

**Vermont Judiciary
Office of State Court Administrator**

January 13, 2016

**Report on Ownership and Maintenance of County Courthouses,
per Section 27 of Act 26 of 2015 (FY 2016-2017 Capital Appropriations Act)**

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Introduction and Summary:

The following report is in response to the requirements of Section 27 of Act 26 of 2015 (FY 2016-2017 Capital Appropriations Act), regarding ownership and maintenance of County courthouses. The legislative reporting requirement focuses on County courthouses, but it is not possible to report on the Judiciary's physical footprint without also acknowledging the State-owned courthouses that it occupies as well. As such, the Judiciary articulates its overall rationale to capital planning and physical infrastructure below, recognizing the limitation that in both the County- and State-owned buildings, the Judiciary is the tenant rather than the building owner. This rationale addresses:

- (1) Emergency and other pressing repairs and modifications for safety, access, etc.;
- (2) Major maintenance based on professionally developed schedule; and
- (3) Long-term capital planning that integrates physical space needs with the Judiciary's future operational needs.

In applying this three-pronged rationale outlined in the Report, the Judiciary believes it has addressed the core question embedded in this legislative reporting requirement: under what circumstances should the State invest in capital projects in the County courthouses, and/or absorb maintenance costs in those County courthouses? As analyzed below and addressed in the Conclusion:

- **In all likelihood the vast majority of available capital funds will be needed to maintain and renovate State-owned courthouses (which are generally the largest and busiest), with any capital funding for County courthouses targeted to emergency needs and/or specific State policy goals;**
- This leaves unresolved the question of how County-owned courthouses will be able to effectively serve the Judiciary's needs in the 21st century and beyond. This report discusses the likely "courthouse of the future" and the ways that such a courthouse is different from Vermont's current inventory.
 - Ideally, the Judiciary would be in a position to influence capital allocation decisions among the three prongs of prioritization: emergency needs; major maintenance and renovation; and reconfiguration toward future needs. In the current reality, as a tenant in both the State-owned and county-owned buildings, the Judiciary has limited ability to influence these capital allocation decisions. While the Judiciary can and does advocate for its needs – particularly via the Governor's Capital Budget request process – that advocacy is not the same as being able to make its own allocation decisions.
 - Long-term planning for courthouse capital needs must take into account the variety of interests and stakeholders – including citizens; attorneys; other partners in the criminal justice process and other judicial processes; and all other stakeholders – to ensure that the justice needs of Vermonters will be well-served by the long-term capital planning process.

- **In the meantime, this report recommends that the Department of Buildings and General Services (BGS) should consult closely with the Judiciary in the determination of capital investment and major maintenance decisions in State-owned buildings.**
 - **The process of formal buildings assessments, as currently being initiated by BGS, will be a valuable tool in identifying needs and setting priorities, and identifying the extent to which deferred maintenance and other issues confront these buildings.**
- Simultaneously, the Judiciary is not standing still; in the past six months, we have consolidated operations in two counties (Essex and Washington) to make our operations more efficient and secure, and saving taxpayer funds (particularly Essex County) in the process.

Report Requirement Language:

Sec. 27. 2014 Acts and Resolves No. 178, Sec. 37 is amended to read:

Sec. 37. COUNTY COURTHOUSES; PLAN

(a) Pursuant to the restructuring of the Judiciary in 2009 Acts and Resolves No. 154, the Court Administrator ~~and~~, in consultation with the Commissioner of Buildings and General Services, shall evaluate:

(1) the scope of the State's responsibility for maintaining county courthouses, including Americans with Disabilities Act (ADA) compliance ~~and~~;

(2) whether an emergency fund is necessary for construction or renovation projects at county courthouses;

(3) the current ownership and maintenance responsibilities for each county courthouse; and

(4) parameters for determining the county's share of maintaining county courthouses in the future.

(b) On or before January 15, ~~2015~~ 2016, the Judiciary shall report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions with the results of the evaluation.

Venue and Superior Court Operations

Much of the information in this section of the report was provided to the Institutions' Committees during the 2015 legislative session.

