

# CRS Report for Congress

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## Federal Courthouse Construction

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### Summary

The General Services Administration (GSA) is the primary federal real property agency, with responsibility for the design, construction, and maintenance of federal buildings and courthouses. The determination for new courthouse construction is based on a five-year assessment of anticipated space requirements compiled by the Administrative Office of the United States Courts (AOC), which is updated and approved each year by the Judicial Conference of the United States.<sup>1</sup> GSA incorporates the ranking of proposed projects into its annual budget request for the authorization and funding of GSA courthouse construction. In September 2004, the Judicial Conference approved a two-year moratorium on new courthouse projects in an attempt to reduce its annual rent obligations for the use of GSA owned and leased space. Three months later, in December 2004, the Judicial Conference requested that GSA provide the judicial branch with a permanent annual \$483 million rent exemption. Bills (H.R. 4710 and S. 2292) have been introduced in the 109<sup>th</sup> Congress to require GSA to reduce the annual rental fees it charges to the judiciary. The President's FY2007 budget requests that \$148.6 million remain available until expended from GSA's Federal Buildings Fund (FBF) for repairs to three courthouses. This report will be updated as legislative activity occurs.

### Background

Even though the federal judiciary has the responsibility to identify and propose new courthouse construction projects, GSA, through its Public Buildings Service (PBS), is responsible for the design and construction of its buildings and courthouses, and for repairs and alterations to existing facilities. GSA bases its annual funding request for new courthouse construction on the Judicial Conference's long-range space estimates and a *Five-Year Courthouse Project Plan*. Proposed courthouse locations are ranked with a numerical score in the prioritization process by the Judicial Conference's Committee on

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<sup>1</sup> The Judicial Conference of the United States is the governing body for the administration of the U.S. Courts, excluding the U.S. Supreme Court (28 U.S.C. § 331), and supervises the Director of the Administrative Office of the United States Courts in the performance of his duties (28 U.S.C. § 604).

Security and Facilities using four major criteria to reach a composite numerical ranking for the proposed projects. The most important consideration is given to “year out of space” for a fully occupied courthouse. The second criterion relates to security concerns and related structural problems that make a building susceptible to a bombing or other threat, or a lack of separate corridors needed to transport prisoners, judges, and the public safely into the courthouse. The third factor pertains to operational and structural needs within aging facilities. The fourth criterion concerns the number of judicial officers who do not have a permanent courtroom and chambers in an existing courthouse, taking into account any future judgeship appointments. The proposed ranking of locations receives final consideration and formal approval by the Judicial Conference in March of each year.

GSA incorporates this prioritization as part of the President’s annual budget submission to Congress for funding for new courthouse construction, renovation, and leasing projects. Under the Public Buildings Act, as amended, GSA is required to submit a formal document, or prospectus, to the Office of Management and Budget (OMB), the Senate Committee on Environment and Public Works, and the House Committee on Transportation and Infrastructure, as part of the funding authorization process.<sup>2</sup> Each prospectus includes project specifications, cost estimates, and an anticipated completion schedule. For FY2006, a prospectus is required for each new construction, repairs, or leasing proposal valued at \$2.41 million or more. Project authorization must be received from OMB and from both the House and Senate Committees before Congress can approve and fund GSA’s proposed courthouse construction and leasing projects each fiscal year through the Transportation, Treasury, Housing and Urban Development, Judiciary, and Independent Agencies appropriations bill. Once the proposed courthouse construction and repairs projects receive congressional funding authorization, GSA’s Public Buildings Service contracts with private sector firms for design and construction work through the appropriate formal bidding process. GSA’s *Facilities Standards for the Public Buildings Service* establishes design standards and technical criteria to be used in the construction of GSA federal facilities. In determining the specialized physical requirements for federal courthouses, GSA also relies on the federal judiciary’s *U.S. Courts Design Guide*. First published in 1991, and most recently updated in 1997, the design guide specifies the federal judiciary’s criteria to be used in the design of new courthouses and renovations. Special considerations pertain to the renovation of historic courthouses, architectural and finish materials, unique spatial requirements for courtrooms and chambers, acoustics, and automation. GSA uses its own guidelines and standards for building perimeter and site specific security issues.

