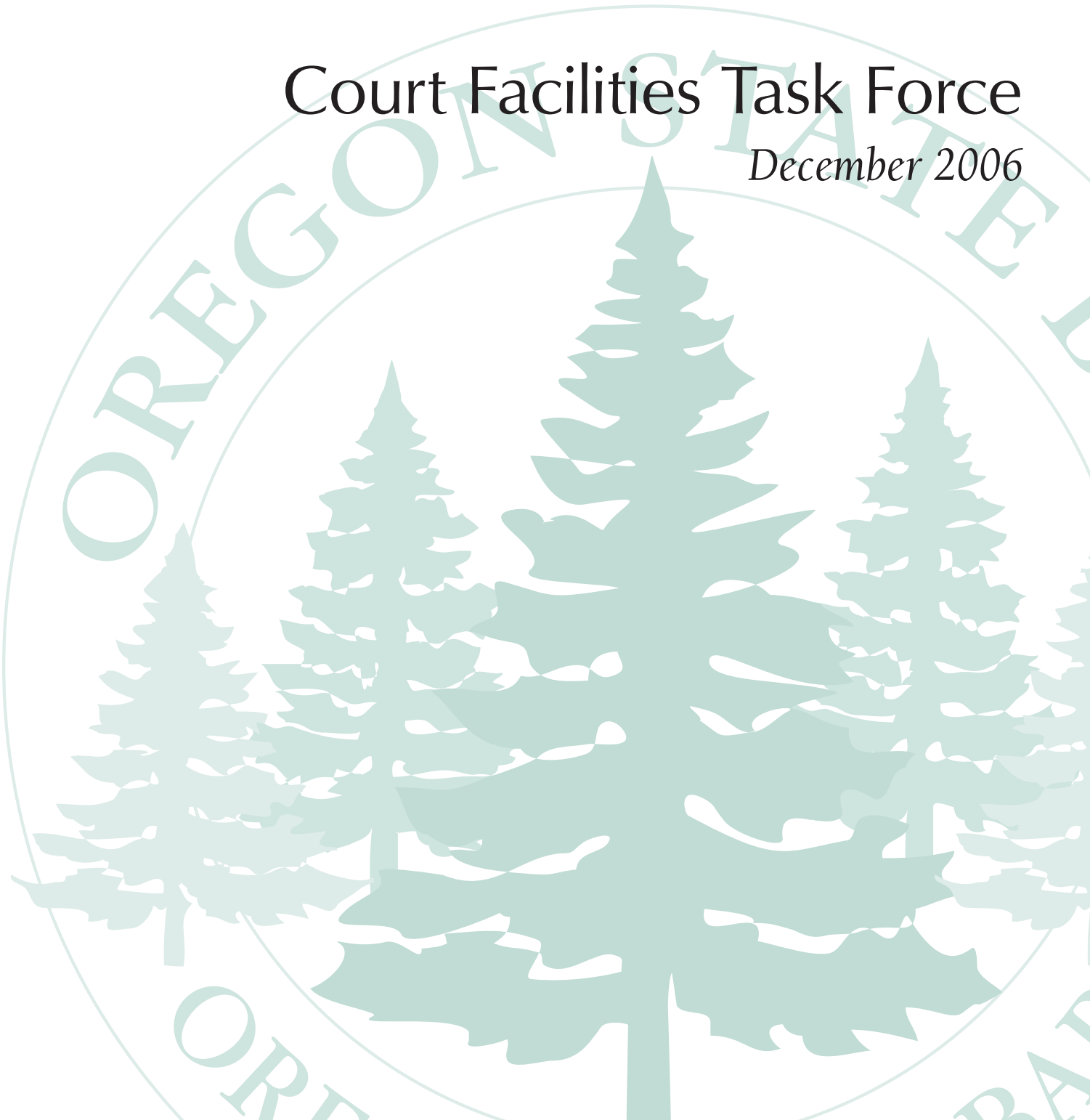


Report on Oregon Court Facilities

Court Facilities Task Force

December 2006



Court Facilities Task Force Overview

The Courthouse Crisis

In the last two legislative sessions, much attention has been given to Oregon's criminal justice system, particularly funding for district attorneys, indigent defense and court operations. These are critical components to a functional justice system.