State law provides that the Judiciary shall conduct Superior Court and Judicial Bureau operations in each of the 14 counties. Generally speaking, statutes identify the venue of a case [where the case will be commenced and where evidentiary hearings will be held] as being in the County where the parties reside, where the incident took place, or where the subject property is located. In general, see 4 V.S.A. § 30, which requires that the Superior Court be held in each County unit. In particular, see, e.g., the following: *Probate* – 4 V.S.A. §§ 272(a) and 311(a) and 14A V.S.A. § 204; *Family*: 4 V.S.A. § 458; *Environmental*: 4 V.S.A. § 1001(e); *Judicial Bureau*: 4 V.S.A. § 1103; *Court Proceedings*: 12 V.S.A. § 402; *Criminal*: 13 V.S.A. § 4601.

As a result of both history and statutory requirements for the Superior Court, the Judicial Branch now provides civil, criminal, environmental, family, probate, and judicial bureau services, as well as housing administrative Judiciary personnel in 27 physical locations across all 14 counties.

In addition – and alongside the venue requirement – the Judiciary has historically conducted court operations in both State-owned and County-owned court buildings. This tradition was continued in the

Judiciary's restructuring legislation. The restructuring law provided that where judicial operations are conducted in County-owned buildings, the Assistant Judges are required to provide the same facilities as were provided in July of 2009. The State Court Administrator, in consultation with the Presiding Judge, makes the decision as to what judicial operations will be conducted in County-owned courthouses.

In State-owned buildings, the State Court Administrator and the Commissioner of Buildings and General Services are the superintendents of the building, and the Judiciary pays fee-for-space. In County-owned buildings, the Assistant Judges are the superintendents, and the Judiciary has no financial obligations to the County. In those counties where the Assistant Judges and the Court Administrator's Office have shared a common vision about facilities, security, and the like, and where the County has devoted appropriate resources to invest in the maintenance and repair of the County buildings, the relationship has been generally constructive. In counties where one or more of these conditions may not have been present, there have been problems with one or more of the following: building conditions, maintenance, use of space, staff conflicts, security, and/or ADA compliance.

Summary of Judiciary Physical Locations

The 27 physical locations can be grouped as follows:

- **Counties with both County-owned and State-owned courthouse(s): (18 locations)**
 - Bennington (two County; one State)
 - Chittenden
 - Franklin
 - Orleans
 - Rutland
 - Washington (two County – currently consolidating into one; one State)
 - Windham
 - Windsor

- **Counties with only County-owned building: (5 locations)**
 - Essex (two County buildings – currently consolidating to one)
 - Grand Isle
 - Lamoille
 - Orange

- **Counties with only State-owned building: (2 locations)**
 - Addison
 - Caledonia

- **Other Judiciary buildings (2 locations):**
 - Supreme Court (and Court Administrator's Office)
 - Leased space: 112 State Street Montpelier (IT and Finance)

It should be noted that the Judiciary has consolidated its Essex County Probate Division into the Guildhall County courthouse (and vacating Island Pond), and similarly is in the process of consolidating the Washington County Probate Division into the Washington County Courthouse (vacating the nearby stand-alone Probate building). These actions will reduce the Judiciary's footprint to 25 locations. Each such operational consolidation reduces the administrative inefficiencies imbedded in the current structure by allowing sharing of work burden among multiple court divisions, and allows for increased security (and/or efficiency of security resources) by concentrating more employees within the "security envelope."

Background on Space Arrangements at these Facilities

There are some commonalities among the courthouses, particularly as relates to building ownership. For instance, as previously mentioned, at all State-owned buildings, the Judiciary pays "fee for space" based on its occupied square footage to the Department of Buildings and General Services (BGS), which maintains the buildings. In FY 2016 the Judiciary will pay approximately \$4.6M in fee-for-space costs. In the County buildings, the Judiciary pays no rent based on the requirements of the restructuring statute. The counties' obligation under the statute is to provide "at least the facilities that existed for judicial operations that it provided on July 1, 2009" and also to "provide a suitable courthouse" and to "keep such courthouse suitably furnished and equipped for use by the Superior Court." 24 V.S.A. § 71a.

Aside from this broad distinction, each County's physical plant is unique. The standard of maintenance, upkeep, and capital investment in the County buildings varies among the Counties. In Windsor County, for example, the County recently raised revenues to renovate its County courthouse. In other Counties, the Judiciary has experienced issues around security infrastructure, public accessibility, staff working conditions, and other issues due to under-investment in the buildings. (It should be noted that the Judiciary has experienced physical plant issues at some State-owned buildings as well.)