The Public Buildings Act Amendments of 1972 established the Federal Buildings Fund within GSA to be used for acquisition and maintenance of federal buildings and courthouses.<sup>3</sup> Beginning in 1975, the FBF replaced direct appropriations to GSA as the primary means of financing the operating and capital costs associated with federal facilities. Created as a revolving fund, the FBF receives revenue from rent payments charged to federal agencies occupying GSA space. While these deposits to the FBF are the principal source of funding, Congress annually authorizes how GSA may allocate its FBF assets as new obligational authority in appropriations funding. In addition, Congress

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<sup>2</sup> 40 U.S.C. § 3307.

<sup>3</sup> 86 Stat. 216.

may appropriate additional money into the fund. Generally, FBF revenues are first used for GSA's building operating expenses. Congress then allocates FBF funds for construction of buildings and courthouses, and for repairs to federal facilities. The GSA Administrator is authorized to charge a tenant for the GSA space which the agency occupies and for all GSA maintenance and repairs. These rates, as determined by the GSA Administrator, "shall approximate commercial charges for comparable space and services." The Administrator may exempt a tenant agency from the rent it owes for occupying GSA space if he determines that the charges are "infeasible or impractical." If GSA grants a rent exemption, congressional appropriations to GSA are "authorized to reimburse the Federal Buildings Fund for any loss of revenue." The GSA Administrator is also required to prescribe regulations providing for the rates that GSA charges to tenant agencies for use of its space.<sup>4</sup> GSA determines the fees it charges for a base or shell rental rate by conducting appraisals of other comparable properties and incorporates operating expenses. An appraisal is conducted every five years to accurately reflect the prevailing market rate. The rental rate may also include a charge for any additional improvements or remodeling performed by GSA at the request of the tenant, which is amortized, or paid in equal installments during the term of the lease. In the event there may be no comparable building available to conduct a fair appraisal, GSA uses a "return on investment (ROI)" method, which calculates the rate needed to recover the building's actual construction costs over 25 to 30 years.<sup>5</sup>

## **Congressional Funding for Courthouse Construction**

In the past 15 years, GSA and the federal judiciary, relying on the Judicial Conference's 1988 estimates that nearly 200 federal courthouses would realize space shortages within the decade, began a major courthouse construction initiative, at an estimated cost of \$10 billion. These long-range planning efforts also identified numerous operational, structural, and security concerns in aging GSA courthouse facilities.<sup>6</sup> To address the judiciary's most urgent housing needs, Congress authorized \$955.2 million in new funding for GSA's Federal Buildings Fund from FY1993 through FY1996 and authorized a total of \$2.2 billion from the FBF to be used by GSA to construct 44 new courthouses and annexes, and for courthouse repairs. Because of these escalating expenditures, Congress directed the judiciary and GSA to better prioritize their future construction projects in FY1995 and FY1996 appropriations language.<sup>7</sup> A 1995 Government Accountability Office (GAO) report recommended that greater oversight was needed by GSA, the judiciary, and Congress to improve courthouse construction planning and to reduce costs.<sup>8</sup> Based on the Judicial Conference's FY1997-FY2001 plan identifying 45 new projects, and GSA's funding request, Congress authorized \$400.5

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<sup>4</sup> 40 U.S.C. § 586(a-b).

<sup>5</sup> 41 C.F.R. § 102-85 sets forth regulations for pricing policy for occupancy in GSA space.

<sup>6</sup> U.S. General Accounting Office, *Courthouse Construction: Improved 5-Year Plan Could Promote More Informed Decisionmaking*, GAO Report GGD-97-27 (Washington: Dec. 1996), p. 3.

<sup>7</sup> 108 Stat. 2404, and 109 Stat. 486.