Not one of these components can operate if the courthouses crumble.

Oregon has a court facility problem, and after decades of postponing action it has reached crisis proportions in many counties. The crisis calls out for a statewide, systemic solution to keep the justice system functioning, and in several counties even to protect lives and avoid catastrophe.

A quick round up of court facilities reveals one courthouse (the largest) that will crumble onto several thousand citizens in even a modest earthquake, one courthouse that loses its heating several times each winter, one courthouse with no elevator for the elderly or disabled to reach the courtroom, one courthouse where the judge can hardly see the jury, and many courthouses that are so overcrowded that they cannot meet the demands of their growing populations. In some counties the need for additional courtrooms has long been recognized, but there is literally no physical space for a judge or staff.

Problems that run rampant in our state's courthouses include seismic risk, ancient and dangerous electrical systems that cannot support modern technology, run-down and inadequate heating and plumbing systems and physical access problems for citizens with disabilities. Serious overcrowding is the rule rather than the exception.

Why does this matter?

Vision Statement

Our state capitol is the symbol of the executive and legislative branches of state government. For the judicial branch, however, the symbols are not confined to a single building in Salem. Instead, the judicial branch and its task of providing justice to each citizen of Oregon is symbolized in every county by a county courthouse that stands as a continuous assurance that justice is available to everyone throughout the state.

Every day thousands of Oregonians use our courthouses for a variety of purposes. In many counties courthouses are the seat of county government and the center of civic life. At present, many of these court facilities are very seriously in need of repair or replacement. The deteriorating condition of these buildings threatens the ability of the courts to function. Oregon must develop a long-term, statewide court facilities funding system to solve the inadequacies that exist and to meet those that will arise. This will ensure that safe and secure court facilities will continue to stand for

the availability of justice for everyone, everywhere. Such a system will need to embrace the unique circumstances of each county, and will need to be developed collaboratively by the courts, the counties and the bar.

Adequate court facilities are essential to maintain the judicial branch as the cornerstone for our constitutional democracy and to the justice system's obligation to preserve the rule of law.

The Time to Act Is Now

A solution to the court facility problem in Oregon is decades overdue. Why has this serious, statewide infrastructure problem developed?

- Maintenance of court facilities is the province of the counties under Oregon law. Counties have seen their revenues shrink over the last 20 years with the passage of a number of tax-limitation ballot measures and the precipitous decline in federal forest revenues. The state has not been inclined to accept a new demand on its resources.
- Courthouses have different functions in different counties. In many rural counties, not only the courts but also many, if not all, county officials and departments reside in the courthouses. In many urban counties, county offices have generally moved out of the courthouses, leaving them to the courts.
- Counties with more adequate court facilities have not been anxious to see the state's resources aimed at this one problem.

After years of inaction, why should the state deal with court facility issues now?

- The counties, the judicial department and the bar are collaborating to develop a workable solution to the court facility problem.
- Court facilities that are currently inadequate will only become more so with the passage of time. All facilities will need investment in the foreseeable future; many that are adequate now will need to expand with the inevitable expansion of the judiciary as the state's population increases.
- Financial considerations make this a propitious time to act. Interest rates are low now, and are expected to stay low for the next 18 months, and construction costs—especially for steel and concrete—are on the rise. Putting off the problem once again will only increase future costs.
- A healthy court system is a crucial component of the state's ability to attract and maintain economic development.

Oregon has dealt with other crucial infrastructure needs effectively during the recent past. For example, in 2003—at a time the state was enduring a devastating recession—the Oregon legislature nonetheless was able to agree to increase motor vehicle-related fees in order to bond a total of \$2.46 billion for roads and bridges.