Allocation of Resources to Infrastructure

As noted above, as a tenant in all its buildings, the Judiciary is extremely limited in its ability to make decisions about the allocation of resources to its infrastructure. To the extent it has control over – or input into – the allocation process, the Judiciary would allocate resources based on three primary criteria:

- 1. Emergency and other pressing repairs and modifications for safety, access, etc.**
- 2. Major maintenance based on professionally developed schedule**
- 3. Long-term capital planning that integrates physical space needs with the Judiciary's future operational needs**

Currently, each of these three factors is handled somewhat differently between the County and State courthouses.

Emergency and Other Pressing Repairs:

In the case of State buildings, it is expected that BGS as the landlord will address any emergencies that may arise in State buildings. An example at the smaller end of the spectrum would be the steps that BGS took ensure that there was no asbestos contamination in the Barre courthouse when questions arose during construction work there. An example at the larger end of the spectrum would be the foundation issues that arose in St. Johnsbury at the courthouse, requiring that a portion of the building be vacated so that the foundation could be stabilized. In both examples, BGS initiated the repair process, and then to the extent necessary, sought additional appropriations after the work ensued.

In the case of County courthouses, the situation is varied. In some counties, the County officials have the resources and oversight that is sufficient to make repairs as they arise. In other counties, they may be challenged to make such repairs. It should be noted that the counties receive half of all notary fees – as well as half the small claims fees in counties that continue to own their own courthouses – to support county functions including maintaining their courthouses.

There may be situations where the magnitude of the required changes – and the policy goals of the State – makes the modifications beyond the scope of the counties' abilities or otherwise justify capital assistance from the State. As an example, the State opted to provide capital funding over the course of several years to address ADA accessibility issues at the County courthouses. The State provided funding for this initiative as follows: \$200,000 in FY 2012; \$200,000 in FY 2013; and \$180,000 in FY 2016, for a total of \$580,000.

Major maintenance:

Again, policies around major maintenance vary among the Judiciary's landlords. In the case of State-owned buildings, it should be noted that the State courthouses are – in general – larger than the County courthouses and often support the criminal and family divisions in the largest counties, which generally have higher traffic and greater infrastructure and physical security requirements.

BGS employs a major maintenance schedule to ensure that various big-ticket items (roofs, HVAC; floor coverings) are addressed periodically. That said, in the Judiciary's view, this schedule is too slow, with the net effect that in some cases physical plant issues manifest themselves with operational impact, often for several years or longer before they are addressed. Examples would be the recurring HVAC issues in the White River Junction and Costello courthouses, as well as the aging facilities in the State's Newport courthouse.

The Judiciary has been informed that BGS will be conducting "building assessments" for all State buildings, including courthouses. The Judiciary strongly supports this initiative, which will help to identify the extent to which there are substantial deferred maintenance issues at the State courthouses.

In the case of the County courthouses, again the amount of major maintenance varies among the counties based on their available resources and commitment to maintenance and upkeep. As noted above, the counties derive fee revenue to support their functions, including building maintenance. While we are not experts in building maintenance, it seems logical to assume that landlords that invest in major maintenance will experience fewer emergency repairs. One positive example is the recent

renovation by Windsor County of its courthouse in Woodstock, paid for primarily by County taxpayers (with a small investment by the State). This investment should keep that courthouse in good working order and help to avoid emergency repair issues for some time. There are counties that have made regular or ad hoc investments in their buildings to address major maintenance issues as well.

As a tenant, the Judiciary has little leverage to encourage the counties to conduct such maintenance and renovation. Frequently, the response from the counties is that the Judiciary pays no rent, and that the County “is not compensated” for the costs of operating the building [notwithstanding the allocation of certain small claims filing fee revenues and notary public revenues to the counties.]

Major Maintenance Example: Security infrastructure issues

By statute, the State Court Administrator is responsible for security across the court system. The Judiciary is currently preparing a report on court security as mandated by Section E.204.14 of Act 58. The report will identify the range of security infrastructure needs across the branch, the sum of which is significant. The extensive physical footprint of the branch in both State and county buildings (as listed above) by its nature creates a significant challenge to bring security infrastructure up to current needs.

Major Maintenance Example: ADA Accessibility

The Legislature has appropriated a total of \$580,000 to the Department of Buildings and General Services to assist counties in improving ADA accessibility in county-owned courthouses. The Judiciary’s report last year to the Legislature on this subject is attached as **Appendix A**. That report summarizes the history of the topic and associated appropriations.