<sup>8</sup> U.S. General Accounting Office, *Federal Courthouse Construction: More Disciplined Approach Would Reduce Costs and Provide for Better Decisionmaking*, GAO Report T-GGD-96-19 (Washington: Nov. 1995), p. i.

million in FY2007 FBF appropriations and authorized \$617.7 million from the fund to be used for GSA courthouse construction and repairs. Conferees for the FY1997 appropriations legislation expressed concern that “courthouse facilities are not designed and built to achieve maximum efficiencies and cost savings.” For the first time, the conferees also requested a courtroom utilization study for each courthouse project.<sup>9</sup> In 1997, the Judicial Conference issued a statement reaffirming its long-standing policy that one courtroom must be provided for each active judge.<sup>10</sup> Congress did not approve any FY1998 courthouse construction, but authorized \$450 million in FY1999 FBF appropriations and obligated \$478.2 million from the fund for GSA courthouse construction and repairs. Congress authorized no FY2000 courthouse construction. The debate over courtroom sharing was reflected in the President’s FY2001 GSA budget request, which incorporated courtroom sharing as a “cost-effective means” for providing courthouse space.<sup>11</sup> Only seven of the 21 projects on the Judicial Conference’s five-year plan were included in the President’s budget request. Congress ultimately funded eight projects, authorizing \$462.2 million in FY2001 appropriations for construction and obligating \$276.4 million from the FBF for site and design expenses. In FY2002, Congress authorized \$8 million for the FBF, obligating \$408.8 million for courthouse construction and repairs. Although the Senate Appropriations Committee remained “extremely supportive” in addressing the “courthouse construction backlog” caused by budgetary constraints in previous fiscal years when not all of the requested courthouse projects were funded by Congress, the committee requested the AOC to provide “persuasive courtroom use data and analysis” to justify any future requests.<sup>12</sup> Congress authorized \$375.7 million in FY2003 appropriations for the FBF and made available \$392.4 million from the fund for 12 new courthouse projects, as well as additional funds for repairs. Congress authorized \$446 million in FY2004 appropriations for the FBF and obligated \$204.6 million for new construction costs for nine courthouses and an additional \$208.2 million for repairs.

**FY2005 Funding.** The President’s FY2005 budget requested that \$381 million be made available from the FBF for the construction of three new courthouses and an additional \$135.1 million for repairs to five existing courthouses. In September 2004, the Judicial Conference approved a two-year construction moratorium for 35 unfunded courthouse projects and for seven congressionally authorized and funded projects that GSA had not yet begun to design. The Judicial Conference approved the moratorium to evaluate its projected space needs in an attempt to reduce the judicial branch’s future rent

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<sup>9</sup> U.S. Congress. House Committee of Conference, *Making Omnibus Consolidated Appropriations for Fiscal Year 1997*, conference report to accompany H.R. 3610, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 104-863, p. 2.

<sup>10</sup> U.S. General Accounting Office, *Courthouse Construction: Information on Courtroom Sharing*, GAO Report 02-341 (Washington: April 2002), p. 4.

<sup>11</sup> U.S. Executive Office of the President, Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2001* (Washington: GPO, 2000), p. 973.

<sup>12</sup> U.S. Congress, Senate Committee on Appropriations, *Treasury and General Government Appropriation Bill, 2002*, report to accompany S. 1398, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 107-57 (Washington: GPO, 2002), p. 63.

obligations to GSA.<sup>13</sup> Four previously authorized projects needed to address urgent space needs were exempt from the moratorium. As a result, the FY2005 Consolidated Appropriations Act authorized that \$441 million be made available for the construction of four courthouses and \$167.3 million for repairs to six courthouses.<sup>14</sup>

**FY2006 Funding.** The 109<sup>th</sup> Congress made no new FY2006 appropriations to the FBF but authorized a total of \$405 million from the fund for five new courthouses, repairs to three existing courthouses, and material price increases for three additional projects.<sup>15</sup> During consideration of GSA's FY2006 funding, the Senate Committee on Appropriations expressed disappointment that the federal judiciary had attempted to:

relieve its overall budget problems by challenging the overall rent and cost of its courthouses. The judicial branch has suggested that all the courthouses be transferred to the judicial branch with a forgiveness of debt. This is misplaced logic and any forgiveness would undermine the ability of the Federal Buildings Fund to meet its mission of supporting federal buildings needs both currently and in the future. The committee notes that it strongly supports the purpose and structure of the Federal Buildings Fund, of which the judicial branch is an important participant.<sup>16</sup>

**FY2007 Funding.** The President's FY2007 budget requests that \$148.6 million remain available until expended from GSA's Federal Buildings Fund for repairs and alterations to three existing courthouses. No request was made for new courthouse construction.