What Does the Legislature Need to Do?

To begin to deal with the problems of the state's courthouses, the 2007 legislature needs to take at least two actions:

- Create a dedicated source of new revenue specifically designated to use to pay debt service on bonds issued to finance capital outlay for court construction and remodeling. These revenues would be collected but not spent during the 2007-09 biennium; they would begin to be disbursed in the 2009-11 biennium.
- Create a State Court Facilities Commission with representatives of the governor, the legislature, the counties, the courts and the bar to establish standards, to create a method to establish priorities among court facility projects, and to report back to the 2009 legislature. The commission would conduct a review of all state court facilities to determine the size of the need for new and remodeled facilities. The 2009 legislature would authorize the commission, perhaps in reconstituted form, to allocate funds to projects throughout the state.

How Bad Is It?

- The Multnomah County Courthouse is over 90 years old, designed to serve as the seat of government for a county of 250,000 citizens. Today the building houses much of the Multnomah County court system and other law-related offices, serving a population of 660,000. As many as 5,000 people pass through its lobby daily. The courthouse is crowded and dangerous due to various fire and safety issues and mechanical and electrical problems. There will be a catastrophic collapse with a moderate earthquake—an inevitable but unpredictable event.
- The Clackamas County Courthouse is 70 years old and is worn out. Originally built to accommodate county government and one circuit judge, it has been reconfigured to accommodate 10 judges. Over time courtrooms have been carved out of space previously used for other functions, resulting in crowding essential court functions into inadequate space. The county has needed a new courthouse for 35 years.
- When the Union County Courthouse in LaGrande was condemned as unsafe in 1996, the courts temporarily moved into an old hospital, where they remain today. The building has only one toilet available to women. Pillars in the courtrooms obstruct the judges' ability to see the audience and the full jury. The clerk's office is in the same building, but is accessible from the courtrooms and chambers only by going outside.
- Due to its inadequate size, the Coos County Courthouse in Coquille can house only three of its four judges—the fourth is assigned to a satellite courtroom in North Bend that accommodates only certain kinds of cases because of the distance between the two court locations. Just as in Clackamas County, the expansion of essential services has forced other crucial opera-

tions into badly designed and inadequate space. There's no room in the courthouse to house the records the court needs to retain and use on a daily basis. Potable water must be brought in. The condition of the electrical system requires that the clerks not use certain pieces of equipment at the same time to avoid blowing circuits. The heating system fails at least twice a winter and sometimes takes two days to fix.

- In Enterprise, the courtroom and clerk's office in the Wallowa County Courthouse are on the second floor. There is no elevator. The regular courtroom is therefore inaccessible to people in wheelchairs.

The Multnomah, Clackamas, Union and Coos county courthouses are among those most in need of replacement, but the problems they highlight are all too typical. Seismic risk, inadequate space, inadequate basic amenities like heat, electricity and plumbing are problems in a majority of court facilities across Oregon. And while the Wallowa County Courthouse is an egregious case, many others pose physical access problems for people with disabilities.

Report of the Court Facilities Task Force

Creation of Court Facilities Task Force

Introduction

In light of the agreement on all sides that court facilities in Oregon are a problem that must be addressed, representatives of the Oregon Judicial Department (OJD), the Association of Oregon Counties (AOC) and the Oregon State Bar (OSB) began discussing formation of a collaborative ad hoc task force in December 2005. Invitations to an initial meeting on May 10, 2006, were sent over the signatures of Chief Justice Paul De Muniz, OSB President Dennis Rawlinson and AOC President Ben Boswell.

The task force met and organized itself on May 10, 2006. Chief Justice De Muniz, OSB Board of Governors member Gerry Gaydos and Lane County Commissioner and AOC First Vice President Bobby Green agreed to co chair the group. The group is composed of equal numbers of members from the courts, the counties and the bar. Representatives of the Governor's office, Judiciary Committee Chairs Senator Ginny Burdick and Representative Wayne Krieger, and Oregon State Sheriffs' Association Director Dave Burrighart participated as ex officio non voting members in some of the meetings. The task force operated collaboratively to address problems that have defied solution for over two decades.