The current status of the work to improve ADA accessibility is as follows:

- No county courthouse – BGS addresses ADA issues under separate authority:
 - Middlebury (Addison)
 - St. Johnsbury (Caledonia)
- Work complete:
 - Chelsea (Orange)
 - Woodstock (Windsor)
 - Guildhall (Essex)
 - Montpelier (Washington)
 - St. Albans (Franklin)
- Work in progress:
 - North Hero (Grand Isle)
 - Burlington (Chittenden)
 - Rutland (Rutland)
 - Hyde Park (Lamoille) – as part of renovation/expansion
- As previously reported, improvements to ADA accessibility are cost-prohibitive:
 - Newfane (Windham) – utilize Brattleboro when ADA access issues arise
 - Manchester (Bennington) – courtroom use is limited; utilize Bennington (State building) when ADA access issues arise
- BGS is currently reviewing the final two courthouses to determine whether ADA accessibility is cost-prohibitive

- Newport (Orleans) – utilize State-owned building across the street when ADA access issues arise; county officials have publicly discussed selling some or all of the property;
- Bennington (Bennington) – county building would require substantial work; utilize State-owned building in Bennington when ADA access issues arise.

The Judiciary defers to BGS regarding additional information about the specific projects in each county. The Judiciary understands that BGS is not requesting additional funds to complete current work. Finally, the Judiciary notes that in consolidating its physical footprint by moving Probate Division activities out of separate buildings in Washington and Essex counties, it has alleviated any potential court-related ADA needs in those former buildings.

Long-term Capital Planning:

Ideally, the Judiciary would identify its future operational needs and develop physical space needs accordingly. As noted, the ability to do such long-term capital planning is limited by the fact that the Judiciary does not own its capital infrastructure. The Judiciary is currently considering the creation of a committee of the Judiciary Advisory Council to support long-term capital infrastructure planning to anticipate and adapt to the trends and changes identified in the “Courthouse of the Future” section set forth later in this Report.

The challenge with State-owned courthouses is that major maintenance for these buildings – as part of the State’s total inventory of over 300 buildings – consumes a significant share of the State’s Capital Bill. Projects in State buildings for re-envisioned court operations will likely need to be targeted, and perhaps be included as part of renovations and/or major maintenance as they occur.

Long-term Planning Example: Lamoille Courthouse

In the case of the State-owned buildings, there is some opportunity to work with BGS to jointly develop space according to future needs. An example of successful medium-term planning is the Lamoille courthouse expansion. In this example, the State lacked its own courthouse in that region. The Lamoille County courthouse, while well-maintained, was not sized sufficiently to handle the modern needs for family and criminal division activities. Expanding onto the County building – with the result to be a jointly owned structure – addressed the Judiciary’s operational needs in that region. As part of the renovation and expansion, the courthouse will address ADA access issues and be made current on technology and security requirements, bringing this courthouse in closer alignment with future court needs (see discussion below regarding the Courthouse of the Future).

In the County buildings, the incentive to play a role in the Judiciary’s operational visioning – and reconfigure their courthouses accordingly – may vary among counties. Even where there is a desire on the part of the county to keep the courthouse in use, not all counties have the same access to county financial resources (or desire on the part of county voters to raise such revenues) for the major expense of a substantial courthouse reconfiguration. Moreover, the State’s Capital budget for the Judiciary is likely to be fully subscribed with maintenance, renovation, and (where possible) remodeling of State courthouses, leaving little capital funds available for supporting changes to County buildings.

Other Models for Building Ownership/Maintenance and Capital Planning:

Other units of government – both in Vermont's Executive Branch, as well as judicial branches in other states – utilize different models of space occupancy than the Vermont Judiciary's model of tenancy occupancy. Generally, these alternative models involve the operational unit retaining ownership and maintenance responsibilities for their buildings, with capital construction and maintenance funds appropriated directly to the unit. These alternative models may be better able to integrate the three components of building needs – emergency repairs; major maintenance and renovation; and reconfiguration for changes in operational needs – than our current model. These alternatives have their own risks, however. **Appendix B** summarizes three examples of such a model: the Vermont Department of Forests, Parks, and Recreation; the Vermont Agency of Transportation; and the Maine Judiciary.

