



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

October 31, 2016
(SENT BY EMAIL)

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Chief Justice Report on Potential Courthouse Replacement Funding Requests
(2016 SB 5701)

Dear Co-Chairpersons:

Nature of Request

The Oregon Judicial Department (OJD) requests that you acknowledge receipt of this report on courthouse replacement projects for which the Chief Justice might seek state funding support between 2019 and 2031, in response to a budget note attached to 2016 Senate Bill 5701. That budget note read:

“The Chief Justice or his designee is requested to present a report to the Emergency Board, no later than December 2016, with a priority ranking and the projected costs of courthouse capital construction projects for which he may, within the next twelve years, request state funding support from the Oregon Courthouse Capital Construction and Improvement Fund. The report shall include recommendations for stabilizing biennial funding request amounts over the ten-year period beginning in the 2019-21 biennium.”

This report identifies projects already approved for funding by the Legislative Assembly, projects for which Chief Justice Balmer is requesting funding in 2017-19, and projects for which the Chief Justice *might* request funding in the 2019-2029 biennia.

Background on State Support for Courthouse Capital Construction

Oregon counties are responsible for providing “suitable and sufficient” facilities for Oregon circuit courts. ORS 1.185. Providing facilities was one of the responsibilities left with the counties when the State created a unified state court system in 1981 and assumed the costs of court staff and indigent defense. The State assumed these costs to provide consistent levels of

justice throughout the state and allow the staff that worked with the state judges to be accountable to a state authority.

In 2006, a report by the Oregon State Bar highlighted the deteriorating condition of Oregon's courthouses and called on the legislature to establish a State Court Facilities Commission. The legislature responded in 2007, passing House Bill 2331, which created an Interim Committee on Court Facilities. That body established state standards for reasonable and sufficient court facilities and commissioned an assessment of all 48 court facilities in Oregon to determine whether they currently met those standards.

That 2008 facility assessment has been used to guide state investments in courthouse facilities, and also made several observations that remain relevant today:

- Overall, security seemed weak. Many corridors are shared by judges, staff, defendants, witnesses, and other litigants.
- The condition of court facilities generally was "poor."
- Many counties are working very hard to maintain court facilities, but the relationship between the counties and the state is "completely dependent" on the personalities involved, which appeared to predict how well a facility was working.
- The quality of the facility seems to "correlate directly" with the presiding judge or trial court administrator communication of facility issues.
- Courthouses are seen as significant landmarks and sources of community pride, and that necessary security might detract from open and accessible court facilities.

In 2011, as part of its changing the structure of court filing fees and court-imposed financial obligations for offenses, the Legislative Assembly authorized funds from the Criminal Fines Account to assist counties in making capital improvements to court facilities. These funds are administered through the Oregon Judicial Department, and have funded a variety of life/safety and critical maintenance and improvement projects in courthouses throughout the state.

In 2013, the legislature authorized use of Article XI-Q bonds to provide State matching funds to assist counties in replacing unsafe courthouses. Counties may receive up to a 50 percent match of the costs to provide circuit court facilities, if the new courthouse also provides space to co-locate a state agency. The State match is limited to 25 percent without co-location. The State match may be applied to the cost of the co-located agency space, but does not apply to any county-supported offices located in the new courthouse.

In order to receive State funds, the project must be approved by the Chief Justice and the Department of Administrative Services (DAS), as well as have legislative authority to issue the bonds. Proceeds from the State bonds are deposited in the Oregon Courthouse Construction Capital Improvement Fund (OCCCIF, also created in 2013), and are used to reimburse counties for eligible expenses. County matching funds also are temporarily deposited in the OCCCIF, to verify that counties have their matching funds and to dedicate those funds to the courthouse project. OJD requests expenditure limitation authority to disburse both the State bond proceeds and the county matching funds from the OCCCIF.

Once the facility is completed, statutes authorize DAS to negotiate a lease on behalf of OJD that establishes a full leasehold interest in the court portion of the facility and to give the State exclusive right of control over that space for a term that is at least equal to the term of the State bonds. This meets the constitutional requirement to use Article XI-Q bonds for facilities “owned or operated” by the State.

Beginning in 2013, the Assembly has approved State bond funding to replace the seismically-dangerous Multnomah County Courthouse in downtown Portland, and in subsequent biennia authorized State bond funding to replace unsafe courthouses in Jefferson, Tillamook, and Lane Counties. The State also has provided matching funds from the Criminal Fines Account for a new courthouse in Union County.