Charge of the Task Force

The purpose of the task force as outlined by the three conveners was to study and to make recommendations on the following issues:

- Whether additional modifications to state court facilities will be required to meet the needs of the judicial system in the coming years and what modifications or new construction may be required to meet those needs;
- Whether changes in state court facility utilization might alleviate the need for additional state court facilities;
- What the costs of implementing changes in state court facilities would be;
- What are the options for ownership or leasing state court facilities by OJD, and what would the costs of ownership or leasing of state court facilities be;
- Whether the state should have responsibility for maintaining state court facilities, for improving, replacing and expanding circuit court facilities and for leasing or constructing new state court facilities;
- What state and county financing options are workable; and
- Whether there are any other matters pertaining to state court facilities that should be considered.

Background

Prior to 1981, state trial courts were a shared responsibility of the state and county governments. There was no state court administration office; however, the state paid the judges' salaries. Counties provided and paid for administrative support services. Counties also paid most of the cost of indigent defense, to which the state contributed with biennial appropriations.

In 1981 the report of the Commission on the Judicial Branch led to passage of several bills that provided for state assumption of the operating costs of state trial courts and costs of indigent defense, and for central state administration of the court system. The counties continued to be responsible for funding district attorney offices and for providing suitable and sufficient court facilities. "Suitable and sufficient" was not defined. ORS 1.185(1)(a).

Between 1981 and 1992, the Oregon Judicial Department (OJD) and the Association of Oregon Counties (AOC) made occasional informal but unsuccessful efforts to define "suitable and sufficient."

In 1992 AOC, OJD and the Oregon State Bar (OSB) created a Joint Task Force on Court Facilities, the mission of which was "to deal with both the short and long term issues surrounding the appropriate type of facilities and support services that should be provided, the costs of providing them, how to avoid unnecessary costs, and how the costs should be paid."

A number of developments in the 1990s significantly affected the revenues to counties and the ability of counties to address significant court facility problems. Ballot Measures 5 (1990), 47 (1996) and 50 (1997) severely limited the abilities of counties to raise revenue. Federal forest revenues and Oregon & California RR revenues for timber-dependent counties crashed at the same time.

The most notable success of the Joint Task Force probably was the creation of Court Facilities Security Accounts (ORS 1.180 and 1.182). The Joint Task Force was not successful in efforts to create court facilities funding mechanisms and to come to agreement on the meaning of “suitable and sufficient.” The Joint Task Force ended in 1999.

Legislative efforts to put another task force together in 2001, 2003 and 2005 were all unsuccessful. The 2005 measure (HB 2295) featured creation of a task force and authorization for the use of lottery funds and certificates of participation to finance court facility construction and renovation. Counties were understandably wary of legislation that might require them to spend millions of dollars on court facilities that had been planned for other uses.

Court facilities in Oregon vary greatly in size, use and age. There has been little disagreement that many of Oregon’s court facilities are in need of extensive renovation and repair, and that some are so inadequate as to require replacement.

Work of the Task Force

Methodology

At the outset, the task force agreed to proceed in three phases:

- *A research phase*, in which subcommittees conduct surveys, assemble data, make contacts and look at other states’ systems for addressing court facilities problems.
- *A deliberative phase*, in which the subcommittees gather and compile the information, present conclusions on what the research shows and recommend a course of action. The full task force considers these recommendations and comes to a coherent resolution of the issues before it.
- *A report writing phase*, in which the task force places its findings, conclusions and recommendations in a report to submit to the legislature.