Courthouse of the Future

Experts at the National Center for State Courts (NCSC) envision a courthouse of the future that is very different from typical courthouses in Vermont. Based on distinct and documented trends in the types of cases presented -- and the ways that cases are increasingly resolved -- the physical space of the courthouse needs to change. Specifically, NCSC envisions:

- Greater use of technology in the courthouse generally, and in courtroom specifically;
- Increased use of videoconferencing and virtual presence in various court proceedings
- More meeting rooms for nontraditional dispute resolution options;
- Greater flexibility in courtroom arrangements;
- But also the ability to create subject-specific courtrooms, whereby the courtroom can be tailored to the needs of particular subject matter proceedings (e.g., Family Division cases);
- Less emphasis on jury boxes, as jury trials become a smaller share of regular courtroom activity; and,
- Movement away from “one judge – one courtroom” model.

Unfortunately, Vermont's courthouse inventory is not well-aligned with these principles:

- Many courthouses – particularly the county courthouses – are traditional arrangement with a single large courtroom on the second floor;
- There is often only a single judge's chambers for each courtroom – and in many instances, there is little capacity to create additional chambers;
- Many courthouses lack conference rooms for non-official meetings;
- The historic nature – and other physical constraints – make it challenging to integrate technology changes that require significant physical modifications;
- As discussed above, because the Judiciary is not the building owner, it is not in a position to unilaterally undertake major modifications to the buildings; and,
- Other than in Chittenden County, Vermont probably lacks the volume of cases that would justify configuring a courtroom for one specific type of case; however, in the smaller jurisdictions, it could perhaps benefit from the configurable courtroom envisioned by NCSC.

For these reasons – and the associated historic preservation issues, other development issues, and costs -- moving to the “Courthouse of the Future” most likely lends itself either to a network of fewer but newer (or significantly repurposed) buildings strategically located around the State or to a hub-and-

spoke regional model, with a full-service, technologically sophisticated courthouse serving a region, supplemented by satellite facilities designed to extend access to justice to local communities. These significant changes in courthouse design and arrangement are likely to require significant capital investment, the amount of which is not known at this time. Depending on the structure and operation of such a model, statutory changes also could be required.

Long-term planning for courthouse capital needs must take into account the variety of interests and stakeholders – including citizens; attorneys; other partners in the criminal justice process and other judicial processes; and all other stakeholders – to ensure that the justice needs of Vermonters will be well-served by the long-term capital planning process.

Conclusion and Judiciary's Recommendations

Ideally, the Judiciary would be in a position to influence capital allocation decisions among the three prongs of prioritization: emergency needs; major maintenance and renovation; and reconfiguration toward future needs. In the current reality, as a tenant in both the State-owned and county-owned buildings, the Judiciary has limited ability to influence these capital allocation decisions. While the Judiciary can and does advocate for its needs – particularly via the Governor's Capital Budget request process – that advocacy is not the same as being able to make its own allocation decisions.

Another significant constraint is the overall amount of available capital resources. For county courthouses – the Windsor County renovation notwithstanding – in many instances counties will lack the financial resources and/or voter support to initiate major renovations of their courthouses.

In the case of the State-owned buildings, the Judiciary continues to be concerned about major maintenance issues, and BGS' capacity – both financially and administratively – to keep on top of these issues. As noted above, the State-owned buildings in many cases are the location for the Family and Criminal divisions in the largest counties, and hence generate the largest infrastructure and maintenance needs. It is critical that major maintenance and renovation issues in these buildings not be neglected.

The Judiciary's recommendations are as follows:

- 1. It must be assumed that statewide capital funding needs will outstrip available funds in the near- and medium-term. Given this likely reality, the Judiciary's "portion" of the Capital Bill will likely be fully subscribed in most years by major maintenance and selected renovation projects in the State-owned buildings – an allocation decision that the Judiciary by necessity must fully support. (Ideally, as renovations take place, they can incorporate changes to the reflect modernization of the Judiciary's court operations.)**
- 2. As noted in #1, in all realistic likelihood, the vast majority of available capital funds will be needed to maintain and renovate State-owned courthouses. Thus, any capital funding for county courthouses would presumably be targeted to emergency needs and/or specific State policy goals, and should not come at the expense of the needs of the State-owned courthouses.**

- 3. In the meantime, this report recommends that BGS should consult closely with the Judiciary in the determination of capital investment and major maintenance decisions in State-owned buildings. The process of formal buildings assessments for the courthouses, as currently being initiated by BGS, will be a valuable tool in identifying needs and setting priorities.**