## Recent Considerations

On June 21, 2005, the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management held a hearing on the judicial branch's long-term space needs and its future ability to meet GSA rental obligations. Testimony was given by officials from GAO, the Judicial Conference Committee on Security and Facilities, the AOC, and PBS concerning the judiciary's request for a \$483 million permanent rent exemption. GAO noted that GSA had not been able to maintain its federal building inventory adequately because of insufficient revenue to the FBF based, in part, on past rent restrictions imposed on GSA.<sup>17</sup> GSA data indicated that, as a result of the ongoing courthouse construction initiative, it had constructed 46

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<sup>13</sup> On December 3, 2004, the Judicial Conference formally requested a permanent annual \$483 million rent exemption for use of GSA owned and leased space. On February 25, 2005, the GSA Administrator denied the judiciary's request.

<sup>14</sup> 118 Stat. 3253.

<sup>15</sup> 119 Stat. 2480-2481.

<sup>16</sup> U.S. Congress, Senate Committee on Appropriations, *Transportation, Treasury, Judiciary, Housing and Urban Development, and Related Agencies Appropriations Bill, 2006*, report to accompany H.R. 3058, 109<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 109-109 (Washington: GPO, 2005), p. 219.

<sup>17</sup> U.S. Government Accountability Office, Testimony Before the House Subcommittee on Economic Development, Public Buildings and Emergency Management, Committee on Transportation and Infrastructure, *Courthouse Construction: Overview of Previous and Ongoing Work*, GAO Report GAO-05-838T (Washington: June 2005), p. i.

new courthouses and annexes for the judicial branch, at a cost of \$3.4 billion from the FBF. The chairman of the Judicial Conference Committee testified on the significant impact of GSA rent payments on the judiciary's overall budget and proposed cost-containment initiatives for future courthouse projects. Subsequently, the subcommittee requested that GAO prepare a report on the judiciary's rent exemption request and its related impact on the FBF, and examine how rent payments are calculated by GSA. Two bills have been introduced in the 109<sup>th</sup> Congress to provide rent relief to the federal judiciary. The first, H.R. 4710, the "Judiciary Rent Reform Act of 2006," amends current law pertaining to court accommodations and adds a new provision requiring the GSA Administrator to establish rent charges for GSA owned and leased space that do not exceed actual operating and maintenance costs. The proposed legislation would also require the judiciary to reimburse GSA from judiciary appropriations for any GSA courthouse construction, alterations, or tenant improvements for which GSA did not receive congressional authorization and funding. On February 9, 2006, H.R. 4710 was referred to the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management. The second bill, S. 2292, also requires GSA to charge the judiciary for actual operating costs but would authorize the AOC Director and the GSA Administrator to agree mutually upon how the judicial branch would reimburse GSA for repairs. S. 2292 was referred to the Senate Judiciary Committee on February 15, 2006. The bill was reported favorably on April 27, 2006, and placed on the Senate Legislative Calendar the same day.

GSA and the federal judiciary undertook a substantial courthouse construction initiative in FY1993 through FY2005, with congressional funding of approximately \$4.5 billion through new appropriations and obligations from the FBF for 78 courthouse projects.<sup>18</sup> In the last 30 years, the judicial branch has increased the amount of GSA space it occupies by 310%, an increase of one million square feet per year.<sup>19</sup> GSA is required by law to charge rent payments for GSA space, which are deposited into the FBF. A significant portion of GSA's funds for the purchase of goods and services comes from rent reimbursements to the FBF. According to GSA testimony, the \$483 million rent exemption sought by the judiciary, approximately 50% of the courts' yearly rental payments, would essentially bankrupt the FBF.<sup>20</sup> The Judicial Conference's rent exemption request also renews longstanding congressional concerns over costly courthouse construction. Among the issues not completely resolved include courtroom sharing and assurances from GSA and the judiciary that all future construction projects be adequately justified to reduce costs.

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<sup>18</sup> U.S. Government Accountability Office, *Courthouse Construction: Information on Project Cost and Size Changes Would Help to Enhance Oversight*, GAO Report GAO-05-673, Washington: June 2005), p. 1.

<sup>19</sup> General Services Administration, *Statement of F. Joseph Moravec Before the House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management*, June 21, 2005, p. 2.

<sup>20</sup> *Ibid.*, p. 4.