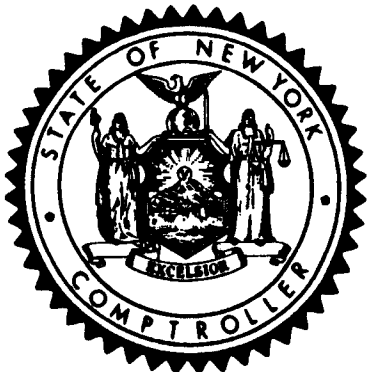


*State of New York  
Office of the State Comptroller  
Division of Management Audit*

**OFFICE OF  
COURT ADMINISTRATION**

**CONSTRUCTION AND  
IMPROVEMENT OF  
COURT FACILITIES**

**REPORT 94-S-70**



*H. Carl McCall  
Comptroller*



# State of New York Office of the State Comptroller

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## Division of Management Audit

### Report 94-S-70

The Honorable E. Leo Milonas  
Chief Administrative Judge  
Office of Court Administration  
Agency Building 4  
Empire State Plaza  
Albany, NY 12223

Dear Judge Milonas:

The following is our audit report on the status of the implementation of the Court Facilities Act of 1987.

This audit was performed pursuant to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law. Major contributors to this report are listed in Appendix A.

*Office of the State Comptroller  
Division of Management Audit*

September 19, 1995

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# Executive Summary

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## Office of Court Administration Construction and Improvement of Court Facilities

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### Scope of Audit

Under the Unified Court System, the Office of Court Administration (OCA) is responsible for employing and administering court personnel, and each locality is responsible for providing and maintaining facilities for court operations. Generally, court facilities throughout the State during the mid-1980s were in a state of disrepair. The Court Facilities Act of 1987 (Act) was enacted to assist localities in meeting their responsibilities to provide adequate court facilities. The Act mandated that all affected localities assess their court facilities and submit a capital improvement plan within two years of the passage of the Act. The cost to complete all court improvements currently planned under the Act is estimated at about \$3.3 billion; New York City's estimated cost is about \$2.7 billion (82 percent of the entire program). According to the Act, localities with approved capital plans would be reimbursed for up to 33 percent of the interest costs related to the financing of the capital improvements. The Act also provides localities with a subsidy of between 10 and 25 percent of its routine court operating and maintenance costs.

The Act established an independent Capital Facilities Review Board (Board) to review and approve the capital plans submitted by each locality. Board approval is required before the locality may be reimbursed for interest expenses. OCA is responsible for establishing the guidelines for developing the capital plans, providing technical assistance to localities as they develop the plans, and monitoring the submission of the plans. The Act did not set any deadlines for localities to complete these improvements.

Our audit addressed the following question related to the Court Facilities Act of 1987:

- Have the provisions of the Act been complied with and what is the extent of progress that has been made in improving the condition of court facilities in the State?

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### Audit Observations and Conclusions

We found that while the initial deadlines for the localities to submit their capital plans were essentially complied with, there has been limited progress in implementing these plans and improving the courts. Five years after the Act required capital plans to be submitted, less than half of the courts in our sample have been improved, and most of the worst courts we sampled have not begun renovations.

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OCA records show that 114 of the 119 affected localities (96 percent) submitted their plans on time, and the remaining localities subsequently submitted their plans within two months of the deadline. We noted, however, the Board sometimes did not give final approval to a locality's plan, but granted a conditional approval. We noted that, as of June 1, 1994, 13 of 40 localities in our sample still did not have final approved plans. (see pp. 5-6)

We found that New York City has lagged behind the rest of the State in implementing its plan. According to OCA officials, New York City is behind the rest of the State because of the scope of the projects, as well as the fact that the City experienced a severe fiscal crisis. At the time of the planned completion of all New York City projects, more than 20 years will have passed since the passage of the Act. (see pp. 7-9)

On a smaller scale, many localities in the State experienced similar delays and problems as New York City. While these localities have made more progress than New York City, less than half of the 35 localities in our sample have completed their planned renovations. Our review found that only two of the eight court facilities that were in need of major renovation had completed their renovations; the other six had not started them. (see pp. 9-10)

Various explanations may account for the delays in implementing the Act. For example, performance dates for implementing capital plans and penalties for missing performance dates are not defined by the Act. As a result, localities which have not started construction are not in violation of the Act. Another cause of the slow progress may be the cost of the projects and the inability of localities to produce plans that are acceptable to all the parties involved with the process, including local government officials, OCA and the Board. Local officials have also stated that the Act's incentive is not sufficient to encourage localities to incur large amounts of debt to finance their projects.