The new courthouses in Union and Jefferson Counties opened in 2016. Multnomah County held a groundbreaking ceremony for its new courthouse in early October 2016, and is projected to be ready for occupancy in 2020, subject to approval in 2017-19 of State matching funds for construction. The Tillamook and Lane projects are in planning stages.

The requests for funding and reports on the results of these replacement projects, as well as courthouse improvement projects funded separately, are submitted as part of the Chief Justice’s Recommended Budget each biennium and fulfill the requirement in ORS 1.176 that the Chief Justice develop a biennial plan for capital improvements to county courthouses.

Project Review and Selection

Beginning in 2014, Chief Justice Balmer has asked the Association of Oregon Counties (AOC) to solicit from counties requests for courthouse improvement and replacement projects, review those requests, and provide prioritized recommendations to him regarding which projects to fund. As a result, the AOC has recommended projects for the Chief Justice’s 2015-17 and 2017-19 budget requests, as well as in response to this budget note.

That approach has identified needed improvements to courthouses across the state and instances where state-funded projects might synchronize or conflict with planned county projects, as well as developed consensus among Oregon counties on funding priorities. The review process utilizes the 2007 interim committee standards and 2008 facility assessment.

AOC appoints a Court Facilities Task Force to solicit and review proposals. The group has adopted criteria for its review which includes the condition of the courthouse, urgency of the need, the county’s readiness to proceed, and likelihood of successful completion.

To assist OJD in responding to this budget note, the task force surveyed all 36 counties, asking which counties might seek State funding to replace unsafe courthouses during the next 12 years. A total of 32 counties responded. Thirteen counties responded they would be interested in State support during that time period. An additional four counties (Jefferson, Multnomah, Tillamook, and Union) either have completed courthouse replacement projects or have projects

underway that will not continue into the budget note time period). The remaining 19 counties either did not reply or said they did not expect to request State support (Baker, Clatsop, Curry, Gilliam, Grant, Harney, Klamath, Lake, Malheur, Marion, Morrow, Polk, Sherman, Umatilla, Wallowa, Wasco, Washington, Wheeler, and Yamhill Counties).

Of the 13 counties interested in obtaining State support, the Chief Justice's Recommended Budget for 2017-19 will request funding for two projects (Clackamas and Hood River). Two other projects would require a law change to be eligible for State support (Deschutes and Jackson).

Prioritized Projects in Response to SB 5701 Budget Note

The budget note first requests a list of courthouse replacement projects, prioritized and with projected costs, for which the Chief Justice might request funding in the 2019-21 through 2027-29 biennia. Because these projects often are funded in multiple biennia, this list includes projects that already have been legislatively-approved for planning funds as well as projects for which the Chief Justice is requesting funding in 2017-19 that will continue into 2019-21.

The projects are summarized and listed in priority order below. The attachment to this report provides a summary view of the priorities, costs, and timelines of these projects.

Priority #1: Complete Currently Authorized Projects:

Multnomah County. Beginning in the 2013-15 biennium, the legislature has approved \$32 million in State funding for planning, land acquisition, and design for a new downtown courthouse. The courthouse, built in 1909 from hollow, unreinforced masonry blocks, is seismically unsafe and has many security and safety deficiencies resulting from its space limitations and design. The Chief Justice will request \$93 million as the final request for construction funding in his 2017-19 Recommended Budget, along with a separate request for state-funded furnishings. The condition of this courthouse was ranked 38th out of the 48 state court facilities in the 2008 facility assessment.

Tillamook County. The legislature authorized \$7.875 million in State bond funding in 2015 to replace the current courthouse, which was built in 1932 and ranked 45th (fourth-worst) in the 2008 facility assessment. Its foundation walls were built from unreinforced masonry and the size of the current second courtroom lacks sufficient space to provide reasonable security for victims, jurors, and witnesses. OJD and the county intend to appear before the December 2016 Emergency Board to provide updated plans and request limitation authority to sell the State bonds in May 2017. No additional State bond funding is contemplated for this project.

Lane County. The legislature in 2016 authorized \$1.4 million in State matching funds for planning. The county has not requested State funds in 2017-19, but will be requesting construction funding in 2019-21 (estimated at approximately \$50 million). This facility ranked 26th in the 2008 assessment, but a seismic report not available for that evaluation shows additional evidence of seismic instability.

