THE JURY IS OUT

Options for financing a new Milwaukee County Justice Center

WISCONSIN POLICY FORUM

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The Wisconsin Policy Forum was created on January 1, 2018, by the merger of the Milwaukee-based Public Policy Forum and the Madison-based Wisconsin Taxpayers Alliance. Throughout their lengthy histories, both organizations engaged in nonpartisan, independent research and civic education on fiscal and policy issues affecting state and local governments and school districts in Wisconsin. WPF is committed to those same activities and that spirit of nonpartisanship.

PREFACE AND ACKNOWLEDGMENTS

This report was undertaken to provide citizens and policymakers in Milwaukee County – as well as lawmakers in Madison -- with perspective on the financing strategies used to construct county courthouses in other large urban counties across the U.S., as well as possible financing strategies that might be considered to construct a new justice center in Milwaukee County. We hope that policymakers will use the report's findings to inform discussions during upcoming policy debates and budget deliberations at both the County and State level.

We thank the Milwaukee County Department of Administrative Services for commissioning and helping to fund this research. Report authors also thank County fiscal officials and departmental staff for their assistance in providing information on the justice center project and County finances, and for patiently answering our questions. Finally, a special thanks goes to the Milwaukee County Comptroller's office for its assistance in developing capital finance scenarios.

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INTRODUCTION

Cracks in the Foundation, the third installment in a series of Wisconsin Policy Forum reports on local government infrastructure released in September 2017, painted an ominous picture of the condition of Milwaukee County's buildings and its financial capacity to address its most pressing building-related needs:

> *The County…has fallen further behind on major building needs in recent years, despite its successful efforts to avoid spending capital dollars on some decaying buildings by liquidating them. We find that even if the County continues that approach…accommodating all of those needs in annual capital budgets will not be possible going forward, thus compounding the backlog year after year.*[i]

Topping the list of major building needs is the County's Safety Building. Built in 1929, the Safety Building originally housed a variety of City of Milwaukee and Milwaukee County functions, including the central police station, City and County courts, City and County jails, and the County Sheriff. The building has been gradually re-purposed to serve primarily as office space for County justice system personnel (while still maintaining nine courtrooms), but it does not adequately meet that need.

Given that reality – and the fact that the building is in poor condition with millions of dollars of major repair needs – the County is considering a plan to demolish and replace the Safety Building with a new 374,000-square-foot justice center on the same site. The new facility would house both existing Safety Building functions and certain functions now located in the Historic Courthouse.

Unfortunately, the price tag is prohibitive. With an initial construction estimate of $262 million – and a total project cost (including demolition and temporary transition space) ranging from $341-$367 million[1] – the project would exhaust much of the County's borrowing capacity for years to come if financed under the County's regular capital program. In fact, as we stated in our recent report, unless new and creative financing options are identified, the County would be forced "either to borrow more than it can reasonably afford, or to exacerbate its decades-long practice of deferring other capital improvement needs."

Milwaukee County is not the only financially-challenged county government that has faced the need for a new courthouse facility. For example, Los Angeles County opened a new $555 million downtown courthouse this past summer; Broward County (FL) opened a new $345 million judicial campus – including a $197 million courthouse tower – in January; and Pima County (AZ) opened a new $143 million courthouse in 2015. Each of those communities – and others across the country – have used distinct financing approaches that may hold lessons for Milwaukee County.

In this report – commissioned by Milwaukee County's Department of Administrative Services – we seek to inform local decision-makers by exploring how other county governments across the U.S. have financed new county courthouses, and applying lessons learned to Milwaukee County's predicament. The report is broken down into three main sections:

[1] These cost estimates are contained in the Milwaukee County Courthouse Complex Planning Phase III report dated April 23, 2018. The report was prepared by a consulting team led by Venture Architects that was hired by Milwaukee County.

- First, we share the results of a national scan of new county courthouse projects initiated or completed since 2010. We find that given the magnitude of courthouse projects, the vast majority employed financing strategies outside of their typical capital improvement programs.

- Next, we provide more detailed overviews of seven county courthouse projects that used financing approaches that may hold relevance to Milwaukee County, including two that are employing Public Private Partnership (P3) models. We find that to pursue most of those approaches, Milwaukee County would need changes to State law and/or to its own capital financing goals and policies.

- In the final section, we undertake a deeper analysis of financing options used elsewhere that we deem most appropriate for Milwaukee County to consider and explain the statutory and/or policy changes that would need to occur to allow for their pursuit.

There is little question that Milwaukee County needs to replace its Safety Building with a major new justice system facility; and there is even less question that to do so it will require assistance from other levels of government and openness to financing approaches that fall outside of its traditional capital finance model. We hope this analysis will be helpful in providing perspective on such financing solutions and in launching informed deliberations on the appropriate means of paying for a new Milwaukee County Justice Center.

NATIONAL SCAN

To initiate our analysis, we conducted a scan of county courthouse projects throughout the United States that have been completed (or are in the process of being completed) since 2010. Our goal was to identify recent projects that were somewhat similar to the proposed Milwaukee County justice center in size and scope so we could examine whether their financing characteristics held any lessons or insights for Milwaukee County. Consequently, our main criterion for inclusion was a project cost of at least $100 million.

Our national scan identified 14 such projects.[2] Notably, we found there is no "cookie cutter" approach to developing and financing large county courthouse projects. Indeed, these projects had a diverse array of financing strategies and funding sources and they employed several distinct types of partnerships. In several instances, the projects housed different county functions besides courts, and some involved municipal functions, as well.

Table 1 provides an overview of the 14 projects, including information about their size, cost,[3] and financing. The average cost among the projects is $262.1 million, while the median cost is $212.5 million. The average size in square feet is 425,145, with a median size of 350,000 square feet. By comparison, the justice center proposed for Milwaukee County has an estimated total project cost of $341-$367 million and an estimated construction cost of $262 million, while its estimated size is 374,000 square feet. A likely explanation for the difference in cost between Milwaukee County and some other projects is the demolition cost, as well as the temporary relocation costs incurred by building the new justice center on the existing footprint of the Safety building.

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[2] Included on this list was a Franklin County, OH project that is a jail; we decided to include the project because of its similar scope to a courthouse project (some of the other courthouse projects include jails).

[3] The project cost is based on information obtained from publicly available documents. To the extent possible, we cite the full project cost – which may include items such as demolition, temporary staff relocation, etc. – as opposed solely to the building construction cost. Also, because some of the listed projects are not complete, the cost may only be an estimate.

Table 1: County courthouse projects throughout the United States

State	County	SQ FT	Total Cost	Financing Source
CA	San Diego	704,000	$550,000,000	State-approved court fees pay off state-issued revenue bonds.
MA	Middlesex	265,000	$200,000,000	State general obligation (G.O.) bonds.
FL	Broward	741000	$262,000,000	Dedicated sales tax revenues received from the State of Florida to pay debt service on revenue bonds.
OR	Multnomah	444,693	$295,000,000	$125 million commitment from State legislature using bond proceeds; remaining $170 million through county G.O. bonds and general fund transfer.
OR	Clackamas	215,000	$154,000,000	Half to be paid by the State using G.O. bond proceeds. County will use "internal financing."
GA	Forsyth	335,000	$100,000,000	Voter-approved Special Purpose Local Option Sales Tax (SPLOST) program to pay off revenue bonds and cash finance.
FL	Duval	800,000	$350,000,000	Revenues from Better Jacksonville Plan (1 cent sales tax) paid debt on revenue bonds. Other funding included general capital funds and revenues from traffic fine surcharge.
OH	Franklin	325,000	$175,000,000	Quarter-cent sales tax initiated in 2013 (ground broke Nov. 2017).
CA	Madera	115,804	$100,000,000	State-approved court fees.
IN	Marion	665,534	$525,000,000	35-year county-issued lease appropriation bonds (debt service payments made w/operational savings).
AZ	Pima	290,000	$143,000,000	Voter-approved county G.O. bonding of $75 million; county general fund reserves.
IL	Will	365,000	$215,000,000	25-year county G.O. bonds; City of Joliet contributing $50 million over 20 years toward debt service; new courthouse fee.
MD	Howard	222,000	$105,000,000	County G.O. bonds; P3 hybrid - Design, Build, Operate.
CA	Los Angeles	531,000	$396,448,640	P3 - DBFOM; private bonds paid off largely through state-approved court fees over 35 years.

FINANCING STRATEGIES

Local governments throughout the country are responsible for maintaining and improving a broad spectrum of public infrastructure and capital assets that include roadways, buildings, parks, recreation facilities, and equipment. Because these assets often have lengthy useful lives and benefit multiple generations of taxpayers – and because the cost of repairing or replacing them often exceeds amounts deemed affordable in annual budgets – most use a mix of long-term borrowing and annual appropriations to address their capital needs. Those needs typically are encompassed in capital improvements budgets that are distinct from the government's operating budget.

Government finance experts urge local governments to engage in multi-year capital planning and to adopt debt management policies to guide their use of debt financing. The Government Finance Officers Association (GFOA) defines debt management policies as "written guidelines, allowances, and restrictions that guide the debt issuance practices of state or local governments, including the issuance process, management of a debt portfolio, and adherence to various laws and regulations." GFOA argues that such a policy should "improve the quality of decisions, articulate policy goals, provide guidelines for the structure of debt issuance, and demonstrate a commitment to long-term capital and financial planning."[ii]

In adhering to such standards, most local governments plan far in advance for major capital improvement projects. The goal is to accommodate such projects by carving out appropriate borrowing capacity to finance them over a period of 15 to 20 years. The challenge is to be able to do so without having to issue unaffordable levels of debt and without having to irresponsibly defer other capital needs.

No matter how effectively local governments manage their debt and engage in long-term planning, however, courthouse projects pose a monumental challenge. The issue is their magnitude – as shown above, the average cost of replacing a courthouse in a heavily-populated county typically exceeds $250 million. To finance a project that size using 15- to 20-year bond financing would require annual debt service payments in the $15 to $25 million per year range over the length of the bonds, which for many local governments is prohibitive.

Also, many local governments have statutory or self-imposed limitations on total debt or on annual borrowing or debt service payments. For example, Milwaukee County, with an annual budget of more than $1.2 billion, has deemed annual borrowing of about $40 million per year as affordable, and that amount must be used to address its entire array of capital needs.

It is no surprise, then, that we see a variety of financing approaches among the 14 courthouse projects. In **Table 2**, we focus on the source of funds used for each of the projects and group them into six distinct categories. It should be noted that distinctions exist by project within each category, and that several projects used additional smaller financing tools.

Table 2: Financing approaches among projects

Main Financing Source	Count
County Bonds	3
State bonds	1
Special sales tax	3
State-approved court fees	3
State/local funding partnership	2
Mixed funding sources	2

Below, we briefly describe the categories cited in the table:

- **County bonds** refers to the use of county-issued bonds as the main financing vehicle for the courthouse project. General obligation (G.O.) bonds are the most common type of bonds used by local governments, though revenue bonds also are used. We group courthouse projects into this category not only based on their use of government-issued bonds, but also to signify that they are using existing sources of local government revenue to pay off the bonds, as opposed to new sources that are unique to the project. An example is Pima County, Arizona, which used general revenues to service the debt on $76 million in 30-year G.O. bonds as part of the annual budget.

- **State bonds** use the same approach as county bonds, but the bonds are issued by state government within its capital improvements program. State G.O. bonds are secured by the full faith and credit of state government and the debt is paid off using existing sources of state revenue. An example is Middlesex County, Massachusetts, where state government has authorized the issuance of $200 million in G.O. bonds to finance a new judicial center.

- **Special sales tax** refers to use of dedicated sales tax revenues to cash finance the courthouse project or pay courthouse-related debt service. While dedicated sales taxes typically would support revenue bonds, G.O. bonds also can be the form of debt utilized under this category. The distinction is the use of a special dedicated sales tax to pay principal and interest on the bonds, as opposed to the government's general revenue streams. An example is Broward County, which dedicated sales tax revenues received under Florida's Local Government Half-Cent Sales Tax Program to pay debt service on $230 million of revenue bonds issued for its courthouse project.[4]

- **State-approved court fees** refer to the use of new or existing fees paid by users of the courts to cash finance the courthouse project or pay off courthouse-related debt. Usually, the use of such fees requires state approval. This approach is similar to the local sales tax category in its use of a special dedicated source of funding, but in this case the funding is user-related. An example is Los Angeles County's courthouse in Long Beach, which is using a state-authorized increase in court user fees to pay back lease revenue bonds used to finance the courthouse's construction.