- 4. Moving to the “Courthouse of the Future” most likely lends itself either to a network of fewer but newer (or significantly repurposed) buildings strategically located around the State or to a hub-and-spoke regional model, with a full-service, technologically sophisticated courthouse serving a region, supplemented by satellite facilities designed to extend access to justice to local communities. The capital costs of this new model are not known at this time. Depending on the structure and operation of such a model, statutory changes could be required. Long-term planning for courthouse capital needs must take into account the variety of interests and stakeholders – including citizens; attorneys; other partners in the criminal justice process and other judicial processes; and all other stakeholders – to ensure that the justice needs of Vermonters will be well-served by the long-term capital planning process.**

APPENDIX A

Report on County Courthouses and Americans with Disabilities Act (ADA) Compliance

**SUPREME COURT OF VERMONT
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January 30, 2015

Senator Peg Flory, Chair, Senate Committee on Institutions
Members of Senate Committee on Institutions
Rep. Alice Emmons, Chair, House Committee on Corrections and Institutions
Members of House Committee on Corrections and Institutions
Statehouse, 115 State Street
Montpelier, VT 05633

Re: Report on County Courthouses and Americans with Disabilities Act (ADA) Compliance

Dear Senator Flory, Representative Emmons and Members of the Committees:

On behalf of the Vermont Supreme Court, please find this report on county courthouses and Americans with Disabilities Act (ADA) compliance. Act 178 of 2014 (Capital Construction and State Bonding Budget Adjustment) included the following language:

Sec. 37. COUNTY COURTHOUSES; PLAN

(a) Pursuant to the restructuring of the Judiciary in 2009 Acts and Resolves No. 154, the Court Administrator and the Commissioner of Buildings and General Services shall evaluate the scope of the State's responsibility for maintaining county courthouses, including Americans with Disabilities Act (ADA) compliance and whether an emergency fund is necessary for construction or renovation projects at county courthouses.

(b) On or before January 15, 2015, the Judiciary shall report to the House Committee on Corrections and Institutions and the Senate Committee on Institutions with the results of the evaluation.

Summary:

The Judiciary utilizes county-owned courthouses: in some instances in conjunction with a State courthouse in that county; in other instances as the only courthouse in the county. While the restructuring statute requires counties to adequately maintain their courthouses, the State has occasionally provided assistance in this regard. As an example, State law requires the State to facilitate ADA compliance renovations at county courthouses; however, the two existing capital appropriations for this project are not sufficient to complete the effort.

Legislative and funding history:

The legislature directed BGS through the Capital Construction Bill [Act 154, Sec 235(a) of the Acts of 2009 Adj. Sess. (2010)] to audit (13) County Courthouses for ADA compliance. All facilities were found to have non-compliance issues. In several buildings, it was determined that renovations would be detrimental to the buildings' historical character and/or cost prohibitive to renovate to comply. In those situations, accommodations would need to be made at other compliant buildings to serve clients with accessibility needs.

In response to these findings, the legislature appropriated \$400,000 (\$200,000 in each of FY 2012 and FY 2013) in Act 40 of 2012 (FY 2012-13 Capital Bill).

Sec. 5. JUDICIARY

(a) \$200,000 is appropriated in FY 2012 to the department of buildings and general services on behalf of the judiciary to perform repairs and upgrades to bring county courthouse facilities into ADA compliance. The department shall perform these repairs in accordance with the County Courts Americans with Disabilities Act Audits Reports submitted by the department to the general assembly pursuant to Sec. 235a of No. 154 of the Acts of the 2009 Adj.Sess. (2010).

(b) \$200,000 is appropriated in FY 2013 to continue the project described in subsection (a) of this section. For the purpose of allowing the department of buildings and general services to enter into contractual agreements and complete work as soon as possible, it is the intent of the general assembly that these are committed funds not subject to capital budget adjustment.

Total Appropriation – Section 5 \$400,000

Status of work completed so far:

As the work on the initial courthouses was performed, in many instances the ADA compliance work turned out to be more complex than initially estimated; the buildings are generally extremely old, and many problems did not manifest themselves until work was underway. In addition, costs of construction increased during the period between the initial audit and the actual work. (In 2012, the Judiciary initially requested \$830,000 over a two-year cycle to complete the work, but ultimately only \$400,000 was appropriated.)

With the amounts originally appropriated, ADA work has been completed in the following counties:

- Orange (County – Chelsea);
- Windsor (County – Woodstock); and,
- Essex (County – Guildhall).

