



**Committee on Transportation and Infrastructure
U.S. House of Representatives**

Bill Shuster
Chairman

Washington, DC 20515

Nick J. Rahall, III
Ranking Member

April 15, 2013

Christopher P. Bertram, Staff Director

James H. Zoia, Democrat Staff Director

SUMMARY OF SUBJECT MATTER

TO: Members, Committee on Transportation and Infrastructure
FROM: Staff, Committee on Transportation and Infrastructure
RE: Full Committee Hearing on "GAO Review: Are Additional Federal Courthouses Justified?"

PURPOSE

The Committee on Transportation and Infrastructure will meet on Wednesday, April 17, 2013, at 10:30 a.m. in 2167 Rayburn House Office Building to receive testimony related to a review by the Government Accountability Office (GAO) of the Judiciary's 5-year Courthouse Project Plan. At this hearing, the Committee will examine the results of the GAO's review of the Judiciary's 5-year plan and whether additional federal courthouses are justified. The Committee will hear from the GAO, the General Services Administration (GSA), and the Judiciary.

BACKGROUND

General Services Administration

The Committee has jurisdiction over all of GSA's real property activity through the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. These three Acts are now codified as title 40 of the United States Code. The Public Buildings Service (PBS), within GSA, is responsible for the construction, repair, maintenance, alteration, and operation of United States courthouses and public buildings of the Federal Government.

GSA's Capital Investment and Leasing Program (CILP) and the Federal Courthouse Program

PBS activities are funded primarily through the Federal Buildings Fund (FBF), an intra-governmental fund into which agencies pay rent for the properties they occupy. Any excess funds generated by the rental system are used for building repairs and new construction, including repairs and new construction of federal courthouses. Each year, GSA submits to the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works its Capital Investment and Leasing Program (CILP) for the

subsequent fiscal year. The CILP submission includes what are known as prospectuses for each project, detailing the project scope, need, and estimated costs. For fiscal year (FY) 2013, a prospectus is required for any project in excess of \$2.79 million.

Pursuant to the prospectus process under section 3307 of title 40, United States Code, capital projects exceeding the prospectus threshold, including construction of new courthouses, must be authorized through a Committee resolution by the House Committee on Transportation and Infrastructure and the Senate Committee on Environment and Public Works. The Committee approves the project by adopting a Committee resolution.

As with many Executive Branch agencies, the Judiciary is a tenant of GSA. In addition to the costs authorized for constructing a new courthouse, there are costs associated with rental payments to GSA. Rental payments by tenant agencies are deposited into the FBF and are appropriated each year for the purposes of covering costs associated with maintenance, repair, alternation, or other construction projects. In FY 2012, the Judiciary's rental payments to GSA totaled over \$1 billion for approximately 42.4 million square feet of space in 779 buildings, including 446 federal courthouses.

Judiciary's 5-Year Courthouse Plan and the GAO's Review

Each year, the Judiciary submits to the Committee a 5-year Courthouse Project Plan approved by the Judicial Conference of the United States. The plan reflects the Judiciary's official list of priority projects over a 5-year period. The most recent plan was submitted to the Committee on March 11, 2013 for FY 2014 – FY 2018. The plan lists 12 projects with \$1 billion in proposed costs.

In 2006, the Judiciary developed a new process for evaluating whether new courthouses are needed, called the Asset Management Planning (AMP) process. In 2008, the Judiciary began using the new AMP process. One of the key criteria is that a new courthouse no longer can be justified based solely on security and operational deficiencies and that a key threshold for justifying a new courthouse is a need for two or more additional courtrooms. Thus far, the Judiciary has completed AMP evaluations for 298 of the 446 federal courthouses (approximately 67 percent) and is not expected to complete a review of all 446 until October 2015, plus an additional 18 to 24 months to complete a Long-Range Facilities Plan based on those results.

Oversight Background of Federal Courthouse Construction Program

The Committee has conducted ongoing oversight over the years on the federal courthouse construction program. In 2005, Chairman Shuster as the then-Chairman of the Subcommittee on Economic Development, Public Buildings, and Emergency Management, requested that the Judicial Conference of the United States study the Judiciary's courtroom usage and report back to the Committee. During the early 2000s, the Judiciary had proposed the construction of a number of new courthouses justifying them, at least in part, on a lack of space, projected growth in judgeships, and increased caseloads.