[4] It should be noted that in Wisconsin, if G.O. bonds are used and sales tax revenues fall short of required debt payments, then the balance must come from other revenue sources, including the property tax if necessary.

- **State/local funding** partnerships can use various forms of financing, but involve equal or near-equal commitments from both the county government and state government. This approach reflects the notion that county courthouses house judicial functions that involve the enforcement of both local and state laws and that often involve both county and state personnel. An example is Multnomah County, where it is anticipated that the State of Oregon will contribute $125 million to a $295 million courthouse project through G.O. bonds. The County is expected to issue its own G.O. bonds to generate most of the remaining financing.

- **Mixed funding sources** reflects use of several different financing sources, including some of those listed above. For example, Will County (IL) is using a combination of sources to service G.O. bonds issued for its $215 million project, including revenue from new court fees and a $50 million contribution from the City of Joliet (paid over 20 years).

In addition to considering the source of funds used to finance the courthouse project, it is instructive to consider the specific financing mechanism. As noted above, local governments typically finance major capital projects by issuing debt (though some also use varying amounts of "cash" to finance the project on a "pay-as-you-go" basis). Increasingly, however, local governments also are considering Public Private Partnership (P3) models to finance extremely large projects.

In a P3, a public entity partners with a team of private architectural, development, and management firms to finance and develop the capital project, and often to maintain the asset after construction. For local governments, the major potential benefits of a P3 approach include the ability to spread cost and construction risks among multiple entities; keep debt off of the government's books; and allow for a lengthier repayment period than traditional bonds. A downside may be the detrimental impact of P3 payments on the government's operating budget. We provide much greater detail on the nature of P3s and their pros and cons in a later section of this report.

We found two examples of P3 approaches among the 14 courthouse projects (Los Angeles and Howard counties), and an additional example (Marion County) where local leaders originally pursued a P3 but ended up with a more traditional approach.

SUMMARY

Our broad scan of county courthouse projects exceeding $100 million that were initiated or completed since 2010 revealed 14 such projects. We find a diverse set of financing sources and approaches, though one common characteristic emerges: most counties are using specialized forms of financing that lie outside of their regular capital improvements program, and/or are receiving direct help from their state government or state-authorized special sources of funding. In fact, even for the three counties that used their own bond financing, two did so in ways that were not different from their traditional capital financing approach.

In the following two sections, we provide greater detail on seven of the 14 projects, selecting those that used financing approaches that we believe to be relevant to Milwaukee County's consideration of the financing of its new justice center facility. Then, in a subsequent section, we consider specific options for Milwaukee County.

TRADITIONAL PUBLIC FINANCING & DEVELOPMENT APPROACHES

As briefly discussed in the previous section, when it comes to financing major repairs and replacement of infrastructure and assets, most local governments use some form of borrowing. The use of long-term borrowing ensures that investment in asset creation, repair, or replacement can be paid off over multiple years.

Local governments take into account a variety of considerations in determining the frequency and affordability of debt issuance, including the size of their tax base and their capacity to accommodate principal and interest payments. Often, the ability to issue new debt in a given year is predicated by the amount of old debt that is retired in that year. Also, in many jurisdictions – including municipalities and counties in Wisconsin – state law prescribes debt limits for local governments.[5]

Local governments most commonly borrow money for capital projects by issuing G.O. bonds. These differ from revenue bonds in that they are not secured with a specific form of revenue, but instead are backed with the government's general credit and taxing authority. A key advantage of G.O. bonds used for public purposes is that in most cases, interest earned by bondholders is free from federal income tax, which means the bonds can be sold at a lower interest rate. Also, backing by the government's full faith and credit means there is less risk for buyers and no need to create substantial reserve funds (as there is for revenue bonds).

While most G.O. bonds are supported by revenue streams that support the government's general operations, some dedicate a specific source of revenue to G.O. debt service. That is somewhat the case in Milwaukee County, where the first use of revenue collected by its half-cent sales tax is the payment of principal and interest on G.O. debt (this is not a pledge of sales tax revenues to support the bonds but instead reflects a County policy).

As noted in the previous section, some governments go a step further by authorizing (or asking voters to authorize) *special* sales taxes or fees specifically to pay off the G.O. debt issued for a particular project. This allows them to clearly link a specific funding source to a specific project even though the debt still is backed by the full faith and credit of the government. Special broad fees or taxes also can be used to support revenue bonds, [6] though these bonds most commonly are supported by revenue generated by the project that is financed by the bonds. A common example would be the use of toll revenue to pay back debt on revenue bonds issued for a highway project.

Traditional public financing tends to be coupled with a development process that involves separate design and bid contracts. When the local government decides on a financing method, it uses requests for proposals to identify an architecture firm to design the project and a general contracting firm to build it (under separate contracts). After construction, the local government is the sole owner of the building and assumes operation and maintenance responsibilities. This differs from the P3 approach, in which private partners finance, operate, and/or own the project after completion.

[5] The Wisconsin Constitution limits local governments' G.O. debt to 5% of the value of their taxable property.
[6] An example is the .1% sales tax in southeast Wisconsin to pay debt service on revenue bonds for Miller Park.

PUBLICLY FINANCED COURTHOUSE PROJECTS

The broad scan in the previous section provides a small sample of the many courthouse projects that have been completed or initiated using county-issued debt. Among the projects we cited, there are differences in the type of public debt – G.O. or revenue bonds – as well as in the sources of funds used to service the debt. We pointed to a few examples that depend on sales taxes or courthouse fees for debt service, others that use property taxes, and others that use multiple funding sources.

In the remainder of this section, we provide additional details on five of the county courthouse projects included on our original list that used county-issued debt and a traditional development approach (i.e. not P3). This list was selected based on project characteristics that we found particularly relevant to Milwaukee County's consideration of financing for its new justice center.

PIMA COUNTY, AZ – TRADITIONAL COUNTY G.O. BOND FINANCING

Project Summary

The Pima County Downtown Court Complex is a 290,000 square-foot facility built to replace a former courthouse constructed in 1929. It opened in 2015. The new building was intended to serve a growing population, with increased and enhanced security, special rooms for victims and attorney conferences, and rooms for jury deliberation.[iii]

Pima County, Arizona

Project Cost: $143 million
Project Financing: 30-year G.O. bonds
Funding Source: County property tax

In 2004, Pima County voters approved $76 million in 30-year G.O. bonds to fund the complex. The new courthouse originally was intended to house both County and City of Tucson municipal court functions. However, the County was forced to come up with an extra $67 million – which it accommodated through its general revenue streams and reserves – to pay for archeological services to remove human remains from an old cemetery that were discovered during early digging. The City of Tucson was unable to pay its assumed share of $21 million, leaving the County to pay the full cost of $143 million.[7][iv]

[7] The facility cost cited here and other facility costs cited in this section reflect the total cost upon project completion and are not adjusted for inflation.

Pima County does not have a local sales tax and relies mostly on the property tax as its main source of locally-generated revenue.[v] The State of Arizona allows counties to approve a local sales tax, but county legislative approval must be unanimous.

A major difference between Milwaukee County and Pima County is that Pima's G.O. bonding must be voter-approved per state law. Under this approach, the County periodically places proposals before voters for large debt issuances for projects covering several years. The total package typically exceeds $300 million. The bond referendum delineates specific projects, which also include debt issued on behalf of municipalities for municipal projects.

A "secondary property tax" is implemented to support the debt service on the bonds if the referendum is approved. This tax essentially constitutes an add-on to the property tax levied by the county for operational purposes. It allows taxpayers to see the proportion of their property tax payments that are being dedicated to paying off capital debt.

Insights for Milwaukee County

Pima County was the only courthouse project on our list that used traditional county-issued G.O. bonds and that incorporated the project within the county's regular capital program. Of course, both of those characteristics were facilitated by the way in which it borrows – placing several years' worth of capital projects before voters as part of huge borrowing proposals makes it easier to blend major projects into the larger program; and having a dedicated secondary property tax to service debt ensures that debt payments do not compete with operating needs.

The Pima County example offers food for thought for Milwaukee County in two ways:

- The use of 30-year G.O. debt allowed Pima County to spread debt service payments over a longer period, thus reducing annual payment amounts. The downside, however, is that considerably more interest is paid over the life of the bonds. Milwaukee County currently is limited by the Wisconsin Constitution to a maximum 20-year term for G.O. debt but that limitation does not apply to revenue bond debt.

- Use of a special, dedicated property tax for justice center debt service could allow Milwaukee County to finance the project in a manner that would not reduce the amount of local tax revenue available for other uses.[8] Per State law, G.O. debt payments are exempted from property tax levy limits if approved by a three-quarters vote of the County Board. Consequently, Milwaukee County policymakers would not be precluded by State law from levying a special property tax to pay off justice center debt. Whether such an approach would be politically palatable in light of the already high property tax rates for Milwaukee County residents may be another story, however.

[8] As mentioned above, the first use of revenues from Milwaukee County's 0.5% sales tax is to pay debt service. Consequently, technically speaking, the County does not use property tax levy to pay debt service. However, because "excess" sales tax revenue not needed for debt service is used interchangeably with property tax levy, any reduction in debt service does free up property tax levy for other uses.

MULTNOMAH COUNTY, OR – STATE/COUNTY PARTNERSHIP

Project Summary

Multnomah County, Oregon

Project Cost: $300 million
Project Financing: State & local G.O. bonds and cash
Funding Source: State & county general funds, traffic and parking fine surcharges

Multnomah County's 444,693 square-foot, $300 million courthouse project was initiated after a review by the National Center for State Courts (NCSC) and its own analysis indicated that demographic changes and the need for a larger space to meet seismic codes required a new facility.[vi] The facility was designed to address safety concerns in the old courthouse's design and to meet the current and future needs of the courts. It is currently under construction and is expected to be finished by 2020.

Multnomah County was able to take advantage of a state policy that allows for up to a 50-50 state-local match for new courthouse projects. State funds are provided through the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF), which was established by the Oregon legislature in 2013.[vii] Proceeds from G.O. bonds are placed into the fund every biennial budget and are available to provide up to 50% capital funding for certain county courthouse projects. The Chief Justice of the Supreme Court determines if a county courthouse's current condition calls for replacement or renovation per guidelines provided by the legislature.[viii] Additionally, the project must be approved by Oregon's Department of Administrative Services.

In 2013, the Oregon legislature authorized $125 million toward the construction of the Multnomah County courthouse. For the remaining amount, Multnomah County has provided $80 million from its General Fund and issued $90 million in 30-year G.O. bonds.[9] An additional bond sale is anticipated this year or next to pay the remainder.

Multnomah County typically supports its G.O. debt with general revenues, but in this case it also is using special surcharges to support $25-$30 million of courthouse debt. Authorization for the surcharges came from state legislation enacted in 2016 that allows the presiding judge in a judicial district to impose a $5 surcharge for traffic and parking violations if the county's commissioners request such a surcharge and if the county is receiving state financial assistance for a courthouse

[9] Multnomah County labels these bonds as "full faith and credit bonds," which are virtually synonymous with G.O. bonds and are similarly backed by the full faith and credit of the government that issues them.

repair or replacement project.[ix] The $5 surcharge in Multnomah County will expire once the courthouse project's bonds are paid off.

Insights for Milwaukee County

In both Wisconsin and Oregon, counties are responsible for capital improvements for their courthouses. Nevertheless, recognizing the overwhelming financial challenge posed by large courthouse replacement projects for county governments, Oregon's legislature created the OCCCIF to share the cost of such projects.

Whether State leaders in Wisconsin would be willing to consider a similar approach certainly is debatable, particularly in light of the State's own pressing capital needs for both transportation infrastructure and buildings. However, as we will discuss later in this report, if State leaders *were* willing to consider some form of cost sharing with Milwaukee County, then a traditional financing approach would be more affordable for the County and any potential need for legislative changes to accommodate special financing provisions or new dedicated taxes or fees could be eliminated.