In addition, the only penalty that OCA may assess on localities for not complying with the Act is to withhold State aid payments. This penalty may be too severe and difficult to impose as it could have a significant effect on local services and finances. Our audit raises issues for further consideration by officials from OCA, the Board, local government, and the State Legislature in order to ensure localities meet their responsibilities to provide adequate court facilities in a timely manner. (see pp. 10-13)

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## **Comments of Agency Officials**

OCA officials indicated that considerable progress has been made in implementing the Act and that they will continue to consider ways in which compliance can be improved.

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<b>Appendix B</b>	Comments of OCA Officials	
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# Introduction

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## Background

Prior to 1977, the cost of the court system in New York State was the responsibility of the cities and counties (localities) in which each court was located. In 1977, the State created the Unified Court System and established the Office of Court Administration (OCA). Under the Unified Court System, OCA is responsible for employing and administering court personnel, and each locality is responsible for providing and maintaining the facilities for court operations. The State estimates that since it assumed the costs of all court employees in 1977, it has saved localities over \$3.27 billion.

In general, localities have not met their responsibility for providing court facilities that are suitable and sufficient for judicial business; needed capital improvements have not occurred on a regular basis and court facilities throughout the State are in poor physical condition. A report issued by OCA in 1985 stated that over half the court facilities in the State were over 50 years old and that almost 60 percent needed major renovation or replacement. As a result, in 1987 the Court Facilities Act (Act) was enacted requiring 119 localities in the State to develop plans to construct or renovate court facilities. The Act was designed to assist localities in meeting their responsibilities to provide adequate facilities by reimbursing localities for up to 33 percent of the interest expense related to long-term financing of projects related to the Act. Localities which financed court improvements between 1977 and 1987 were also eligible to receive retroactive payments for their interest costs. The Act provided additional fiscal relief to the localities by subsidizing between 10 and 25 percent of routine court maintenance costs.

The Act established an independent Capital Facilities Review Board (Board), which is responsible for reviewing and approving the capital plans submitted by each locality. The Board consists of four voting members appointed by the Governor based on the recommendations of the Legislature and the Chief Judge. Board approval of each locality's plan is required before the locality may receive reimbursement for interest expenses. OCA is responsible for establishing the guidelines for developing the capital plans, providing technical assistance to localities as they develop the plans, and monitoring the submission of the plans.

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The cost to complete all court improvements currently planned under the Act is estimated at about \$3.3 billion; New York City's estimated cost is about \$2.7 billion, or 82 percent of the entire program. The Act established the Court Facilities Incentive Aid Fund (Fund), which is supported by 87 court filing and recording fees, as the mechanism for paying the State's share of the cost of the Act. For 1993-94, the Fund had revenues of \$44.3 million. Projected 1993-94 payments from the Fund include \$7.8 million for operation and maintenance aid, \$8.03 million in current interest aid and \$548,000 in retroactive interest aid.

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## **Audit Scope, Objectives and Methodology**

We audited activity related to the Court Facilities Act of 1987 for the period April 1, 1987 through June 1, 1994. The objectives of our audit were to determine whether the provisions of the Act were complied with and to determine the extent of progress that has been made in improving the condition of court facilities in New York State. To accomplish our objectives we interviewed officials from OCA's central and district offices and officials from various localities. We also reviewed the Act and related legislation, OCA internal management reports and court facility capital plans for selected localities. In addition, we made site visits to various court facilities.

Normally our audits recommend that corrective action be taken by the auditee to address the weaknesses we have identified. However, because of the different jurisdictions covered by the Act, issuing recommendations may not serve the State's best interest. As a result, our audit raises issues for further consideration by OCA, the Board, local government, and State Legislative officials.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations which are included within our audit scope. Further, these standards require that we understand the applicable internal control structure and compliance with those laws, rules and regulations that are relevant to our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and issues raised for further discussion.

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## **Response of OCA Officials to Audit**

A draft copy of this report was provided to OCA officials for their review and comment. Their comments have been considered in preparing this report and are included in Appendix B.

We recommend that within 90 days after final release of this report, the Chief Administrative Judge should report to the Governor, the State Comptroller and the leadership of the Legislature and fiscal committees, advising what steps were taken to address the issues and questions contained herein, and where these issues and questions were not addressed, the reasons therefor.