Task Force Subcommittees

The group identified three distinct issues which it addressed through three subcommittees:

1. Defining guidelines for adequate court facilities. (Suitable and Sufficient Subcommittee)
2. Exploring different options for ownership of court facilities. (Ownership Subcommittee)
3. Exploring options for financing the replacement, renovation and repair of facilities as appropriate. (Financing Subcommittee)

Each subcommittee was composed of at least one representative from each of the constituent groups.

Staff from OJD, AOC and the OSB provided support to the task force itself and to the subcommittees.

Full Task Force

The full task force met four times on May 10, July 18, October 24 and December 1, 2006.

The bulk of the work of the task force was done in the three subcommittees. In light of the great variation among the court facilities and their uses, the task force recognized that no one solution is appropriate for all facilities, and indeed that many facilities are adequate as they are.

In the course of the meetings, the group identified a number of crucial tasks:

- Assess the status of current court facilities.
- Determine a method of ranking facilities in order of need.
- Determine the extent to which different circumstances require different solutions.
- Define minimum guidelines that all court facilities must meet.
- Outline different ownership models possible for court facilities.
- Identify various methods of financing court facility renovation and development.

Surveys

Both the Suitable and Sufficient Subcommittee and the Ownership Subcommittee conducted statewide surveys.

The Suitable and Sufficient Subcommittee Survey was conducted on-line, and was sent to trial court administrators, county administrators, presiding judges and a number of lawyers. Over 160 people responded—at least one from each of the 36 counties. The Ownership Subcommittee survey was sent on-line to county commissioners, and responses were received from all but four counties. Both surveys produced valuable information, but much of the information simply reflected the respondents' personal knowledge and view of the court facilities with which they are familiar.

Among the findings from the Ownership Subcommittee survey are the following:

- Serious structural deficiencies exist in at least 15 facilities; significant deferred maintenance issues exist in at least 12.
- In 23 counties, upgrading court facilities is a high or moderate priority.

- Most courthouses house both court and county operations.
- Counties with older, historic courthouses want to maintain ownership of those facilities, but are open to different forms of ownership for future court facilities.

The Suitable and Sufficient Subcommittee survey results are consistent with those findings. This survey also suggests that the adequacy of court facilities varies greatly on a continuum ranging from “adequate to meet current need” to “inadequate by almost any measure.” Some of the most inadequate facilities are in high-population counties. The majority of facilities fall into a broad mid-range: in need of substantial repair but not in need of major remodeling or outright replacement. Space is a real problem in many facilities, and some facilities that are now large enough to meet current need may soon be too small to accommodate likely future growth.

The Size of the Problem

Without conducting an extensive professional survey of all court facilities in the state, it is not possible to come to a reliable estimate of the cost to replace or repair Oregon’s court facilities. The best that can be done is to estimate the need based on certain assumptions about the area needed in a court facility on a per judge basis and the cost per square foot of construction or remodeling.

Preliminary modeling using assumptions in these areas indicate that the cost either to undertake significant remodeling or to replace the majority of the courthouses completely will be between \$228 million and \$528 million in current dollars. The lower end of the range represents remodeling courthouses; the upper end represents replacement. These numbers are based on very rough estimates and should be used only to get a general sense of the size of the problem. Detailed planning should be undertaken in the 2007-09 biennium to come up with a more accurate assessment.

A good estimate of the actual amount of investment needed will require detailed architectural assessments and a detailed set of court facility standards. Factors that will need to be taken into account will include the gap between the actual state of each courthouse and the basic guidelines; the gap between the current facility’s size and the court’s actual need; future growth needed in the court; whether a court can be remodeled effectively; the location of the court in the state; and how quickly technology can be implemented to reduce growth in the space needs of the courts.

The Need for a Dedicated Revenue Source

It is critical that a new dedicated revenue source be established to pay for debt service on bonds for construction and remodeling court facilities. The task force has identified two new revenue sources:

- Increase the document recording fee by \$3 per page, effective July 1, 2007. This is estimated to generate \$18 million per year.