Multnomah's use of special surcharges on traffic and parking fines also may be instructive for Milwaukee County. Again, recognizing the challenge posed by courthouse construction, Oregon lawmakers adopted legislation authorizing the use of special user-based fees to help support county-issued courthouse debt. Similar special surcharges also would require state legislative approval in Wisconsin.

FORSYTH COUNTY, GA – DEDICATED LOCAL OPTION SALES TAX

Project Summary

Forsyth County's new courthouse facility was completed in 2015. Attached to the new building is a 608-bed jail, which was a key part of the County's plan to consolidate many of its public safety/judicial functions and processes into one complex. The total complex's size is 335,000 square feet and the total construction cost was $100 million. Included in the complex is space for the State Court, Superior Court, Clerk of Court, District Attorney, and Solicitor Offices.[x]

Forsyth County, Georgia

Project Cost: $100 million
Project Financing: Short-term revenue bonds and cash
Funding Source: Special Purpose Local Option Sales Tax

In 2011, Forsyth County voters approved a 1% Special Purpose Local Option Sales Tax (SPLOST) to pay for a list of infrastructure projects, including its courthouse and jail complex. The tax had been approved by voters on six previous occasions to pay for other sets of infrastructure projects.[xi]

The County issued $50 million in revenue bonds in 2012 to a local financial institution to help finance the project. Sales tax revenues from the SPLOST supported the bonds, which were used as a line of credit.[xii] In other words, the County was able to draw on the funds as needed and only paid interest on the drawn amounts. SPLOST revenues were used to cash finance the remainder of the project's costs, which the county paid in phases from 2013 to 2015.

In Georgia, the state allows counties and municipalities to enact a 1% SPLOST for the purpose of financing certain capital outlays (e.g. for schools, roads, buildings).[xiii] The tax only can be imposed via a referendum, which must be called by a county board of commissioners. The SPLOST is time-limited (usually five or six years) but can be renewed by voters for new sets of projects.

Insights for Milwaukee County

The SPLOST approach potentially could be attractive for Milwaukee County given that it would provide a dedicated and robust source of new revenue to support courthouse debt (and potentially other projects), thus not detracting from the County's regular capital program. From the perspective of taxpayers, requiring that such a special tax be approved via referendum, that it be time-limited, and that the proceeds be restricted to specifically delineated capital projects could help temper concerns about permanent higher taxation.

Of course, any such approach would require State authorization. State law allows counties to levy up to a 0.5% local option sales tax, but that authority already has been used by Milwaukee County.

BROWARD COUNTY, FL – DEDICATED PORTION OF EXISTING SALES TAX

Project Summary

Broward County opened a new 674,000 square-foot courthouse in January 2017. The $345.6 million complex includes a 20-story tower and houses civil, family, and criminal courts. The facility also houses the Clerk of Courts and some functions of the State Attorney's Office.

Broward County, Florida

Project Cost: $346 million
Project Financing: Revenue bonds with maturity dates varying between 15 and 30 years
Funding Source: County share of state sales tax

According to the County's 2011 capital budget, the project was financed with $108 million originally appropriated for a Family Court building and jail expansion project; and $218 million in proceeds from revenue bonds issued in 2010 that mature on varied dates spanning 15 to 30 years.

The use of revenue bonds – as opposed to G.O. bonds – was predicated on the County's decision to pledge revenues received from a distribution of a state sales tax to support the debt. The State of Florida allows its counties to add a 1% sales surtax on top of the state's 6% sales tax to support infrastructure needs. Broward County did not avail itself of that option, but instead opted to dedicate the revenues it received under the State's Local Government Half-Cent Sales Tax Program as its pledge against the debt.[xiv]

Under that statewide program, Broward County receives a formula-driven distribution of a portion of the State's sales tax collections.[10] At the time the bonds were issued, that distribution was in the $60 to $70 million range per year, which provided ample coverage on the projected $13.5 million of annual debt service.

Insights for Milwaukee County

Broward County may hold lessons for Milwaukee County both in its staggering of the maturity of its debt over a 15- to 30-year period and its dedication of sales tax revenues to cover revenue bond debt. As noted with regard to Pima County, issuing debt over a longer term can enhance the affordability of annual debt service payments, though the downside is higher total interest payments.

Dedicating a portion of its existing half-cent sales tax to support debt service payments also may be an option for Milwaukee County. A positive would be the ability to clearly demonstrate to constituents

[10] When the program originated in 1982, that distribution was equivalent to a half-cent of the state sales tax, but that is no longer the case.

the impact of the project on the overall County budget and capital plan by delineating the amount of sales tax revenue that would be dedicated each year.

A clear negative, however, would be the impact on the remainder of the capital program and the operating budget. Existing sales tax monies already service the County's wide range of long-term capital debt, and amounts not needed for that purpose are a key source of operating budget revenue. Diverting those resources to courthouse debt undoubtedly would create severe financial pressure in other areas.

That negative element would be reduced to the extent that debt service payments could be spread over 20 to 30 years (though as noted above, only revenue bond debt could exceed 20 years). In light of the pressures on Milwaukee County's capital program and operating budget, however, dedicating a portion of the existing sales tax project to a new justice center would appear to be a viable option only if it was accompanied by some other source of expenditure or revenue relief in the overall County budget.

DUVAL COUNTY, FL – MIXED APPROACH

Project Summary

Duval County, Florida

Project Cost: $350 million
Project Financing: 30-year revenue bonds
Funding Source: Local option sales tax, traffic fine surcharge, county capital funds

The Duval County, FL courthouse was planned and constructed to replace an overcrowded facility and to meet the needs of the County's rapidly growing population. The 800,000 square-foot facility opened in June 2012 at a cost of $350 million. The facility houses the County's Circuit Court as well as the State's Fourth Judicial Circuit.

The courthouse was funded in large part by the Better Jacksonville Plan (BJP), a $2.25 billion infrastructure package that was placed before voters in 2000 by the City of Jacksonville/Duval County (the County of Duval and City of Jacksonville consolidated in 1968 and have a unified government).[xv] The courthouse was one of several projects included in the BJP, which was funded in part by a half-cent county sales tax that will expire no later than 2030.[11] As noted above, the State of Florida authorizes counties to seek voter approval of sales taxes of up to 1% for infrastructure spending.

The courthouse project received $211 million as part of the total BJP infrastructure package. Other primary funding sources included $86.5 million in City of Jacksonville capital funds (appropriated as

[11] The half-cent increase increased the County's sales tax to one cent.

part of the city/county government's regular capital program); and $48.3 million collected from a $15 traffic fine surcharge.[xvi]

The $211 million from the BJP is paying debt service on 30-year revenue bonds issued in 2001. The traffic fine surcharge – specifically authorized in Florida statutes for the City of Jacksonville/Duval County as a means of financing state court facilities – also helps service that debt.

Insights for Milwaukee County

Duval County provides an example of a mixed funding approach that combines the use of local option sales tax revenue, traffic fine surcharge revenue, and funds from the government's regular capital program. For Milwaukee County, an expanded local option sales tax and traffic fine surcharge would require approval by the Legislature and Governor. Despite that obstacle, a mixed approach might be seen as a compromise in which the County would need to fit part of the courthouse project into its regular capital program, but could turn to voters for sales tax approval and Madison for permission to implement a traffic fine surcharge for the remainder.

Summary

The courthouse funding and financing models described in this section show there is no "one size fits all" approach. Several common characteristics do emerge, however:

- With the exception of Forsyth County, which had a robust source of short-term revenue, each of the counties used debt financing approaches that involved the issuance of long-term debt exceeding the State of Wisconsin's current 20-year limit for G.O. debt.
- Three of the five counties were required to obtain voter approval for the funding sources required to service debt on their courthouse projects, reflecting the magnitude of the long-term obligation for local taxpayers. The two that did not obtain voter approval received considerable assistance from state funding sources.
- Special sales taxes or court-related surcharges are common mechanisms for supporting courthouse-related debt and ensuring that large courthouse-related debt obligations do not weigh down the remainder of the county's capital program.

As we will discuss in a subsequent section of this report, these examples suggest that to build a new justice center in Milwaukee County, County and State policymakers may need to consider: 1) use of revenue bonds or a special exemption from the 20-year G.O. bonding limit; 2) a special State funding source; or 3) State and/or voter approval for a dedicated local sales tax or special court-related fees or surcharges.

PUBLIC-PRIVATE PARTNERSHIPS

In this section, we consider the Public Private Partnership (P3). While a less traditional and less common form of public infrastructure financing, P3s have gained increased attention from local governments recently in light of their vast infrastructure needs and limited borrowing capacity.

Customarily, when a government wants to construct a road or a new facility, it engages in a process known as design-bid-build. Under this approach, government or contracted engineers and architects design a project, and then construction firms bid for the right to build parts of it.

In recent years, however, a number of state and local governments have departed from standard practice and begun employing private firms in new ways to develop their infrastructure. Private firms have taken on diverse duties such as financing and even facility maintenance.

A distinctive feature of P3s is the combining of separate phases of procurement under a single contract such as design, finance, and construction; or design, finance, construction, operations, and maintenance.[xvii]

To evaluate the need for and the value of a P3 and to ensure that the partnership is effectively structured, the public partner must acquire new knowledge, undertake new types of analyses, and engage in new activities, such as P3 contract negotiations. P3s are funded (as opposed to financed) either from project user fees, such as court fees; or annual “availability payments,” which are direct payments from the public partner’s operating budget. Whichever form they take, payments typically last the useful life of the infrastructure, which in some cases is 35 years or longer.

TO P3 OR NOT TO P3

A public entity considering the possibility of pursuing a P3 must be prepared to conduct a rigorous analysis of whether its own circumstances and capacities make it a good candidate for this type of financing. Below, we cite some of the most common benefits and disadvantages attributed to P3s.

Potential Benefits

- *Faster Project Completion and Lower Construction Costs* – Investors have a strong incentive to come in on or under budget since an overrun diminishes profits.

- *Operational Efficiency* – Bundling design, construction, and operations into a single contract can promote operational efficiency since private partners have an incentive to configure the building in a way that optimizes long-term costs.

- *Maintenance Assurance* – Under some P3 contracts, the private partner assumes responsibility for long-term maintenance and must meet specified maintenance standards. This can be particularly appealing given that many local governments have large unfunded deferred maintenance backlogs.

- *Access to Private Expertise* – P3s are able to access private skills and expertise, which is especially important for technically challenging projects.

- *Off-loading of Risk* – Under a P3, the private partner takes on legal responsibilities assumed by the public partner under traditional procurement practices. The transfer of risk provides the public partner with greater cost assurance and reduced legal liability, and can lower cost.

- *Focus on Life-Cycle Costs* – Under traditional capital procurement, infrastructure projects are evaluated in terms of their construction and borrowing costs. P3 projects can offer a more comprehensive cost assessment by also examining long-term downstream expenditures for operations and maintenance.

- *Outside the Capital Budget* – Since many P3s are financed (at least in part) by non-public funds, projects are considered "off-budget" and not subject to the same rules and regulations that often govern public financing, such as borrowing limits or approval by public referendum. Also, many P3 contracts are budgeted as an operational cost and not as public debt, which means they may not pose as big a threat to bond ratings.

- *Project Payments Spread Over Many Years* – P3 contracts typically exceed the payback period for municipal bonds. Consequently, annual P3 payments for construction and financing may be lower than annual debt service payments, making the project easier to accommodate within constrained annual budgets (though total payment costs would be higher).

Potential Disadvantages

- *Additional Costs* – Contractual costs for the public sector must incorporate both private partner profit and contractual risks that the private partner assumes. Moreover, private capital comes at a cost that usually exceeds that of public financing. Cost savings in other areas, such as construction, design, and operations, are intended to offset these higher costs, although costs for operations and maintenance become obligatory, as opposed to discretionary expenses.

- *Fewer Bidders* – With private firms organized in teams that submit a single bid, P3 projects generally have fewer bidders than traditional projects. This may reduce competition and result in higher costs.

- *Contract Complexity* – Since multiple stages of procurement are rolled into one transaction, P3 projects can be large and complex. The mix of public and private responsibilities can add further complexity. For example, many P3 projects combine public and private financing with private funds derived not only from team members, but also from investors, investment equity infrastructure funds, loans, or bond issuance.[xviii]

- *Substantial Transaction Costs* – Administrative costs can be substantial given the length, detailed nature, and expertise required for contact negotiations. Also, monitoring contract provisions entails additional staff and time.