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## Results of Court Facilities Act

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The intent of the Court Facilities Act (Act) was to upgrade all court facilities in New York State to an acceptable level. The Act mandated that all affected localities assess their court facilities and submit a plan for improvement within two years of the passage of the Act. The Act did not set any deadlines for localities to complete these improvements.

OCA established guidelines for the localities' capital planning. OCA issued a Court Facilities Capital Plan Manual (Manual) that required localities to include in their capital plan an assessment of the court facilities' current condition and the designs, working drawings, financing methods and initial budgets for court renovation projects. Further, the Manual provided a detailed method for conducting an assessment of the present condition of the courts and a list of issues to be considered by localities when projecting their future court facility needs. OCA offered to assist localities during the assessment and capital planning process.

The Act establishes a procedure to be followed if a locality does not develop an acceptable plan. If a plan is not approved, the locality and the Capital Facilities Review Board (Board) may enter mediation in an attempt to reach a settlement that produces a plan that is satisfactory to all parties. If such an effort fails, OCA may direct the State Comptroller's Office to withhold State aid payments to the locality in an amount equal to the cost of necessary renovations to the court facilities. OCA can not spend this money on renovations, but can only have it withheld as a punitive measure until the locality produces an acceptable plan.

We found that while the initial plan submission deadlines were essentially complied with, the interpretation by OCA and the Board of their required role for approving the plans allowed for interim levels of approval. More importantly, we found there has been limited progress in actually implementing the improvement plans. Five years after the Act required plans to be submitted, less than half of the courts in our sample have been improved, and some of the worst courts we sampled have not begun renovations.

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### Approval of Capital Plans

The Act became effective on August 7, 1987 and required localities to submit their capital plans to OCA no later than August 7, 1989. OCA officials stated that 114 of the 119 localities (96 percent) submitted their plans to the Board by August 7, 1989. The remaining five localities subsequently submitted their capital plans by September 30, 1989.

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The Act's description of the Board's role is very general. The Act states that the Board "shall act on each capital plan within sixty days of the submission of such plan to the Board." The Act called for the Board to "review and approve" the overall plan as well as the cost estimates for the design, acquisition and the construction or renovation of the court facilities. OCA officials stated that the capital plans submitted by localities ranged from detailed and sophisticated plans to vague "plans to develop plans." OCA officials stated that, in the absence of detailed statutory instruction, the Board was left to develop rules, policies and procedures for many issues. In addition, OCA and the Board did not want to be an impediment to the renovation of court facilities, but rather they wanted to be a facilitator for implementing the Act and achieving the Act's primary objectives. Therefore, OCA and the Board developed various levels of approvals as a method for moving localities through the planning stage and to avoid the disapproval of any plan, which could set in motion some of the Act's punitive requirements of mediation and the withholding of State aid. For example, "master plan approvals" required that detailed designs with the related cost estimates be submitted at a later date. "Provisional approvals" were given to localities that submitted plans to develop plans, as a way of avoiding disapprovals and providing localities with an extension to solve difficult facility planning problems.

To determine how quickly plans were reviewed and approved by the Board, we randomly selected a sample of 40 localities. We found that it took the Board an average of 151 days after the plan was submitted to issue some type of initial approval, and an average of 497 days to issue final approvals, for the 40 localities in our sample. Time frames ranged from 7 days to 1,726 days for the Board to issue a final approval. Of the 40 capital plans in our sample, 26 (65 percent) received final Board approval of their initial submission. The remaining 14 initially received some form of conditional approval from the Board.

We also reviewed the current status of the 40 localities in our sample. As of June 1, 1994, 27 localities (68 percent) have plans with final approvals. Twelve localities (30 percent) are still in the planning stage and one (2 percent) is in mediation. Therefore, nearly five years after the Act required all localities to have submitted plans, a third of the localities in our sample still do not have final approved plans.

In addition, the Act called for plans to be submitted by the chief executive officer of the locality (e.g., mayor or county executive). The Act does not require the plans to receive approval from the localities' legislative body prior to submission. The need to have capital plans formally approved by the local legislature before submission was not realized until some legislative bodies subsequently refused to provide

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funds for Board approved plans. According to OCA officials, once they recognized this problem, OCA and the Board began to require public evidence of legislative concurrence and extended the approval process when necessary. For example, Erie County submitted a plan to renovate its courts at a cost of \$45 million. OCA had to subsequently disapprove the plan because the Erie County legislature refused to fund the project. Erie County and OCA are now involved in mediation, attempting to get a plan in place that is acceptable to the County, OCA and the Board. This process exists so that OCA can avoid imposing sanctions that will result in a loss of State funds which will negatively impact numerous other services the locality must provide.