As noted above, assessments at the following courts determined that the cost of ADA compliance was prohibitive, but given there are multiple courthouses in the county, any hearings requiring ADA access could be scheduled at another courthouse:

- Windham - Newfane (County-owned) – utilize Brattleboro (State-owned) when ADA accommodation is necessary; and,
- Manchester (Bennington County-owned) – utilize Bennington (State-owned) when ADA accommodation is necessary.

Compliance at the Lamoille courthouse is incorporated in proposed renovation work that is separately budgeted (see Judiciary's FY 2016-17 capital request). The Caledonia courthouse is now a State building; ADA compliance becomes part of BGS' major maintenance and can also be incorporated in the structural work scheduled this year (also see Judiciary's FY 2016-17 capital request).

To the extent there is carry-forward of unspent funds from these two appropriations, they will be applied to the projects described below as a contingency.

FY 2016 Capital request for remaining buildings:

During FY 2016, funds are being requested to continue making repairs and upgrades to help provide reasonable accommodations in the County courthouse buildings. Section 37 requested that BGS and the Judiciary review the status of the remaining ADA projects and identify any emergency funding required. BGS has identified the following renovation and modification needs at county-owned buildings.

Estimated cost of remaining renovations/modifications at the following county-owned buildings:

• Grand Isle Superior Court	\$33,000
• Bennington Superior Court	\$50,000
• Orleans Superior Court	\$15,000
• Chittenden Superior Court	\$16,000
• Washington Superior Court	\$38,000
• Rutland Superior Court	<u>\$28,000</u>
Total Estimated Cost:	\$180,000

The Judiciary strongly supports these requests. The Judiciary's original request of \$155,000 reflected our understanding in the fall of the projects' costs. The revised estimate in the Capital Bill of \$180,000 reflects BGS' most current projects' cost estimates, and we defer to BGS' revised estimates. BGS advises that these are challenging projects due to the buildings' historic nature, and project costs may be revised as the projects develop.

These estimates reflect BGS' estimate to provide reasonable accommodation in the county buildings. As noted above, during the first phase in several buildings it was determined that renovations would be detrimental to the building's historic character and/or be cost prohibitive to renovate. (Washington Superior Court is an example where reasonable accommodation cannot be provided on the second floor without destroying historic elements and where costs would be prohibitive. Access will be developed for the first floor public counter window. Hearings there – normally on the 2nd floor -- can be redirected to the Barre courthouse).

Conclusion:

The Judiciary feels that the current legal structure, whereby counties are responsible for maintaining their own buildings, is both logical and cost-efficient. As a corollary to this statement, the Judiciary -- as a tenant in both county- and state-owned buildings -- has a reasonable expectation that the building owner will maintain the building to proper standards.

Aside from the commitment that the State has made to the ADA projects discussed above, our first priority for any capital funds allocated to the Judiciary would be to address known deficiencies at state-owned buildings, where there are significant short-term and long-term infrastructure needs. Based on BGS' estimate of the remaining county locations, the \$180,000 provided in the Governor's recommendation should be sufficient to complete the ADA work, so no emergency fund should be required. In light of past experience regarding cost overruns, however, we request that any funds remaining from the previous ADA appropriations be used as a contingency fund to address hidden conditions and other unforeseen issues.

Please let us know if you have any questions about this topic generally. BGS has detailed assessments of each location and, therefore, is in the best position to answer any technical questions.

Very truly yours,
/s/
Patricia Gabel, Esq.
State Court Administrator

cc:

Representative Maxine Grad, Chair
House Judiciary Committee

Senator Richard Sears, Chair
Senate Judiciary Committee

Supreme Court Justices
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Appendix B: Other Models for Building Ownership/Maintenance and Capital Planning

Vermont Department of Forests, Parks, and Recreation:

Entity status: Unit of Vermont Executive Branch

Ownership status of facilities: Owns its own facilities at parks – not owned by BGS (does not apply to FPR office space -- leased).

Funding source: Fixed amount in Capital Bill – currently \$3M per year – not project-specific.

Allocation of capital funds: Projects determined by unit – not Legislature. Funds are allocated among emergency needs, major maintenance, and future needs. Utilizes “infrastructure scoring” process to prioritize among capital needs and requests, applying a matrix of criteria for scoring and ranking project proposals.

Staffing and infrastructure: FPR has internal staff for capital planning and maintenance.