Priority #2): Fund Chief Justice Requests for 2017-19:

Hood River County. This facility, built in 1954, ranked 46th (third-worst) in the 2008 assessment. In addition to being seismically vulnerable, its outdated design and space utilization creates security issues for judges, staff, victims, witnesses, and the public. Details regarding the site and co-located state agency are being worked on by the county, and will be presented to the legislature during the 2017-19 budget process. Hood River County was approved in the AOC process as a priority in 2015-17, but later withdrew its funding request in order to more fully develop its planning efforts. The Chief Justice intends to request \$4.4 million in Article XI-Q bonds in the 2017-19 biennium for full funding of the State match for this project.

Clackamas County. This facility was ranked 23rd in the 2008 assessment, but two seismic studies conducted in 2015 showed the building would experience significant damage in a 'design-level' earthquake and that subsurface conditions are susceptible to liquefaction (where the stress applied to the soil during an earthquake or other sudden change would cause the soil to behave like a liquid). The original facility was built in 1936 with one courtroom and has been expanded over the years but reached its capacity for expansion some time ago. The county plans to build a new facility at its Red Soils campus, which already houses the juvenile department and service providers. The new facility would allow sufficient space for court operations, allow jurors to convene in the courthouse instead of in a separate building, and consolidate district attorney offices into one building. The Chief Justice intends to request \$1.25 million in State match for planning in 2017-19, and the county anticipates requests for State matching funds for construction of \$28.8 million in 2019-21 and \$48.2 million in 2021-23.

Priority #3): Potential Requests in 2017-29 Under Current Law

In addition to the construction request for the Lane County project in 2019-21 and, if approved, for Clackamas County in 2019-21 and 2021-23, the Chief Justice provides the following list of projects for which he might request funding in the 2019-29 biennia. The list is in priority order, and includes cost estimates where available.

- 1) Benton County. The Benton County courthouse was built in 1888. The county has completed a thorough seismic evaluation of the building, which is on the National Historic Register and ranked 34th in the 2008 assessment. The county is conducting a public outreach effort, and is looking to build a replacement courthouse as part of a justice center facility on land already owned by the county in downtown Corvallis. The county intends to ask the Chief Justice to request approximately \$1 million in planning funds in the 2019-21 biennium, and an estimated \$5.7 million in construction funds in 2021-23.
- 2) Columbia County. The Columbia County courthouse consists of two buildings, the original 1905 building and an annex built in 1969. The courthouse ranked 29th in the 2008 assessment, and did not meet state standards for seismic safety, fire alarms and fire sprinkler systems, or security. The county recently conducted a basic seismic

assessment that identifies seismic and structural defects that would threaten safety in a major seismic event. The county intends to build a 34,000 square-foot courthouse adjacent to its Justice Center (which includes the jail). Columbia County anticipates requesting \$9.16 million in State matching funds in the 2023-25 biennium.

- 3) Linn County. The Linn County courthouse was built in 1940 and expanded in 1967, before Oregon had a statewide building code. As with many other courthouse facilities, its age and design contribute to significant seismic issues as well as space limitations and security concerns. The 2008 assessment found the building needed “excessive” upgrades for seismic safety and defendant custody, as well as significant upgrades to security systems. The county has purchased land to build a public safety campus, of which the courthouse would be a part. Linn County anticipates a one-time request of \$13.4 million in State matching funds in the 2019-21 biennium. The Linn County courthouse was ranked 13th in the 2008 study.
- 4) Lincoln County. The Lincoln County courthouse was built in 1954 and expanded in 1964. It ranked #20 in the 2008 assessment, which noted that a recent seismic survey was not available for that report. The assessment found the courthouse needed upgrades in fire alarms and sprinkler systems, security systems, and a ‘modest’ seismic upgrade. The county’s seismic survey (not considered by the assessment) reported that the construction used low-strength concrete, that federal seismic hazard mapping expects “very large” ground motions at the site, and that the building contained several key deficiencies in the building’s structural systems. No cost estimate was provided, but the county intends to request State matching funds in the 2021-23 biennium after it completes other local capital projects.

The final four counties did not provide specific information or requests relating to potential courthouse replacements, but expressed intent to apply for State funding during the budget note period.

- 5) Crook County. This building was ranked #40 in the 2008 assessment, which noted “excessive” upgrades needed in seismic safety and in-custody defendant areas and “significant” upgrades needed in security systems. The county hopes to replace the existing 1909 courthouse with a multi-purpose, multi-agency justice center. No cost estimates or timeline was provided.
- 6) Douglas County. The Douglas County courthouse was built in 1974 and ranked #10 in the 2008 assessment, with “significant” upgrades needed in security systems and “moderate” seismic upgrades needed. The county will be conducting a seismic review in the near future. The county did not provide a cost estimate, but said the earliest it might seek State funding is the 2023-25 biennium.
- 7) Coos County. The Coos County courthouse was originally built in the 1920s, with four subsequent additions ending in 1958. It ranked #33 in the 2008 assessment, which showed needs for upgrades in fire alarm and sprinkler systems and security systems.