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## **Implementing the Capital Plans**

While some localities needed to make minor renovations or repairs to their facilities, other localities needed to construct new buildings or entire complexes. We took two approaches in evaluating the progress made by the localities in implementing their plans. We evaluated the overall progress made in actually improving court facilities by reviewing a random sample of 35 localities in the State, outside of New York City. This evaluation did not take into consideration the condition of the courts at the start of the program. We also evaluated how effective the Act has been in improving those courts most in need of repair. To do so, with OCA's assistance we selected a judgmental sample of eight courts (one court from each of the eight judicial districts outside of New York City) that were most in need of repair. To evaluate the progress made by New York City, we reviewed the status of all 32 planned projects.

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## **New York City**

New York City has lagged behind the rest of the State in implementing its plan. The cost of the New York City renovations comprises 87 percent of the total cost of the program. According to OCA officials, New York City is behind the rest of the State because of the scope of the projects as well as the fact that New York City experienced a severe fiscal crisis that made the City question the affordability of its plan.

New York City submitted its original capital plan to OCA and the Board on August 7, 1989. Prior to the Act's deadline, OCA worked closely with New York City to ensure a timely submission. Meetings between New York City's and OCA's staff were held on a regular basis, and OCA's staff reviewed various components of the plan as they were developed. Despite OCA's effort, New York City requested an extension to complete its plan. It was the opinion of the Board and OCA that sufficient information had been gathered to complete the plan timely and therefore New York City's requested extension was denied.

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After the original submission of the capital plan, New York City submitted four modifications during the next three months. In November 1989, this plan with the four modifications received master plan approval from the Board with detailed construction plans for each court to follow. This capital plan's budget called for \$1.6 billion to be expended by June 2005, of which \$800 million would be expended by June 1999.

In late 1990, New York City requested an amendment to its approved master plan which would delay a \$170 million project for five years. OCA analyzed the request and concluded in early 1991 that delaying the project would not produce significant savings and the delay would cost New York City more than it would save. In the fall of 1991, New York City submitted another capital plan amendment that postponed 12 projects. The Board concluded that these delays deferred needed court facility improvements and would not provide suitable court facilities until sometime after the year 2007. Therefore, the Board disapproved the plan amendment in March 1992.

The Board's disapproval resulted in the start of the mediation process called for in the Act and raised the possibility that sanctions would be imposed if an agreement could not be reached. In an attempt to avoid imposing sanctions, the Board directed OCA to develop a capital plan that could form the basis of an agreement. OCA's capital plan was submitted to New York City in April 1992, and New York City then presented its own amended capital plan, which was approved by the Board in July 1992. New York City's amended capital plan calls for \$2.8 billion for constructing 15 new court facilities and renovating 17 other facilities. By the year 2001, the plan calls for half of the projects to be completed and another one-quarter to be under construction. The entire plan is scheduled to be completed by 2008.

New York City subsequently experienced delays in implementing the plan. The first bond sale of \$780 million was scheduled for the fall of 1992. However, the bond sale had to be delayed because it was found that the drawdown schedule would not meet the Federal requirement for tax-exempt bonds. According to OCA officials, in April 1992, OCA was assured by the State Dormitory Authority that the bond sale would meet Federal requirements. However, in December 1992, New York City officials decided that projects would be subject to the Uniform Land Use Review Process (ULURP). Further analysis in 1993 showed that ULURP compliance would profoundly affect the drawdown schedule. During early 1993, the drawdown schedules were revised to adhere to the Federal Tax Law. Also, in early 1993 New York City attempted to delay implementing the approved capital plan by requesting a three-year moratorium from the State Legislature. Although the attempt was

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denied, these various issues set the bond sale back over a year and reduced the bond issue to \$414.5 million.

Currently, the construction of the Bronx Housing Court, Queens Criminal Court Annex and Kew Garden I Criminal Annex are under way. However, these projects incurred delays during the spring of 1994 due to contractor default and bidding problems.

Although New York City has made progress and is moving forward, overall it is behind its final schedule, which was approved by the Board in July 1992. It is critically important that the construction schedules currently in place for New York City be adhered to. At the time of the planned completion of all New York City projects more than 20 years will have passed since the passage of the Act; during that time, court business will be carried out in buildings that are not suitable for the transacting of judicial business.