- Impose a \$50 fee for filing annual reports of legal entities with limited liability, effective July 1, 2007; increase the fee to \$100 effective January 1, 2009. Each \$50 fee increase is estimated to generate \$7.5 million per year.

These revenues should be implemented as of July 1, 2007, even though actual construction or remodeling will not commence until the 2009-11 biennium.

The Benefits of Moving Forward Rapidly

As with the rest of the nation, construction costs in Oregon are rapidly escalating. These costs are increasing at approximately twice the interest rate on Certificates of Participation (COPs). Under these circumstances, the amount of revenue needed each year to pay debt service will actually be lower if all the needs of the courts are financed at once rather than equally spread over numerous biennia. Preliminary modeling indicates between \$20 and \$50 million a year is needed if all remodeling and new construction projects are financed at once. The amount of revenue needed each year to pay the maximum debt service is between \$50 and \$120 million if financed over time. The amount to be financed will grow dramatically the longer construction is delayed.

Subcommittee Reports

The following are summaries of the reports of the three subcommittees.

Suitable and Sufficient Subcommittee

The Suitable and Sufficient Subcommittee was charged with developing a set of standards for court facilities.

The subcommittee decided that two sets of guidelines would be appropriate: one setting a baseline for all court facilities to meet dealing with basic health and safety issues, and another establishing a more comprehensive set of guidelines.

Minimum Facility Guidelines

The subcommittee developed the following set of guidelines as minimum health and safety requirements for trial court facilities:

In recognition that many Oregon counties do not have the resources to construct or remodel current court facilities, the following standards apply only when a funding source is available to cover the cost. These services are necessary for the minimum proper functioning and operation of Oregon's courts.

All Oregon court facilities must meet these criteria:

- Heating, ventilation and air conditioning systems must meet code requirements in effect when the system was installed or last substantially upgraded, and be able to maintain temperatures between 66 and 76 degrees Fahrenheit.

- All restroom facilities and drinking fountains must meet requirements of building codes in effect when the system was installed or last substantially upgraded and be in compliance with the Americans with Disabilities Act.
- Separate restroom facilities must be provided for the public, judges and in-custody defendants.
- Electric systems must meet building codes in effect when the system was installed or last substantially upgraded.
- Acoustics must be adequate to ensure a minimum of intrusive noise, accurate hearing and recording of proceedings, and access to the court by the hearing-impaired.
- Court facilities must provide adequate security, but security facilities will vary depending on the size, function and location of the court.

Exceptions may be authorized only by approval of the Presiding Circuit Court Judge to address the special and unique qualities of county courthouses when for cultural, historical or commonsense reasons deviations are appropriate.

Although these guidelines are limited, they are intended as a baseline to ensure that people using all court facilities can do so in relative comfort and without potential threat to their health and safety.

Comprehensive Guidelines

The subcommittee adopted a second set of more comprehensive guidelines based on the California *Trial Court Facilities Guidelines*, adopted in 2002. These deal with all aspects of court facilities and are intended as an outline for facility managers to use in undertaking court facility capital outlay projects. (A copy of the comprehensive guidelines can be obtained from David Nebel, dnebel@osbar.org.)

Ownership Subcommittee

Currently counties own and are responsible for state court facilities. The Ownership Subcommittee examined other possible ownership options, including state ownership and a hybrid model. The subcommittee conducted a survey of county commissioners as part of its research.

Based on its research, the subcommittee observes and recommends as follows:

- One size does not fit all. Most counties prefer to retain their control over existing court facilities, but many are amenable to different approaches. Local decision-making should control the future of each court facility.
- Many court facilities are in dire need of improvement; the status quo is not acceptable. The work of this task force must continue through the legislative session. Information collected in the survey process may be of further use.
- Capital, maintenance and operating expenditures vary widely from one county to the next. The subcommittee recommends adoption of a uniform

cost-sharing approach to deal with these disparities. Flexible ownership models should be available to facilitate leasing arrangements and financing of tenant and capital improvements.