- *No Exemption from Levy Limits* – Under Wisconsin State law, only G.O. debt payments are exempted from State levy limits. Consequently, in Milwaukee County, there would be only limited ability to increase property taxes to pay P3 availability payments, which would further constrain the operating budget unless offsetting reductions were identified. The magnitude of such potential cuts could jeopardize core programs.

- *Inadequate Protection of Public Interest* – Some P3 contracts can cost more than traditional procurement because the public partner lacks the financial and/or analytical skill to negotiate a satisfactory contract. Another problem is potential failure to monitor contractual performance standards.[xix]

- *Public Criticism* – Some object to removing the acquisition and management of public infrastructure from the public domain. Dissatisfaction may become more acute when controversial issues arise, such as labor and environmental matters.

- *Unforeseen Risks* – P3 contracts may involve risks for which the public partner has no experience or preparation. Examples would be the bankruptcy of the private partner, the sale of the asset to another party, and unanticipated disputes over the contract.

THE P3 TRACK RECORD

Infrastructure contracts are long-term arrangements and are a relatively new phenomenon in the U.S. Since most projects have not yet completed their life cycles, there are few extant after-the-fact analyses. A 2012 study of P3 highway projects by the Congressional Budget Office found that P3s have built highways "slightly less expensively and slightly more quickly" than the traditional approach, but the "relative scarcity of data and uncertainty of existing studies" make it difficult to apply [these] conclusions definitively to other such projects.[xx]

Not all P3 projects achieve their goals and intentions. Ryan Holeywell, a columnist for *Governing*, reports that there are a "long list" of projects that have turned out "very bad for governments" since public leaders failed to ask the right questions and perform appropriate due diligence.[xxi] Moreover, the initial stages of a P3 can be unproductive. In fact, it is estimated that about half of P3 negotiations do not end with an agreement.[xxii]

P3 financing is a tool and, as such, it can be poorly or adroitly applied. The California Legislative Analyst, in a study of the Long Beach courthouse project (described in detail below), emphasized the importance of following P3 best practices to ensure success, such as rigorous cost analysis and thorough and transparent project approval.

P3 COURTHOUSE PROJECTS

While 38 states have authorized P3s, eight states and the Los Angles and Washington D.C. regions have experienced the greatest P3 activity.[xxiii] Most P3 agreements have funded transportation infrastructure, although the number of non-transportation projects has risen in recent years. Several states have adopted broad P3 legislation or amended existing legislation to facilitate such activity.

A 2014 study by the Administrative Office of the Courts of the Arizona Supreme Court found that "public entities have increasingly considered or utilized some form of private financing arrangement" to fund new county courthouses.[xxiv] According to this report, Los Angeles County, discussed below, was the site of the first full P3 (i.e. design through maintenance).

Metro areas of various sizes and fiscal circumstances have undertaken P3 agreements. The Riverside Law building in Riverside, California – completed in December 2014 at a cost of $38.6 million – offers one example of the so-called American Model, mainly used for smaller projects. Financed through tax-exempt bonds issued by a non-profit organization, the Riverside building was designed and built by a private development team with operational responsibility contracted to a separate management firm.

P3 financing has been both an option of first and last resort. Howard County, the third wealthiest county in the U.S. whose county government boasts an excellent credit rating, is currently planning to contract with private partners for the design, construction, operation, and maintenance of a new courthouse, as discussed below. In contrast, Dade County in South Florida is now considering a P3 after voters rejected revenue bond financing for a new courthouse in 2014.

P3 projects can become a subject of philosophic dispute and political controversy. The Marion County courthouse and jail in Indianapolis is one such example. For many years, this project was being developed as a design through maintenance partnership, and the County conducted negotiations with several of the private firms that participated in the Long Beach courthouse's development. However, in January 2018, officials changed course and the project reverted to more traditional financing.[xxv]

In contrast, in Canada, some provinces routinely make use of P3s. In 2002, the provincial government established Partnerships British Columbia whose charge is to promote, stimulate, and help implement P3 projects by supporting public agency initiatives. Currently, a new P3 courthouse project is underway in Abbottsford, B.C. The facility will cost $150 million and will have a 30-year contract.

CASE STUDY #1 – LONG BEACH (LOS ANGELES COUNTY) COURTHOUSE: A DESIGN, FINANCE, BUILD, OPERATE, AND MAINTAIN PROJECT

Concept

This project is the first P3 courthouse built in the U.S. under a performance-based infrastructure (PBI) approach. The impetus came from former California governor Arnold Schwarzenegger, a strong advocate of P3s.

In 2007, the Legislature approved a proposal for consideration of a P3 for a new Los Angeles County courthouse. The project was contingent upon the Legislature's review and the Department of Finance's review and approval of key project elements, such as cost and performance standards.

Los Angeles County, California

Project Cost: $343 million
Project Financing: P3 using a performance-based infrastructure (PBI) approach
Funding Source: State court fees

As originally conceived and implemented, the Long Beach courthouse relied upon private firms for all phases of infrastructure procurement: design, construction, finance, operations and maintenance. To assure high quality and reasonable cost, the project was designed to be performance-based. Under this approach, the private partners must meet contract metrics for daily operations, facility conditions, preventive maintenance, and life-cycle repair and replacement, as well as implement specified processes and procedures for customer services, facility modifications, continuous quality assessment, and other operations. If these standards are not met, then funds are deducted from the state's annual lease payment to the private partner.

The Building

The five-story courthouse opened to the public in September 2013. The new courthouse is 545,000 square feet, which is 65% larger than the 55-year-old building it replaced. It is the largest courthouse in the State of California and accommodates an estimated 800 workers and 3,500 to 4,500 visitors daily. The building cost $343 million to design and build.

The Los Angeles Supreme Court occupies 415,000 square feet of the new courthouse and has 31 civil and criminal courtrooms. The building includes below-grade detention facilities and separate secure parking for judges.[xxvi] Los Angeles County agencies have contracted for 100,000 square feet of space. Food court and retail space take up the remaining 5,500 square feet. The project also renovated and expanded an attached parking structure with about 900 spaces.

Principal Partners

The main public partner is the Judicial Council of California, which is the policymaking body of the California courts (i.e. the state court system). The Superior Court of Los Angeles County provided input on court building design, functionality, and space and participated in the selection of external advisers, which included financial services and law firms.

Long Beach Judicial Partners is the private partner. This is a company established specifically for the courthouse project. It includes Meridian Infrastructure (lead partner, a large, Luxemburg-based private equity development firm) as well as design/construction, architecture, and real estate firms. Johnson Controls also is part of the partnership and provides operations and maintenance.

Timeline

The Long Beach courthouse was designed and built in 32 months. The entire project, including a feasibility study and refinancing, took seven years. The innovative, complex nature of the procurement process and the Judicial Council's unfamiliarity with P3 financing extended the time required.[xxvii]

Financing

Financing followed a two-step process. Because of the volatility of the private bond market at the time the project was first financed, LBJP signed a $441.5 million "mini-perm" medium-term loan. Meridian also invested $49 million in the project. In December 2013, the project was refinanced through a $518.5 million 34-year bond. The bond has a coupon rate of 6.88% and was subscribed by 10 investors, including insurance companies and pension funds.[xxviii]

Under terms of the agreement, the Judicial Council provides $53 million annually in availability payments over 35 years. The payment is not considered debt, but instead is treated as compensation for performance-based facility services, such as operations and maintenance, which constitute 40% of the payment value. Payments began after occupancy and the fixed annual amount has been adjusted for inflation. Income from space leased to Los Angeles County public agencies and parking fees offset some of the cost of the availability payments.

Cost

The Value For Money analysis was a key part of the P3 process and one that the Judicial Council had to submit to the Department of Finance for its final review and approval.[xxix] Consultants from the Vancouver office of Ernst and Young, familiar with Canadian P3 projects, conducted the VFM. Two separate analyses were undertaken. The first occurred early in the process when multiple bids were being considered, while the second was conducted for the LBJP bid.

To capture the full cost of the project under each procurement option, the VFM included a risk identification and risk qualification process for each procurement option and then assigned a value to each risk, such as for construction delays, unanticipated operating costs, and labor disputes. The estimate for the public option was calculated by using the building program and operating requirements as if developed under a traditional public sector design-bid-build process.

Perhaps the most challenging part of a VFM analysis is determining the discount rate to be used to calculate the "net present value" of the project over time. Because of the nature of the VFM formula, variations in the discount rate can have a sizable impact upon a project's comparative cost, i.e. the difference between the net present value of a P3 project and net present value of traditional financing. The VFM analysis for the LBJP bid used a discount rate of 6.06%. It calculated the net present value for the project at $725 million, making the LBJP bid $26 million (3.5%) less than the $751 million net present value of traditional financing.

Praise and Criticism

Several financial, engineering, and architectural journals and professional associations have lauded the Long Beach project. Conversely, the Alliance of California Judges, a 500-member group of California judges formed in 2009, has criticized the expense of the Long Beach project and questioned whether the project needed P3 financing.

In 2012, the Legislative Analyst of California produced an in-depth review of the Long Beach project. The Legislative Analyst faulted the *a priori* way in which the Judicial Council singled out Long Beach for a potential P3 project, rather than first determining the profile and characteristics of projects that lent themselves to this approach. The agency also concluded that Long Beach lacked the unique and/or complex features that would likely benefit from the innovative design and construction techniques associated with P3 financing.[xxx]

The report concluded with some general recommendations. It stated "we believe that P3 procurement—if done correctly—has merit and may be the best procurement option for some of the state's infrastructure projects." At the same time, the report recommended that future projects follow P3 best practice more closely, such as by developing state resources and expertise to support these projects and adopting a thorough P3 program approval process.

The principal architect of the Administrative Office of the Courts has said the Judicial Council will not pursue another PBI in the near future. He cited several financial reasons for this decision along with the fact that the State of California has not strengthened its capacity to manage PBI projects.

CASE STUDY #2 – HOWARD COUNTY (MD) COURTHOUSE: DESIGN, BUILD, OPERATE, MAINTAIN, AND JOINTLY FINANCE

Concept

Howard County, a suburb located between Baltimore and DC, is in the midst of a process that will select a private partner for the building and operation of a new county courthouse. The project is of interest for its procurement model and planning/approval processes.

Howard County characterizes its new project as a "hybrid P3," meaning that private firms take on all procurement responsibilities from design through maintenance but the County provides most of the financing through G.O. bonds. An advantage is that these municipal bonds have a lower interest rate than private capital.

Howard County, Maryland (photo shows existing courthouse)

Project Cost: $138.7 million
Project Financing: P3 hybrid using county G.O. bonds and private capital
Funding Source: General county revenues and private funds

This project is performance- or output-based. Private contractors assume all operations and maintenance except certain security activities retained by the sheriff. According to the County's Expressions of Interest (EOI), which defines the project for potential bidders, the final P3 contract "will include performance criteria and specifications for the design, construction, maintenance, and operation of the project, including defined requirements and expectations for minimum staffing, space and functional area requirements and design criteria, the scope of the services to be provided…. [and] required criteria and levels of maintenance".[xxxi]

The project has undergone extensive financial analysis and review under the direction of Howard County Executive Allan Kittleman, a strong advocate. The County's Spending Affordability Advisory Committee – a group comprised of local citizens, organizational leaders, and government officials – has examined four procurement models and unanimously recommended the hybrid P3. The Common Council has adopted a resolution supporting this model, as well as the use of G.O. bonds to support the project.[12]

Through the hybrid P3, the county hopes to achieve cost savings, improve quality, and transfer risk to the private sector. The project has had no strong public opposition and the County could implement

[12] Howard County, Common Council, CR-27-2017, Howard County Circuit Courthouse: Public-Private Partnership (P3) Project (website), https://www.howardcountymd.gov/HowardCourthouse

a traditional procurement process if it so chose. Howard County is the third wealthiest county in the U.S. and all the municipal bond rating agencies award it a high credit score.[13]

Howard County will have the first courthouse in the State of Maryland established through a public-private partnership, although the City of Baltimore also is exploring P3 procurement for renovation of its courthouse complex. The project will not draw on state or federal funding. Howard County has authority to proceed with the project under the Maryland state code, which specifically gives counties the right to establish and maintain courthouses and to enter into multi-year service contracts.[xxxii]

The Building

The new courthouse will replace the existing building, which is more than 170 years old and was last remodeled in 1983. The facility will occupy 227,000 square feet and will be large enough to expand courtroom space and security, permit technological improvements such as electronic filing, and incorporate a consolidation of County legal services. Occupants will include the state attorney, sheriff, public defender, juvenile services, department of social services, and the bar association. The project also features a 600-space parking garage.