No cost estimates or timeline was provided. Given the lack of information provided, OJD assumes the earliest the county would request state funds is the 2023-25 biennium.

- 8) Josephine County. The Josephine County courthouse was originally built in 1915 and expanded in 1974. It ranked #30 in the 2008 assessment, and needed significant improvements in fire alarm and sprinkler systems and seismic safety in order to meet state standards. No cost estimates or timeline was provided. Given the lack of information provided, OJD assumes the earliest the county would request state funds is the 2023-25 biennium.

Priority #4) Potential Requests in 2017-29 if Law Allows Bond Funding for Expansions

Current law generally authorizes State bond funds to be used to replace unsafe courthouses. Two counties – Deschutes and Jackson – would seek State funding assistance for significant expansions of their courthouses if the law is changed to allow them to do so. Both counties anticipate needing expansions to house additional judicial positions authorized by the legislature.

Deschutes County would request assistance in funding an expansion of its courthouse to provide space for two additional judges and their support staff. The estimated cost is \$9-11 million. Depending on the actual cost of the project and the level of State match provided (25% or 50%), the State contribution is estimated to be \$2.3 - \$5.5 million. The Chief Justice is requesting one new judicial position for Deschutes County in his 2017-19 Recommended Budget.

Similarly, Jackson County would request assistance to expand its courthouse if additional judges are approved. The county has preliminary plans to add two or three additional courtrooms and support space, at a current cost of \$14.8 million. Again, depending on the level of State match, the State contribution would be \$3.7 - \$7.4 million. The Chief Justice is requesting one new judicial position for Jackson County in his 2017-19 Recommended Budget.

The Chief Justice would support a law change to make these expansion projects eligible for State support, but as a secondary priority to replacement projects.

Recommendations to Stabilize Funding Requests

The final request in the budget note was for the Chief Justice to provide recommendations on how to stabilize courthouse replacement funding requests during the specified time period. The level of requests in a biennium is a function of the number of replacement projects and the size of those projects. That, in turn, depends largely on a county's willingness and ability to manage a courthouse replacement project and fund its share of the costs. In the end analysis, both the State and the county need to be in a position to provide funding and project management to successfully manage these projects. These recommendations can be viewed individually or collectively, so are not presented in any priority order.

1. Discuss with the Chief Justice legislative target amounts. The legislature has not engaged in a discussion or provided guidance to the Chief Justice regarding what it would like to achieve or avoid in this process. We hope that this report encourages that discussion.
2. Provide Statutory Authority for the Chief Justice to adopt formal criteria and process to review and evaluate courthouse funding requests. Providing this authority would allow the Judicial Department to develop formal criteria that prospective replacement projects must meet. OJD would review both the 2007 interim committee criteria, review criteria from the AOC task force, and its own work.
3. Re-visit assigning OJD as the project managing entity and/or provide OJD with additional resource to evaluate projects. OJD is designated by statute as the “project agency” for purposes of courthouse replacement construction, meaning OJD has the legal responsibilities for project administration. However, OJD does not have staff with experience in evaluating construction project requests or in construction project management, or construction law attorneys. Because of this, OJD is not fully equipped to evaluate requests from counties for State bond assistance, or conduct the expected monitoring and oversight functions or legal work (such as drafting financing agreements, etc.) involved in project administration. OJD currently contracts with DAS to provide project monitoring, and with the Department of Justice for legal assistance. This process could be more efficient and effective if either DAS was given more responsibility and/or OJD was given additional resources for these duties.
4. Provide phased funding for replacement projects. Currently, the legislature authorizes one sale of bonds for courthouse replacement projects per biennium, typically at the end of the biennium. Authorizing bond sales more than once per biennium would assist counties in managing the cash flow of these projects, and not require them to be able to provide essentially two years of project funding before any reimbursement from the state is available.
5. Extend the time period during which counties may expend matching funds. Capital projects require study, design, and other planning work before an accurate budget (and accompanying funding request) can be provided. The legislature can choose to assist with these expenditures, or it could establish an expectation that a certain level of planning work be done before it entertains requests for State funding support. If the latter, the legislature could allow counties to put their funds supporting those early expenditures through the OCCIF, so they could be identified and recorded. OJD can work with DAS to develop a process in which the state would provide an “intent to reimburse” letter that would allow early recognition of county expenditures. OJD and DAS would need to work with state bond counsel to identify any conditions that must be satisfied for this recommendation to take effect.
6. Establish a ‘stagegate’ approach to project funding. Counties have requested State support for replacement projects at various stages in their planning process. Jefferson County, for example, had completed its siting and design work before requesting legislative funding. Tillamook County was just beginning its planning process when it requested funding. Multnomah County had completed multiple studies over a long period of time, but did not have a site or design when it requested State funding. The legislature can promote a more consistent and orderly funding request process if