Risks: Capital needs may exceed annual Capital Bill appropriation. Legislature may cut the annual appropriation. The annual appropriation may not grow consistent with capital cost growth.

Vermont Agency of Transportation:

Entity status: Unit of Vermont Executive Branch

Ownership status of facilities: Primarily owns its own AOT garages, etc. (leased space for AOT offices at National Life and other).

Funding source: AOT has two funding sources for its buildings work. In the Transportation Bill/Appropriations Act, there is a “Transportation Buildings” appropriation of approximately \$2M annually, but the amount can fluctuate. Projects contained in that appropriation are more typical “capital” projects (they tend to be larger in scope and cost) and are identified in the AOT budget book in a 5-year plan. AOT also has an allotment within its Maintenance Appropriation which funds smaller buildings projects/repairs. That allotment runs around \$1.5M annually. The amount of money in both of these pots is based on buildings’ needs, but is tempered by the fact that this money comes from the Transportation Fund which must cover a wide range of transportation infrastructure projects. AOT has leeway to adjust funds among projects, but in the case of the Transportation Buildings program, cannot work on a project which has not been identified in that program as presented to the Legislature.

Allocation of capital funds: Projects in the Transportation Buildings appropriation are requested by AOT, presented to Legislature, and ultimately approved by Legislature in the Transportation Bill and signed into law by the Governor. Projects funded under the Maintenance Appropriation are determined by the AOT. Funds are allocated among emergency needs, major maintenance, and future needs. Allocations are based on structural/conditional needs, space needs, and repairs to extend useful life and preserve the existing facilities. Projects are identified through consultation with District staff to receive and consider their input based on needs. Planning for major maintenance and future needs is based on knowledge of existing conditions and through close coordination with District staff that operate out of these facilities.

Staffing and infrastructure: AOT has internal staff for capital planning and maintenance. The Logistics/Facilities Section within the Maintenance & Operations Bureau has staff dedicated to identifying, programming, and managing all aspects of the buildings projects.

Risks: Capital needs may exceed annual appropriation. Transportation revenues may not grow at sufficient rate to support capital needs.

State of Maine Judiciary:

Entity status: Separate constitutional branch of government

Ownership status of facilities: Three categories of building occupancy: (1) County-owned buildings where the Maine Judiciary is a tenant (similar to Vermont); (2) Buildings owned by the Maine Judiciary; and (3) Buildings leased by the Maine Judiciary (including instances where the project was developed by a private developer with the participation of the Maine Judiciary as the intended tenant). By statute, Maine Judicial Branch does not pay for space in county courthouses that was in use in 1976. In those buildings, the counties generally provide all maintenance, repairs, and janitorial services. The level of service varies between the counties still providing space under that statute.

Funding source: Maine Judiciary requests funds in Capital Appropriation. For major maintenance, the branch is appropriated \$300,000 per year but it is a formula based on revenues which has fallen short to about \$250,000 per year. In addition, the branch is appropriated \$465,000 for smaller projects and maintenance, as well as office furniture and cubicle replacement. The Judicial Branch has total discretion on how that is spent. The legislative and executive branches do not review detail line items.

From time to time bond money has been provided to facility repairs or ADA upgrades. In addition, bond funds have been provided for large projects related to State-owned and county-owned courthouses. Two recent projects include: Capital Judicial Center (\$58 million) and Washington County Courthouse addition (Judicial Branch owned) and renovation of the Superior Court (county owned) (\$8.5 million bonded for the total project).

As legislative priorities, the Maine Judiciary is seeking to change the formula for major maintenance in the next budget cycle to a larger and fixed amount, versus the current \$300,000 benchmark formula. In addition, the branch is requesting in the next session to use the unused Personal Service funds for additional capital projects that have already been identified, an amount expected to be under \$1 million.

Allocation of capital funds: Funds are allocated among emergency needs, major maintenance, and future needs. This allocation is recommended by the Director of Court Facilities based on needs assessments, and reviewed with chiefs and State Court Administrator, where priorities are set.

Staffing and infrastructure: Maine Judiciary has internal staff for capital planning and maintenance.

Risks: The legislature primarily becomes deeply involved when there is a major courthouse renovation/addition or the building of a new courthouse. In the last session \$300,000 was provided for a feasibility study to determine the cost of a new building in York County (which is be close in size to the Capital Judicial Center), Oxford County (renovation and addition similar to Washington County Courthouse), and Waldo County (a new and smaller Superior and District Courthouse).