In 2008, the Judiciary submitted to the Committee a final report on courtroom usage completed by the Federal Judicial Center (FJC), the education and research agency for the U.S. Courts. The FJC study showed that, on average, a courtroom is *scheduled* to be used 4.1 hours a day for active district judge courtrooms, 2 hours a day for senior judge courtrooms, and 2.6 hours a day for magistrate judge courtrooms.¹ In addition, only half of the scheduled courtroom time is actually spent on case-related proceedings. For example, the 4.1 hours scheduled for the use of courtrooms assigned to district judges includes about 1 hour for scheduled events that were subsequently canceled or postponed and 1 hour for events that are not related to case proceedings.² In light of this study, the Committee requested the GAO review federal courthouse planning and construction.

Unneeded Space and Overbuilding

In 2010, the GAO completed a study entitled, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*.³ Specifically, the GAO examined 33 courthouses that were constructed during the ten-year period from 2000 to 2010. The GAO found that 3.56 million square feet of *extra* space was built because of the following reasons:

- The Judiciary grossly overestimated its 10-year projection of future judges assigned to courthouses;
- New courthouses did not incorporate courtroom sharing; and
- GSA constructed courthouses above the congressionally-approved size.

Over Estimating the Future Number of Judges

A primary reason for the overbuilding of recent courthouses has been the Judiciary's inaccurate 10-year projections for future judgeships. Because courthouses are designed to house judges and their staffs, the overall size of a courthouse is largely determined by the number of judges expected to be housed in the building and whether or not judges will share courtrooms. In the 2010 report, the GAO found:

- GSA constructed 887,000 extra square feet of space due to the over-estimating the number of judges;
- 28 of the 33 courthouses had reached or passed their 10-year planning projection period and 24 of the 28 courthouses had fewer judges than estimated; and
- The judiciary over-estimated the number of judges by 35 percent (342 actual judges versus a total projected judge population of 461).

¹ *Report on the Usage of Federal District Court Courtrooms*, Judicial Conference of the United States, September 16, 2003. See also, *Federal Courthouse Construction: Better Planning, Oversight, and Courtroom Sharing Needed to Address Future Costs*, GAO-10-417, June 2010.

² Such as set-up and take-down time for courtroom uses, public tours and other events.

³ GAO-10-417.

Lack of Courtroom Sharing

The lack of courtroom sharing has also been an ongoing issue. Using information provided in a study completed in 2008 issued by the Federal Judicial Center⁴, the GAO created a model for courtroom sharing that showed significant amounts of unscheduled time in courtrooms for judges such that the sharing of courtrooms could be at significantly higher levels than were in practice. In the 2010 report, the GAO concluded:

- 946,000 extra square feet was constructed because of a lack of sharing;
- The number of courtrooms needed in 27 of the 33 courthouses would have been reduced by a total of 126 if sharing was done; and
- 40 percent of district and magistrate courtrooms constructed would not have been needed.

Construction Exceeded Authorized Limits

Additionally in the 2010 report, the GAO found that many courthouses were built above authorization limitations. More specifically, the GAO found that:

- 27 of the 33 courthouses completed since 2000 exceeded their congressionally-authorized size by 1.7 million square feet;
- 15 of the 33 courthouses exceeded their congressional authorization for square footage by 10 percent; and
- Three courthouses exceeded their authorized square footage by 50 percent.

Following the GAO study issued in 2010, in August of 2010, the Subcommittee on Economic Development, Public Buildings, and Emergency Management submitted a bipartisan letter to President Obama highlighting the concerns raised by the GAO report and indicating that the Committee planned to withhold authorizing new federal courthouse construction until the Committee was satisfied that appropriate reforms to the program were in place. The Committee has not approved any new courthouses since August of 2010.

The Committee subsequently requested that the GAO review the Judiciary's 5-Year Plan, which is the focus of this hearing. Additional information regarding the GAO's findings and recommendations will be provided to Members prior to the hearing. In addition, the GAO is currently reviewing the utilization of the original courthouses in locations where new courthouses or annexes were constructed.

⁴ The FJC is the Judiciary's research and educational arm, which conducted an in-depth study involving six months' worth of daily scheduled and actual use for 602 courtrooms in 26 of the nation's 94 federal district courts.

WITNESS LIST

Mr. Mark L. Goldstein
Director, Physical Infrastructure
U.S. Government Accountability Office

The Honorable Michael A. Ponsor
Judge
United States District Court
Chairman
Committee on Space and Facilities
Judicial Conference of the United States

Dr. Dorothy Robyn
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