Principal Partners

The Howard County Executive will have overall responsibility for the project. The County has contracted with financial, technical, and legal consultants and has engaged eight other consulting firms for activities such as security, engineering, and building services.

On the private side, the County has shortlisted three teams who are now qualified to respond to the Request for Proposal. No non-qualifying teams can apply. County officials and consultants are currently working with each team to discuss technical, financial, and legal details. The two teams that are not awarded the final contract will receive stipends for their work.

Timeline

Howard County is more than half way through the process of selecting a private partner. Activities began in 2016 and the county will make its choice in August of this year.[xxxiii] Initiation of construction is slated for December 2018 and project completion is anticipated in June 2021.

Financing

The total construction cost is estimated at $138.7 million. The county will make a “milestone” payment at the time of occupancy with monies derived from the issuance of about $90 million in G.O. bonds. Bond revenues will fund partial construction, procurement, and preparatory costs.

Private capital will finance the remaining construction costs as a means of ensuring that the private participants have “something at stake” in the long-term success of the project. After occupancy, Howard County will make estimated annual availability payments of $14.4 to $17 million under a 30-year contract. Failure to meet performance standards will result in deductions from the county’s

[13] For instance, see, *Moody Assigns Aaa to Howard County, MD, Outlook Stable*, Moody’s, December 5, 2017, https://www.moodys.com

yearly payment. The county anticipates budgeting the payment as an operational expense, as opposed to debt.

Cost and Program Analysis

The Spending and Affordability Advisory Committee, working with County consultants, examined four procurement models: the traditional design-bid-build; private assumption of all procurement; shared public and private financing; and total public financing. In its analysis, the committee examined factors such as cost, construction delivery schedule, risk shift, operations/maintenance quality and efficiency, predictability of future costs, lifecycle costs, and performance enhancement capability. The committee calculated that the hybrid P3 model's net present value would be $289 million, or $24 million less than the net present of the traditional model ($313 million) and $39 million less than the net present value of the full P3 model ($328 million).[xxxiv]

POSSIBLE FINANCING STRATEGIES FOR A MILWAUKEE COUNTY JUSTICE CENTER

In this section, we discuss four potential strategies to finance a new justice center in Milwaukee County. These strategies emanate from our consideration of funding and financing approaches discussed in previous sections and our knowledge of County finances. They are not mutually exclusive and some can be implemented jointly. It is important to note, however, that most would require a change in State law or policy.

MILWAUKEE COUNTY'S FISCAL CHALLENGES

Consideration of potential justice center financing strategies first requires brief context on Milwaukee County's overall financial picture. Milwaukee County has never had to finance a $300 million facility. Not only is this a daunting price tag, but it also must be considered in the context of the County's other financial difficulties, which include a mounting backlog of unfunded capital projects and a longstanding structural deficit. The County's challenge not only is to finance a large-scale capital project, but to do so in a way that does not further weaken its overall fiscal condition.

In a series of recent reports, the Forum has explored infrastructure owned by Milwaukee County and other large metro Milwaukee governments, examining the condition and capital needs of parks and cultural assets; streets, bridges and buses; water, sewer, and wastewater facilities; and government buildings.[xxxv] We have found that many of the County's capital needs are not being addressed and that the size of the infrastructure backlog is growing.

Chart 1 outlines the dimensions of the County's infrastructure challenge. The chart shows the local cost of non-Airport capital projects requested by County departments for the 2018-2022 timeframe and the County's local capital financing capacity for each of those years (as defined by a self-imposed bonding limit plus a 20% cash match). As shown, projected local financing needs greatly exceed available financing capacity in each year of the five-year period. Consequently, if the County adheres to its borrowing limits, the existing backlog of capital needs will grow substantially.[14]

The huge escalation in projected local capital financing in 2022 stems from the justice center project, which at the time was estimated to cost $220 million. Yet, even excluding that project, capital requests would far exceed available local resources in each of the five years. Also, this chart

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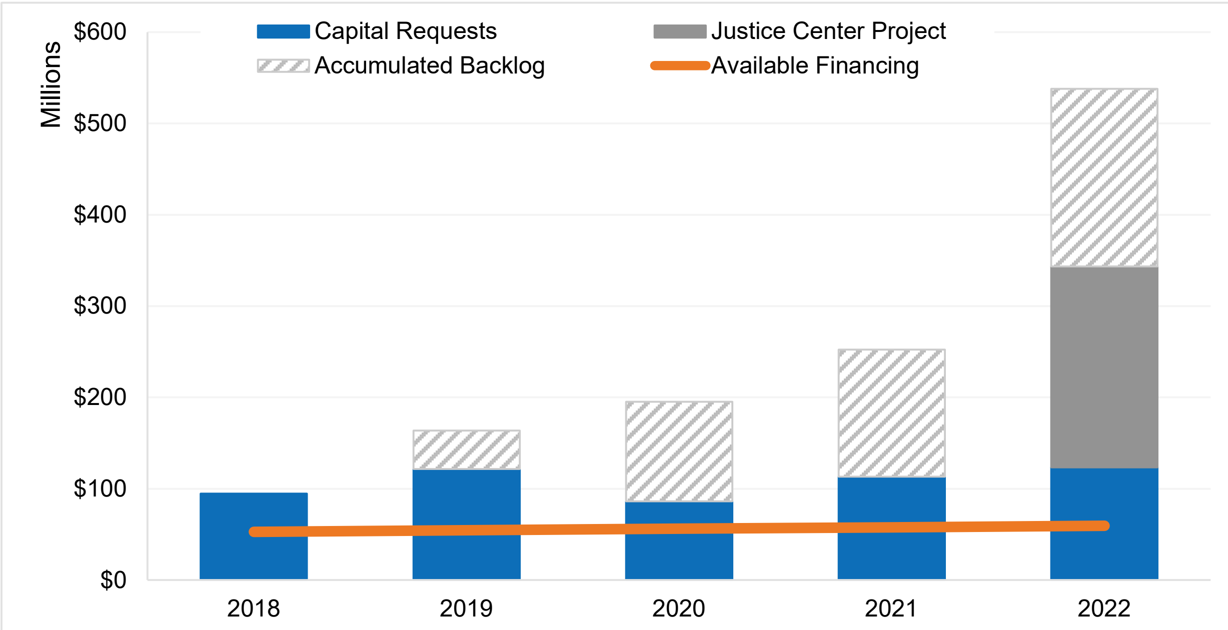
[14] It is important to note that even if the County had sufficient borrowing capacity to budget for its full array of capital needs, it does not currently possess the staff resources to implement such a huge list of projects.

may understate the severity of the challenge, as it is possible that new capital projects identified in the intervening years will widen the gap between now and 2022. On the other hand, the County could reduce the magnitude of the problem by liquidating assets in need of repair or replacement.

Chart 1: County financing for capital requests, 2018-2022 (in millions)[15]



Source: Milwaukee County Capital Improvements Committee and Department of Administrative Services

On the operating side, Milwaukee County's financial situation is equally worrisome. The County faces a longstanding structural deficit, which is caused by the failure of its revenue streams to keep pace with growth in fixed costs. In recent years, the annual gap between ongoing revenue and "cost-to-continue" expenditures has been about $25 to $30 million.

To balance its operating budget and address the structural deficit, the County has cut costs and increased local revenues. For example, it has restructured its employee health insurance program, increased employee contributions for health and pension benefits, implemented a vehicle registration fee, drawn on reserves, and—most relevant to this analysis—lowered County debt.

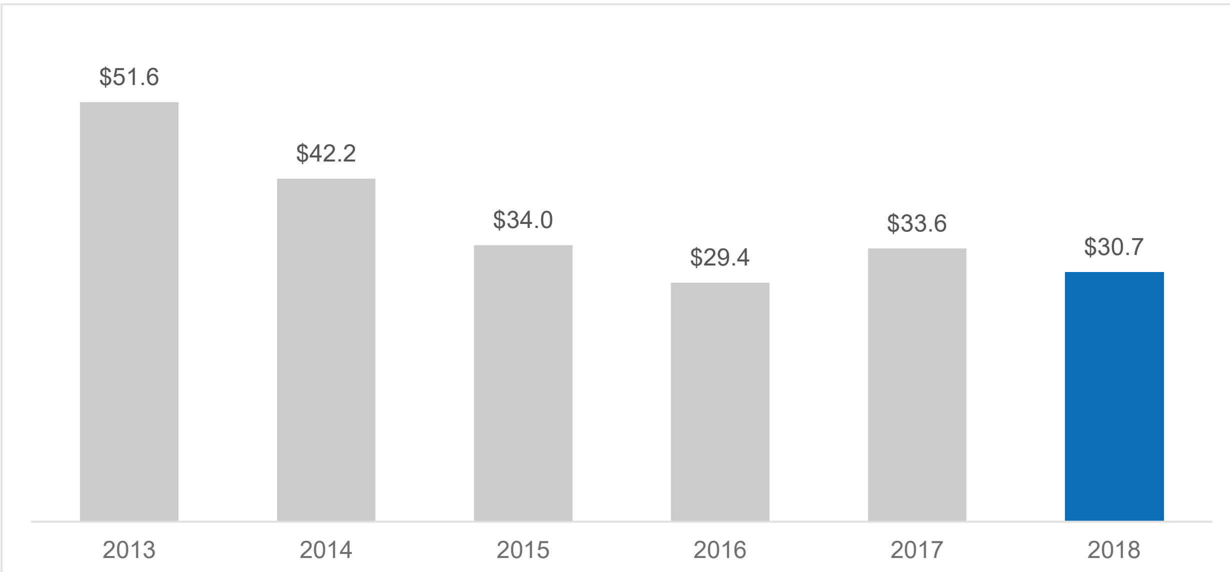
Debt reduction has been accomplished, in part, by capping annual borrowing and paying off bonds in a timely manner. Per County policy, most G.O. bonds are issued for a period of 15 years—although the State permits 20-year borrowing—and County policy also limits increases in bonding to no more than 3% per year. County policy also stipulates that 20% of all capital spending be cash financed.

The 2018 budget cites total outstanding debt of $606.7 million, which consists of $305.3 million for capital projects and $301.4 million in pension obligation bonds (POBs).[16] The $305 million in capital debt is a 20% reduction from the $379 million the County held five years earlier.

[15] The "Available Financing" line reflects an assumption that the County follows its self-imposed bonding limit each year (i.e. G.O. bonding is increased 3%) and meets its 20% cash financing goal.
[16] The POB debt was issued in 2009 to reduce the County's unfunded pension liability; annual debt service payments (about $33 million annually) are budgeted as part of the annual pension fund contribution.

The County's ability to reduce its debt – which also is linked to retirement of debt from a major restructuring initiative in 2003 – has allowed it to enjoy substantially lower annual debt service payments in recent years. As shown in **Chart 2**, annual net debt service payments have now leveled off in the low $30 million range.[17] While the $30.7 million budgeted for 2018 still represents about 8% of the County's overall property and sales tax revenues, this is a considerable reduction from just five years ago, when debt service comprised 15% of budgeted property and sales tax revenue.[18]

Chart 2: Budgeted local revenue-supported debt service, 2013-2018 (in millions)



Source: Milwaukee County budget documents

Yet, despite this accomplishment, the County's structural deficit still has necessitated adoption of a $30 vehicle registration fee and consideration of controversial service reductions over the past two years. This demonstrates the importance of maintaining recent progress in lowering (or at least maintaining) annual debt service expenditures. Also, while debt reduction strategies have helped budget balancing, they also have restricted the County's ability to borrow to address mounting infrastructure needs and produced the daunting capital repair/replacement backlog cited above.