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counties have clear expectations on what work product must be underway or completed at various stages of the project in order to receive initial or subsequent State funding. If the legislature is interested in this approach, OJD can provide specific recommendations for its 2017-19 budget deliberations.

Action Requested

The Oregon Judicial Department requests acknowledgment of this report as requested in the budget note attached to 2016 Senate Bill 5701 (Chapter 082, 2016 Laws).

Legislation Affected

None.

Sincerely,



Kingsley W. Click
State Court Administrator

KC:PL:ma/16eKC020ma

Attachment:

ec: Chief Justice Thomas A. Balmer
David Moon, Director, Business and Fiscal Services Division, OJD
John Fagan, Budget Manager, OJD
Phil Lemman, Legislative Communication Manager, OJD
Ken Rocco, Legislative Fiscal Officer, LFO
Steve Bender, Principal Legislative Analyst, LFO
George Naughton, Chief Financial Officer, CFO
Michelle Lisper, Policy and Budget Analyst, CFO-BAM

Chief Justice Priorities for OCCIF Projects, 2017-2029

1) LEGISLATIVELY-APPROVED PROJECTS

County	Summary	Estimated State Bond Requests (in millions)					
		2017-19	2019-21	2021-23	2023-25	2025-27	2027-29
Union	Completed. Funded in 2013 (CFA funds). Opened March 2016.	-	-	-	-	-	-
Jefferson	Completed. Funded in 2014-15, opened September 2016.	-	-	-	-	-	-
Multnomah	Funded in 2013 and 2015. Requests for furnishings, final construction funds in 2017-19.	101.9	-	-	-	-	-
Tillamook	Approved in 2015. Will request bond sale authority in December 2016. No request beyond 2015-17.	-	-	-	-	-	-
Lane	Approved planning funds in 2016. No request in 2017-19. Construction request in 2019-21 (estimated).	-	50	-	-	-	-

2) REQUESTED PROJECTS, 2017-19		2017-19	2019-21	2021-23	2023-25	2025-27	2027-29
Hood River	One-time request, planning and construction.	4.4	-	-	-	-	-
Clackamas	Planning funds requested for 2017-19. Construction requests in 2019-21, 2021-23 (amounts estimated).	1.2	28.8	48.2	-	-	-

3) POTENTIAL REQUESTS, 2019-31 (in priority order)		2017-19	2019-21	2021-23	2023-25	2025-27	2027-29
Benton	Seismically unsound courthouse built in 1888.	-	1	5.7	-	-	-
Columbia	1905 courthouse has seismic, fire safety, security issues.	-	-	-	9.16	-	-
Linn	1940 courthouse has seismic, in-custody areas, security issues.	-	13.4	-	-	-	-
Lincoln*	1954 courthouse has seismic, fire system, security issues.	-	-	TBD	-	-	-
Crook*	1909 courthouse has seismic, in-custody areas, security issues.	-	-	-	?	?	?
Douglas*	1974 courthouse has seismic and security issues.	-	-	-	?	?	?
Coos*	1920 courthouse has fire system and security issues.	-	-	-	?	?	?
Josephine*	1915 courthouse has seismic and fire system issues.	-	-	-	?	?	?
Totals		107.5	93.2	53.9	9.16	?	?

#4) POTENTIAL REQUESTS, 2019-31, WITH LAW CHANGE		2017-19	2019-21	2021-23	2023-25	2025-27	2027-29
Deschutes	Expand courthouse if new judge(s) authorized. Est. \$2.3 - \$5.5M	?	?	?	?	?	?
Jackson	Expand courthouse if new judge(s) authorized. Est. \$3.7 - \$7.4M	?	?	?	?	?	?

Request amounts in 2019-2029 are estimates.

* No specific information about cost and/or timeline provided.