- Some court facilities need to be replaced; some need seismic retrofit; others need remodeling. Capital expenditures must be available to address each of these situations.
- The best model for ownership of a particular courthouse may depend in large part on the extent to which the facility is shared between court and county functions.
- After the legislative session, each county should undertake an evaluation of its court facilities, to update the information collected in the survey in light of the recommendations of the task force and whatever actions the legislature takes.
- Whatever financial model the task force recommends must take into account the unique circumstances of the counties and the court facilities within them.

Finance Subcommittee

The Finance Subcommittee was formed to examine potential new revenue streams and financing models for court facility improvement projects.

How improvements or replacements of court facilities are financed depends mainly on who will own the facilities and whether a new revenue source is authorized.

If the task force recommends authorization of a new revenue source, either dedicated to pay debt service on bonds or to fund improvements directly, it should consider one or more of the following sources:

- Document filing fee increases – every \$1 per page increase generates \$6 million per year.
- Limited liability company (LLC) registration fee increases – every \$50 per year increase generates \$7.5 million per year.
- Court filing fees – every \$1 increase generates \$369,500 per year.

One option is to dedicate new revenues directly for improvements at the state or county level. This will limit improvements to the amount of revenues raised. At the county level, this could handicap smaller counties because of limits on the amount of revenues that counties can raise.

A second option is to apply new revenues to pay debt service. With new revenues for this purpose, options include:

- Certificates of Participation (COPs), with the new revenue used to offset the debt service. This is the lowest cost option.

- Revenue bonds based on the new dedicated revenue source. This option carries higher costs and lower borrowing potential. It could be used at either the state or county level.
- An incentive model in which the state issues COPs to match revenues raised locally through general obligation bonds. This is currently used for community colleges.
- OJD uses new revenues to pay debt service on new facilities that are built using county-issued debt. A similar system is in use in Kentucky.

There are two bonding options that do not require authorizing a new revenue source:

- COPs with general fund used to pay the debt service.
- Lottery bonds backed by anticipated future lottery proceeds.

The financing model used will also be determined by recommendations on ownership.

- If the facility is *state owned*, the financing options are:
 - General fund appropriation or new revenues for improvements
 - COPs
 - Incentive model
 - Revenue bonds
 - Lottery bonds
 - Kentucky model
- If the facility is *county owned*, the financing options are:
 - New county-level fees dedicated to improvements
 - General obligation bonds
 - Kentucky model
 - Revenue bonds

Full Task Force Recommendations

After considering the subcommittee reports, the Court Facility Task Force recommends the following legislative concepts.

- Create funding stream of \$50 million per year in 2007 legislature to pay debt service on state-guaranteed bonding for new and remodeled court facilities.
 - Impose a document recording fee increase of \$3 per page.
 - Impose a fee for filing annual reports of legal entities with limited liability by \$50 for the period July 1, 2007, through December 31, 2008, and a fee of \$100 thereafter.

- Request a general fund or lottery fund appropriation to make up the difference between the funds generated by the recording and LLC fees and \$50 million per year.
 - Place the amount generated during the 2007-09 biennium in savings while the process for distributing the funds is developed.
- Create a State Court Facilities Commission, funded by a portion of the revenue stream.
 - Fourteen members:
 - Governor appoints two
 - Senate President appoints two senators of different parties
 - Speaker of the House appoints two representatives of different parties
 - Chief Justice appoints two
 - Oregon State Bar appoints two
 - Association of Oregon Counties appoints four
 - During the 2007-09 biennium, the Commission would establish:
 - Standards for court facilities subject to availability of state funding;
 - Criteria to establish priorities among court facility projects;
 - A plan for the future configuration of the commission, which will include independent authority to make priorities and to distribute funding for court facility capital projects directly.

The Commission would report to the 2009 legislature and would propose legislation establishing a permanent commission.

Court Facilities Task Force

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