STRATEGIES TO PAY FOR A NEW SAFETY BUILDING

In the remainder of this section, we describe the funding and financing strategies we have identified for a new justice center in Milwaukee County. Those strategies – and their pros and cons – are summarized in **Table 3.**

[17] The net debt service expenditure represents the amount of annual debt service (not including POB debt) that must be paid each year with the County's local revenue sources (i.e. property and sales taxes). For example, while the total debt service payment for 2018 is about $55 million, $25 million is covered by departments that have outside revenue sources (e.g. the Airport) as well as offsetting revenues from other sources.
[18] Because the first use of sales tax revenue generated by the County's 0.5% sales tax is the payment of G.O. debt service, the debt service payment technically consists solely of sales tax revenue. However, for budgetary purposes, sales and property tax revenues are interchangeable and are considered a single source of revenue.

Table 3: Possible funding strategies for new justice center

Strategy	Description	Pros	Cons
Strategy 1 – County G.O. Bonds	15-year G.O. bonds used for full project cost as part of regular capital program	Rapid debt repayment No change in State law required	Potential negative impact on bond rating Size of bond issue would crowd out other capital needs Debt service would create huge operating budget challenges
Strategy 2A – State G.O. Bonds	State issues bonds for at least one half of project cost	Enhances project affordability Reflects shared State-County justice system roles & responsibilities	State has own pressing capital needs Would require change in State law/policy
Strategy 2B – Private Capital	P3 approach in which private partner finances all or part of project cost	Keeps debt off County's books Brings enhanced private sector skills and expertise to project	Payments to private partner would create huge operating budget challenges Project financing more expensive Would require additional expertise to evaluate & implement
Strategy 3A – Sales Tax	Expanded County sales tax used to cash finance project or service project debt	New funding source would avoid impacts to other capital and operating needs Cash financing approach would avoid interest costs	Would require State authorization Sales tax has regressive elements Could impact consumer purchases in Milwaukee County
Strategy 3B – Miller Park Sales Tax	Extend 0.1% Miller Park sales tax in Milwaukee County to service project debt	No sales tax increase as tax already in place Small tax should not impact consumer behavior New funding source would reduce or avoid impacts to existing needs	Would require State authorization Proceeds may not fully cover annual debt service costs Miller Park sales tax unpopular with many county residents, who have been eagerly awaiting its termination
Strategy 3C – Court Fees or Surcharges	Expand or create new court fees and surcharges to service project debt (or allow County to retain larger share of existing fees)	New funding source would avoid or reduce impacts to other capital and operating needs Ties project financing to justice system users Precedent exists from Jail Assessment Surcharge	Would require State authorization Proceeds may not fully cover annual debt service costs Places financing burden on those who may not be able to afford it
Strategy 4A – Extend Bond Repayment	Issue 20-year G.O. bonds for full project cost as part of regular capital program or issue revenue bonds with a lengthier term	No change in State law required Reduced annual debt service costs	Higher total interest costs Potential negative impact on bond rating Size of bond issue/annual debt service still would impact other capital needs & create serious operating budget challenges Use of revenue bonds would increase total financing costs
Strategy 4B – New G.O. Debt Service Structure	Structure principal payments for project's G.O. debt to coincide with retirement of pension obligation bonds	No change in State law required Would avoid large short-term spike in debt service	Higher total interest costs Potential negative impact on bond rating Size of bond issue/annual debt service still would impact other capital needs & create serious operating budget challenges

Strategy #1: Issue General Obligation Bonds Per Current Practice

The traditional way of financing large municipal projects is through cash financing and/or the issuance of G.O. bonds. As described in previous sections, counties and municipalities often favor debt financing since it permits them to spread costs across the generations of users who will benefit from a project. G.O. bonds also are less expensive than other sources of capital since they generally are federal tax-free and carry a lower interest rate. This strategy would not require a change in state or local laws.

Bonding for the full cost of a large facility, such as a courthouse, is a fiscal reach for most governments. Indeed, as shown in our national courthouse scan, most counties that have used G.O. bonds for this purpose also have drawn on special revenues sources to help service the debt or finance part of the cost, such as state funding or sales tax revenue. Only Pima County has financed its new courthouse exclusively through the issuance of G.O. bonds, and that project had a much lower price tag than the proposed Milwaukee County building.

One concern about full bond financing by Milwaukee County would be the potential impact that a large increase in debt might have on the County's bond rating and, as a result, on future borrowing costs. An even bigger concern would be the negative implications for the County's capital program and operating budget. Under that option, total G.O. debt would rise by about 50% (assuming $300 million in new debt) and would reach an unprecedented level. If the County adhered to its current practice of issuing 15-year G.O. debt, then its annual debt service would be about $25.6 million per year.[19] Such an increase would pose a severe threat to core County operations and sharply constrain its ability to issue other debt for mounting capital needs.

Given the difficulties the County has encountered each year in bridging its structural deficit and the expectation that budget balancing strategies will grow even more difficult in the future, it is doubtful that issuing 15-year G.O. bonds for the full cost of this project and paying the associated debt service payments would be a viable option to pursue. Other funding strategies, however, could reduce the amount of needed G.O. borrowing and/or the level of debt service payments, as discussed below.

Strategy #2: Reduce Financing Costs and Debt Through New Sources of Capital

We present here two strategies involving outside financing that would reduce or eliminate the County's need to issue G.O. bonds to finance a new justice center.

Strategy #2A—State G.O. Bonds

One way to reduce the amount of County debt needed for the justice center would be to draw on state G.O. bonds for at least partial assistance. As discussed in earlier sections, several states are financing or facilitating the local financing of new county courthouses and jails. In some cases, such as Massachusetts and California, these facilities are owned by the state. In other instances, such as Georgia and Florida, the state authorizes new forms of local revenue. In Oregon, the state provides

[19] We assume total project bonding of $300 million (this is a rough estimate of costs that would be bondable out of the total $341-$367 million project cost); and we use a hypothetical interest rate of 3.25% and assume level debt service payments. It is likely that the $300 million in debt would be issued over two or three years (depending on the cash flow needs of the project), but once all of the bonds are issued the total increase in annual debt service still would be in the $25 million range.

capital grants to counties to finance up to 50% of the construction of new courthouses where there is a demonstrated need.

In Wisconsin, the State and counties share in financing county circuit court operations, but counties have had full responsibility for capital funding. While the State (to our knowledge) has not issued bonds in whole or part for county courthouse and justice facilities, there appears to be no hard and fast agreement on this practice. For instance, State policymakers recently voted to close the Lincoln Hill and Copper Lake juvenile correction facilities and provide State funding for new county-run facilities for less serious juvenile offenders. The proposal authorized $40 million in general fund-supported borrowing to pay about 95% of the capital costs that counties would assume.

State bonding assistance could have a meaningful impact on the Milwaukee County project. If the Oregon model of equal capital financing were followed, Milwaukee County's total G.O. debt would increase $150 million (to about $760 million) and debt service payments by about $12.8 million annually. Of course, even with the State paying for half of the cost, Milwaukee County might find it difficult to fund its share.

From the State's perspective, there would be concern that borrowing for county justice facilities might establish a costly precedent and add to its total G.O. debt. According to the U.S. Census Bureau, Wisconsin's per capita debt of $3,829 ranked 17th in the nation compared with the U.S. average of $3,582 per capita in 2016. Wisconsin's total debt has risen from $483 million in 2007 to $713 million in 2016. However, despite this growth in borrowing, the State's fiscal position is stable. In August 2017, Moody's upgraded the State's credit ranking, placing Wisconsin among a group of 18 states that are one notch below the 14 states in the top credit tier.[xxxvi]

Strategy #2B—Private Capital

The County also could pursue a P3 to finance a new justice center. More states and municipalities across the U.S. are considering P3s for capital projects, as discussed previously.

The two case studies that we reviewed make different use of private capital. The Los Angeles County Courthouse relied totally on private financing, while Howard County employed a so-called hybrid P3 in which the private partner's contribution establishes its stake in the project, while the public entity takes advantage of the lower interest rate of municipal bonds to finance most of the cost.

Our previous analysis reviewed, in general, the benefits and liabilities of P3 financing. For Milwaukee County, one advantage of a P3 is that financing would be "off the books" and private borrowing costs would not be counted as debt nor availability payments as debt service. Nevertheless, Milwaukee County would need to find the resources in its operating budget to make room for the substantial annual payments required for a P3 contract. Also, because P3 payments would count against the property tax levy limits on the County's operating budget, using increased property taxes to find such room largely would be precluded.

Another related consideration is that P3 private and public responsibilities are governed by a long-term contract. As a result, operations and maintenance costs are not discretionary under this approach, and the County could not adjust them in response to changes in financial circumstances.

P3s work best for complex construction projects where the expertise and skill of private partners can reduce risk and lower life-cycle expenditures despite higher financing costs. Milwaukee County facilities officials and engineers would need to determine whether that potential advantage would offset the added costs of private financing.

An approach modeled after Howard County's P3 hybrid, financed in large part with public G.O. bonds, would eliminate much of that added cost, but the hybrid's draw on G.O. bonding would take away one of the advantages of a P3. Moreover, P3s require the public partner to bring in considerable outside expertise.

A major obstacle to the formation of municipal P3s in Wisconsin is the absence of State authorization and direction. Under sec. 84.01 (30) of the Wisconsin statutes, the Wisconsin Department of Transportation is empowered to establish P3s.[xxxvii] State law is silent, however, on local P3 authority. Some believe that existing statutory language on outsourcing may give local governments sufficient leeway to set up a P3.[xxxviii] However, there remains uncertainty about municipal prerogatives and authorizing legislation may be needed before such projects can gain private confidence and support.

Strategy #3: Create New Revenue Sources for Annual Debt Service Payments

We explore three potential new revenue sources for offsetting the debt costs of the proposed justice center. Under each of these strategies, the County would issue G.O. bonds to finance some or all of the project cost, and the new revenue would be applied toward required annual debt payments. All three options involve local revenues that would require State authorization.

Strategy #3A—Sales Tax

Our national scan identified three counties that recently have imposed sale taxes for the financing of courthouse and related capital projects: Forsyth County assessed a 1% Special Purpose Local Options Sales Tax (SPLOST) for a new courthouse; Franklin County approved a quarter-cent sales tax for a new jail and forensic center; and Broward County dedicated a half-cent of its sales tax to the construction of a courthouse that opened in January 2017.

Forsyth County's SPLOST will generate $200 million for the lifetime of the tax with the first $100 million paying for the entire courthouse project. The other two county projects are partially funded by sales taxes. In Broward County, sales tax revenue will fund 70% and the county will issue bonds to finance the remaining cost. In Franklin County, sales taxes funded the first stage of the project and bond proceeds will cover subsequent costs. Franklin County will save $100 million in financing costs by the use of sales taxes.

There are two ways to use the sales tax for capital funding. First, sale tax revenues receipts can be directly applied toward construction costs. Two of the three projects described above use sales taxes in this manner. Conversely, sales tax receipts can be applied toward annual debt service payments, as five metro Milwaukee counties have done in the financing of Miller Park (see below). Milwaukee County would require State authorization to implement either approach.

Applying sales taxes directly toward construction would cost more on an annual basis than using these revenues for debt service payments. However, direct financing is less expensive in the long run since interest costs are avoided and the project is financed more quickly.

Currently, Milwaukee County raises about $75 million a year through its 0.5% sales tax. This tax rate would need to double for at least four years to fund the entire cost of the proposed justice center.

Conversely, an increase in the sales tax of .17% for a period of 15 years would fund required debt service payments using our previous assumptions (i.e. $300 million in 15-year G.O. debt at an interest rate of 3.25%). Extending the life of the bonds for a longer period of time (such as 20 or 30 years, as discussed below) would lower these sales tax requirements.

There are a variety of arguments that can be made for and against choosing the sales tax to finance capital projects. On the positive side, the amount of tax assessed on most sales transactions would be small and the administrative framework for tax collection already is in place. Also, a sales tax casts a wide net and is applied not just to residents, but also to those who visit and work in the county and, in the process, utilize county government infrastructure and services.

On the negative side, budgeting a given amount of sales tax for a specific purpose can be tricky since incoming revenues can fall during an economic downturn. Also, the sales tax takes a larger proportion of income from low-income residents, although exemptions on food and prescription drugs can partly offset such distributive effects. Another potential negative consequence would be the impact on consumer activity if such a tax was in place. Arguably, the small increase cited above to finance debt service would be unlikely to influence consumers to take their business outside of the county to avoid such a tax.

Strategy #3B—Miller Park Sales Tax

This option is a variation of the one presented above. It also would use sales tax revenue to make debt service payments for a new justice center. However, rather than increase Milwaukee County's current 0.5% sales tax, it would apply the 0.1% Miller Park sales tax in Milwaukee County to debt service on a new justice center after the ballpark's bonds are retired in late 2019 or early 2020.[xxxix]

In 1995, the Wisconsin Legislature created a special district to help finance Miller Park. The Milwaukee Brewers, Milwaukee County, the City of Milwaukee, and Wisconsin Department of Transportation all contributed to financing the new facility. However, most funds for construction came from the issuance of revenue bonds. Annual debt service costs on the bonds are paid by a 0.1% sales tax on residents living in the five-county Milwaukee metro area.

Retention and repurposing of this tax in Milwaukee County would require legislative authorization and would raise about $15 million per year, or more than half of estimated debt service costs associated with a 15-year, $300 million G.O. bond issue.[20] This approach could be combined with other funding sources to fully pay for annual debt service (e.g. court fees, as described below, or general County revenues). Alternatively, the length of the bonds could be extended to 30 or 35 years, in which case the 0.1% sales tax may be sufficient to fully cover annual debt service payments. Each of these options would require State authorization.

Strategy #3C—Court Fees or Surcharges

Our national scan identified three counties that employed increases in court fees/surcharges to help pay for a new courthouse: Duval County allocated $48.5 million from a traffic fine surcharge;[xl]

[20] Under this approach, the tax presumably would be allowed to expire in the other four counties.

Multnomah County is using $25 to $30 million from a similar surcharge; and Los Angeles County is using funds from a statewide increase in court fees.

In Wisconsin, the State and counties share in funding circuit court operations. The State assumes the salaries and fringe benefits of circuit court judges, court reporters, and other specified costs, which are funded mainly by an annual lump-sum appropriation. Counties pay for court clerks, courtroom security, clerical staff, law libraries, juries, and other costs. In the 2015-16 fiscal year, State-funded circuit court expenditures totaled $108.8 million, while county-funded circuit court expenditures were estimated at $207.2 million.[xli]

The circuit courts assess fees, fines and forfeitures, and surcharges. This revenue helps offset general court costs while also funding specific law enforcement and justice programs. Some revenues flow directly to the State general fund or other State agency programs. State statutes set each specific charge and specify the portion of revenues allocated to the State and/or county.

Court fee revenues have grown significantly over the past two decades. The Legislature created circuit court surcharges in 1993 and subsequently has increased them on four occasions. In 2015-16, the State received $107.3 million in revenue from all circuit court charges, a sum nearly equal to total State-funded circuit court expenditures. Wisconsin counties received $31.3 million from these same program revenues, an amount far below their $207.3 million expenditure total.

The revenue generated by Milwaukee County circuit court operations in 2015-16 is shown in **Table 4**. The table indicates the County received $15.6 million from this source, of which it retained $3.2 million and remitted $12.4 million to the State.

Table 4: Revenue generated from Milwaukee County circuit court operations, 2015-16

Program Revenue	Fines & Forfeitures	Circuit Court Fees	Surcharges	Total
State Remittances	$591,400	$1,899,600	$9,878,700	$12,369,700
Retained by County	$1,534,100	$955,300	$703,600	$3,193,000
Total	**$2,125,500**	**$2,854,900**	**$10,582,300**	**$15,562,700**

Source: Wisconsin Legislative Fiscal Bureau

It is beyond the scope of this analysis to determine the amount of additional fee revenue that might be generated for the proposed Milwaukee County justice center from the nearly 80 different fines and forfeitures, fees, and surcharges authorized by the State for application in circuit courts. Some charges – such as for traffic and motor vehicle violations – likely would be targeted for any such analysis, while other fees that support non-court operations would not.

An increase in county circuit court revenues would require State authorization. Additional funding could be obtained either by raising the dollar value of specific charges or by increasing the counties' share of the pot. A basic argument for drawing upon court fees to fund courthouse capital projects is that the users of court services would bear greater responsibility than the general citizenry for paying for those projects. The fact that in recent years many local governments have increased user fees more than general taxes is perhaps an indication that this policy has support.

On the other hand, unlike the sales tax, court fees are paid by a relatively small percentage of residents. As a result, not only would a substantial increase in individual court fees be required to generate enough money to support debt service payments, but some of those paying the increased amount likely would be economically disadvantaged and more affected by the additional cost.

Finally, it should be noted that there is precedent for authorization of a special surcharge to help pay for capital costs for justice system facilities in Wisconsin. Section 302.46 of the Wisconsin Statutes – adopted in the late 1980s – provides for the imposition of a "jail surcharge" if the court imposes a fine or forfeiture for a violation of State law or municipal or county ordinance. The surcharge is 1% of the fine or forfeiture or $10 per count (whichever is greater) and 100% of the proceeds are retained by counties for use in constructing, remodeling, repairing, or improving county jails.[xlii] The Milwaukee County budget estimates the jail assessment surcharge will generate $987,000 this year, which will be used by the County to offset debt service on bonds issued for the Criminal Justice Facility.

Strategy #4: Reconfigure Bond Repayment to Reduce Annual Debt Service Costs

We present two strategies to reduce the amount of annual Milwaukee County sales and property tax revenue needed for a justice center bond issue, neither of which would require new revenues. The first option would stretch the bonds' repayment period from 15 to 20 years or more, thereby lowering annual payments. The second option would "backload" debt repayment so the principal for the G.O. bonds would come due after the County's $301 million in POBs are retired.

Strategy #4a—Extend Repayment from 15 to 20 years or More

Local government debt is controlled both by the Wisconsin statutes and the Wisconsin Constitution. Specifically, as noted above, both the statutes and constitution limit the aggregate value of a local government's total debt to less than 5% of the value of its taxable property; and the repayment period of G.O. bonds to 20 years from date of issue. Milwaukee County fits comfortably within these standards; its debt is at 20% of the debt ceiling and County policy restricts the life of its G.O. bonds to 15 years.

The repayment period of a bond should not exceed the useful life of the infrastructure being funded. However, the useful life of local government facilities varies according to factors such as construction materials, purpose, and use. Major facilities, such as courthouses, have a useful life well in excess of 15 years, and some state and local governments' debt policies reflect that fact.

Local governments are wise to keep firm control of their debt, which if left unchecked can crowd out funding for needed services and programs. For Milwaukee County, however, this strategy has had the consequence of leaving important capital needs unaddressed. It also raises the question of whether the relationship between County capital and operating funding now requires adjustment. If so, one way to proceed would be to extend the repayment period on bonds that finance longer-lasting facilities, thereby lowering annual debt service costs and making it easier to borrow for other capital projects. The disadvantage of this approach is that it increases the bonds' total interest cost.

Table 5 shows the impact on annual debt service of extending the repayment period for justice center bonds from 15 to 20 years. For illustrative purposes, we also include a column showing a 30-year G.O. bond repayment, though that would require a Constitutional change. Two scenarios are presented, one for a $300 million G.O. bond issue and the second for a $150 million issue. The smaller amount could be accommodated if, for example, the State agreed to finance half the cost; or if it authorized Milwaukee County to use new taxes or fees to directly finance half the cost.

Because lengthier bond terms would result in higher interest rates, we use three different assumed interest rates for each hypothetical bond issue. As shown, such a change would produce a modest drop in annual debt service cost if the bonds were issued over a 20-year period, as opposed to the County's current policy of 15 years. For example, for a $300 million G.O. bond issue, annual debt service could fall from $25.6 million to $21.1 million by extending payment from 15 to 20 years. At the same time, however, stretching out the payments produces a higher overall cost to the County.

Table 5: Estimated annual debt service and total debt service cost for G.O. bond financing scenarios

	15 years (3.25%)	20 years (3.5%)	30 years (4.0%)
$150 million G.O. Bond *Annual Debt Service*	$12,793,287	$10,554,162	$8,674,515
$150 million G.O. Bond *Total Debt Service*	*$191,899,305*	*$211,083,240*	*$260,235,450*
$300 million G.O. Bond *Annual Debt Service*	$25,586,574	$21,108,323	$17,349,030
$300 million G.O. Bond *Total Debt Service*	*$383,798,610*	*$422,166,460*	*$520,470,900*

A weakness of this approach – in addition to producing substantially higher total debt service payments over the life of the bonds – is that even if the debt service payments were stretched out over 30 years, the annual cost under either the $150 million or $300 million scenarios still could produce unacceptable impacts on County operations and/or cause other capital needs to be deferred. Also, the fiscal pressure exerted by the increased debt would last for an even longer period of time than under the 15-year debt scenario.

It also may be possible through various legal and financial means for the County to issue revenue bonds to finance a new justice center, in which case the life of the bonds could be stretched to 30-35 years without a legal change. Under such a scenario, the County hypothetically could pledge a portion of its existing sales tax revenues as the revenue source for the bonds, similar to Broward County.

While an advantage of issuing 30- or 35-year revenue bond debt would be lower annual debt service payments, disadvantages would include the need to pay a higher interest rate and establish a reserve fund because of the increased investor risk associated with revenue bonds. Also, the lengthier term of the bonds would produce higher total interest payments. The complexity of the revenue bond approach and the fact that it would not, on its face, be more financially advantageous than issuing G.O. bonds makes this a questionable option for the County unless its only hope for affording annual debt service payment is to substantially extend the term of the debt.

Strategy #4B—Structure G.O. Debt Service to Avoid Spike in County Payments

Another alternative debt strategy would be to structure the debt service payments for justice center G.O. bonds in a way that would time the initiation of principal payments to coincide with the retirement of POB debt. Doing so would allow the County to maintain relatively level debt service payments throughout the term of the bond issue, thus potentially allowing it to avoid an unaffordable spike in debt service payments that would cause severe disruption in other parts of the budget.

In **Table 6**, we show the possible structure of $299 million in 20-year G.O. bonds that hypothetically would be issued in 2020 for a new justice center (this information was prepared by the County Comptroller's office).[21] It is assumed that the bonds are issued over a multi-year period as the need for borrowing occurs, and they are structured so that principal payments do not begin until 2031, which is the year in which the POB debt is scheduled to come off the County's books.

Table 6: Potential structure of 20-year G.O. debt for new justice center

Year	Total Principal	Total Interest	Total Debt Service
2020	$0	$221,176	$221,176
2021	$0	$871,122	$871,122
2022	$0	$2,917,184	$2,917,184
2023	$0	$8,760,989	$8,760,989
2024	$0	$12,970,855	$12,970,855
2025	$0	$14,539,434	$14,539,434
2026	$0	$14,804,500	$14,804,500
2027	$0	$14,804,500	$14,804,500
2028	$0	$14,804,500	$14,804,500
2029	$0	$14,804,500	$14,804,500
2030	$0	$14,804,500	$14,804,500
2031	$24,480,000	$14,804,500	$39,284,500
2032	$24,465,000	$13,580,500	$38,045,500
2033	$24,335,000	$12,357,250	$36,692,250
2034	$24,335,000	$11,140,500	$35,475,500
2035	$24,335,000	$9,923,750	$34,258,750
2036	$24,330,000	$8,707,000	$33,037,000
2037	$24,330,000	$7,490,500	$31,820,500
2038	$24,330,000	$6,274,000	$30,604,000
2039	$24,330,000	$5,057,500	$29,387,500
2040	$24,200,000	$3,841,000	$28,041,000
2041	$23,670,000	$2,631,000	$26,301,000
2042	$23,210,000	$1,520,625	$24,730,625
2043	$7,260,000	$433,250	$7,693,250
2044	$1,405,000	$70,250	$1,475,250
Total	**$299,015,000**	**$212,134,885**	**$511,149,885**

Source: Milwaukee County Comptroller's office

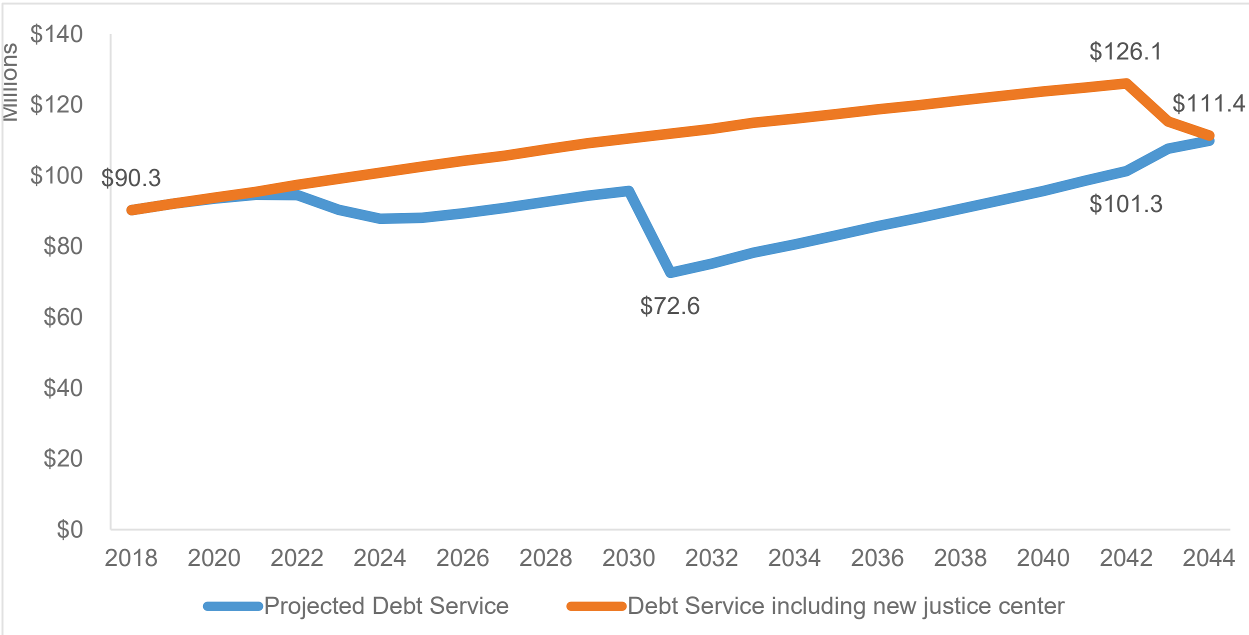
In **Chart 3**, we show projections by the Comptroller's office of the County's current projected annual debt service payments for the next 25 years *without* the justice center project (the blue line),[22] and compare those to projections that incorporate justice center debt per the above debt service

[21] The Comptroller's office used a $299 million per current estimates of the justice center's cost while we used $300 million as a round number.

[22] These projections assume the County will maintain its current policy of increasing G.O. bonding amounts by 3% each year and uses interest rate assumptions that are consistent with past practice. Also, unlike the *net* debt service expenditures shown earlier in this section, this table shows *total* debt service expenditures, including POB debt service and not including revenue offsets.

schedule (the orange line).[23] While the orange line shows that the County's annual debt service payments would increase by $35.8 million (40%) over the period, the annual increase would be relatively steady at $1.1 million to $2 million per year because of the "backloaded" structuring of principal payments for justice center debt.

Chart 3: Potential County debt service with and without new justice center



Source: Milwaukee County Comptroller's office

The clear benefit of this approach is that it would allow the County to absorb the debt related to a new justice center without having to accommodate a sharp increase in debt service in any particular year or short period of years, and without needing to seek a change in State law. In a typical large county government that is able to achieve reasonable annual revenue growth, the annual increases of $1.1 million to $2 million per year would not appear to be an exceedingly daunting obstacle.

However, while this approach certainly would appear to be more affordable and realistic for Milwaukee County than any of the G.O. bonding approaches discussed above, it still would pose considerable challenges. The foremost is that Milwaukee County's financial woes make it far from a typical large county government. For years, the County has been able to achieve only *limited* annual revenue growth, and any growth it does achieve is required for basic operational needs (e.g. fringe benefit and salary increases). Thus, absorbing $1.1 to $2 million in annual debt service increases over a prolonged period would constitute a substantial challenge for the County.

In addition, this structure would reduce the County's strong showing in the percentage of debt it retires each year. While not necessarily a bond rating driver in and of itself, this would be a negative factor considered by Moody's – along with the overall increased debt burden – in its ratings determination.

[23] Tables laying out annual principal and interest payments under both scenarios are included in the Appendix.

Finally, the above approach does not take into account the County's other overwhelming capital needs, which likely would require greater than 3% annual increases in bonding to appropriately address. Also, it is important to note that the County likely will have other pressing uses for its added financial capacity after the POB debt expires, including the possibility of a large remaining unfunded pension fund liability.

SUMMARY

The four different justice center financing/funding strategies outlined in this section convey the magnitude of the challenge at hand.

The first – an approach in which Milwaukee County would address justice center financing within its regular capital finance structure – does not appear to be realistic in light of the magnitude of the project and competing capital and operating needs.

The second – involving the use of outside financing from the State or private sector – also has limitations. State assistance would require legislators and the Governor to accept a State financial responsibility for county courthouse construction, which would be expensive and precedent-setting. Private financing, meanwhile, could address construction and maintenance challenges if obtained through a P3, but it likely would not address the County's foremost challenge, which is to reduce the impact of annual payments associated with justice center debt.

If the State is unwilling to directly help shoulder the project's cost, then the third approach – allowing the County to use a special sales tax and/or court fees to service debt – could be effective, though that also would require the County to clear steep political hurdles. The fourth approach – use of new debt repayment structures – would appear to have some promise in improving the justice center's affordability, but still would leave questions about the County's capacity to pay project debt while addressing its other pressing capital and operational needs.

CONCLUSION

This report has explored a number of different financing, funding, and technical strategies that would help Milwaukee County pay for a new justice center. Some are financial strategies that pertain to the capital budget and would reduce the amount of needed capital resources; others are funding strategies that would create new fiscal resources to pay for debt service costs; and some are technical strategies that would reduce annual debt service obligations by altering the manner in which the County currently issues long-term debt.

This analysis yields the following conclusions:

- The traditional approach of issuing 15-year G.O. bonds will not work given the costs of the proposed building and the impact that paying for it would have on the County's capital and operating budgets. This approach would constrain the County's ability to finance other needed capital projects and exacerbate the current infrastructure backlog. It also would worsen the structural deficit and intensify the County's fierce operating budget challenges.

- Most other large counties that have built new courthouses in recent years received state assistance in paying for the new facilities. This has come either in the form of direct state financing or state legislation that empowered local governments to raise local funds for capital projects, often via referendum.

- Many counties have drawn on multiple sources of funds to finance their project or pay debt service costs, and many have used lengthy debt repayment schedules of 30 years or more. If the State of Wisconsin is unwilling to share in the construction cost of a new justice center, then a strategy that combines new funding sources with a non-traditional debt financing approach would appear to be most viable in Milwaukee County, as well.

While we do not advocate a specific solution, it is illustrative to consider how two potential combined approaches might work:

1) Under a scenario in which the State did accept a shared responsibility for justice center construction and bonded for $150 million of the construction cost itself, the County could consider a backloaded debt financing approach for the remaining $150 million. That would ostensibly allow it to absorb interest costs within its regular capital program between 2020 and 2031 without experiencing a spike in debt service. After that time, when the POB debt is retired, the need to pay off $150 million of principal (as opposed to $300 million) still would leave several million dollars of POB debt savings to apply to other needs.

2) If the State instead was willing to authorize new sources of Milwaukee County revenue (or authorize a referendum on the matter), then a 0.1% sales tax combined with a traffic fine surcharge and other increased court fees could be sufficient to meet the annual debt service cost of a 20-year, $300 million G.O. bond issue, which we estimate to be about $21.1 million annually. A positive element of this approach is that it would allow the County to service its justice center debt without impacting its other budgetary needs.

A negative element of both approaches would be higher total interest payments from the lengthier bond structures, which would increase the project's overall cost to taxpayers. Also, even an approach in which the State is willing to pay half the cost may not be affordable for the County without new sources of revenue given its other financial challenges and needs.

The overriding conclusion is that Milwaukee County does not have the financial wherewithal under current conditions to finance a new $300 million justice center, which is a conclusion reached by most other large county governments as they have pursued similar facilities. Creative options for financing and funding such a facility do exist, but implementing them is likely to require some form of assistance from State government.

APPENDIX

Projected County debt service expenditures without justice center, 2018-2044

Year	Total Principal	Total Interest	Total Debt Service
2018	$66,514,012	$23,800,824	$90,314,837
2019	$68,491,614	$23,552,052	$92,043,666
2020	$69,877,492	$23,670,466	$93,547,958
2021	$70,993,327	$23,604,207	$94,597,534
2022	$71,319,325	$23,200,185	$94,519,510
2023	$67,651,076	$22,743,865	$90,394,941
2024	$65,374,377	$22,469,631	$87,844,008
2025	$65,920,000	$22,149,810	$88,069,810
2026	$67,980,000	$21,370,569	$89,350,569
2027	$70,255,000	$20,621,164	$90,876,164
2028	$72,875,000	$19,783,331	$92,658,331
2029	$75,180,000	$19,165,601	$94,345,601
2030	$76,385,000	$19,304,876	$95,689,876
2031	$53,310,000	$19,286,321	$72,596,321
2032	$55,000,000	$20,167,528	$75,167,528
2033	$57,130,000	$21,126,805	$78,256,805
2034	$58,820,000	$21,795,645	$80,615,645
2035	$60,530,000	$22,628,904	$83,158,904
2036	$62,445,000	$23,296,692	$85,741,692
2037	$64,095,000	$24,009,313	$88,104,313
2038	$65,905,000	$24,751,131	$90,656,131
2039	$67,675,000	$25,474,398	$93,149,398
2040	$69,550,000	$26,179,565	$95,729,565
2041	$71,585,000	$26,990,967	$98,575,967
2042	$73,515,000	$27,809,303	$101,324,303
2043	$78,985,000	$28,673,094	$107,658,094
2044	$80,595,000	$29,292,923	$109,887,923

Source: Milwaukee County Comptroller's office

Projected County debt service expenditures with new justice center under back-loaded debt structuring, 2018-2044

Year	Total Principal	Total Interest	Total Debt Service	YOY Change
2018	66,514,012	23,800,824	90,314,837	
2019	68,491,614	23,552,052	92,043,666	1,728,830
2020	69,877,492	23,891,641	93,769,133	1,725,467
2021	70,993,327	24,475,330	95,468,657	1,699,523
2022	71,319,325	26,117,369	97,436,694	1,968,037
2023	67,651,076	31,504,854	99,155,930	1,719,236
2024	65,374,377	35,440,486	100,814,863	1,658,933
2025	65,920,000	36,689,244	102,609,244	1,794,381
2026	67,980,000	36,175,069	104,155,069	1,545,825
2027	70,255,000	35,425,664	105,680,664	1,525,595
2028	72,875,000	34,587,831	107,462,831	1,782,166
2029	75,180,000	33,970,101	109,150,101	1,687,270
2030	76,385,000	34,109,376	110,494,376	1,344,275
2031	77,790,000	34,090,821	111,880,821	1,386,445
2032	79,465,000	33,748,028	113,213,028	1,332,208
2033	81,465,000	33,484,055	114,949,055	1,736,027
2034	83,155,000	32,936,145	116,091,145	1,142,090
2035	84,865,000	32,552,654	117,417,654	1,326,509
2036	86,775,000	32,003,692	118,778,692	1,361,038
2037	88,425,000	31,499,813	119,924,813	1,146,121
2038	90,235,000	31,025,131	121,260,131	1,335,318
2039	92,005,000	30,531,898	122,536,898	1,276,768
2040	93,750,000	30,020,565	123,770,565	1,233,667
2041	95,255,000	29,621,967	124,876,967	1,106,402
2042	96,725,000	29,329,928	126,054,928	1,177,962
2043	86,245,000	29,106,344	115,351,344	(10,703,584)
2044	82,000,000	29,363,173	111,363,173	(3,988,172)

Source: Milwaukee County Comptroller's office

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