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## **Outside of New York City**

On a smaller scale, many localities in the State experienced similar delays and problems as New York City. While these localities have made more progress than New York City, less than half of the localities in our sample have completed their planned renovations.

For the 35 localities we sampled outside of New York City, we found that as of June 1, 1994:

- 7 localities (20 percent) were essentially in compliance with the Act at the start of the program;
- 10 localities (29 percent) had completed major renovations projects;
- 6 localities (17 percent) were in the process of implementing their capital plans; the level of project completion, estimated by the localities, ranged from 8 to 90 percent complete;
- 9 localities (26 percent) had received final approval for their plans, but had not yet started renovations; and
- 3 localities (8 percent) were still developing capital plans.

Our review of the eight court facilities which were most in need of renovations (Rensselaer, Washington, Erie and Dutchess Counties, and the cities of Utica, Elmira, Hornell and Glen Cove) shows that they have made even less progress than all the courts in general. We found that, as of April 1, 1994, only two of the eight courts we reviewed had their renovations completed and the other six courts had not started their



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renovations. In fact these six courts are all still planning what they are going to do. Therefore, these six courts still have deficient court facilities, five years after the plans were required to be submitted. Only \$11.9 million of the planned \$186.3 million of planned renovations have been completed to date for the eight courts.

In response to our draft report, OCA officials indicated that by the end of 1994, 46 of the 62 cities and 32 of the 57 counties had substantially completed their Capital Plans. In addition, they noted that five localities had moved to the final design stage by April 1995.

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## **Causes for Delays in Implementing the Act**

We found that five years after the deadline to submit capital improvement plans, less than half of the affected localities in our sample have implemented their plans. Even less progress has been made on the worst facilities in the State. OCA has worked with the localities and attempted to get them to comply with the Act and to renovate court facilities in the poorest physical condition, but has had limited success. Without adequate enforcement powers or a significant enough incentive, OCA has been unable to persuade some localities to comply with the Act.

OCA officials stated that for a variety of reasons, the time necessary to plan and build public structures is significant. They state that delays are largely beyond the control of local officials and are not peculiar to the court facility improvement program. Some of the factors OCA officials believe contributed to the delays include environmental and land use review processes, public hearing requirements, historic preservation concerns, and the need to reconcile conflicting public priorities, such as historic preservation versus life safety codes and access for people with disabilities. We believe that other factors related to the Act have contributed to the limited amount of progress made to date.

To make the Act work better, changes could be considered. For example, performance dates for implementing capital plans and penalties for missing performance dates are not defined by the Act. As a result, localities which have not started construction are not in violation of the Act. The Act only specified one performance date for local governments (i.e., that capital plans be submitted to OCA and the Board by August 7, 1989). The establishment of performance dates could have provided OCA with a reasonable enforcement tool to get reluctant localities to comply with the Act and to measure overall program progress.

Based on our discussions with local officials, it appears that a cause of the slow progress has been the cost of the projects and the inability of localities to produce plans that are acceptable to all the parties involved

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with the process, including local government officials, OCA and the Board. In addition, since the program was initiated, local government officials that may have started the process may have changed during subsequent elections. New officials may not agree with the approach of prior officials and may be unwilling to proceed.

In a prime example, the City of Glen Cove, with a final Board approved capital plan in place, started construction of a new court facility to replace an existing inadequate facility. OCA officials stated that approximately \$4.5 million of a total estimated cost of \$9.3 million had been spent, when a new city administration put the project on hold for reevaluation. OCA officials now state that an entirely new plan, at a different site, has been submitted to and approved by the Board. The net effect of this change is that \$4.5 million already spent for site work and construction is wasted, and the improvement of Glen Cove's court facility problems are further delayed. (In response to our draft report, OCA officials stated that the problems experienced by Glen Cove were the result of poor project management decisions by City government, not necessarily the change of administration. They added that a new City Administration took office in 1994, hired outside experts, and promptly developed and advanced a new proposal that is now under construction and will be completed later in 1995.)

Other local officials have also stated that they can not afford the costs of these multi-million dollar projects, due to local fiscal constraints. The Act does require the Board to consider a locality's fiscal capacity before approving its capital plans. The Act states that, "the [Board] shall consider, in approving or disapproving a capital plan for each political subdivision...such political subdivision's fiscal capacity, including but not limited to total taxes raised, total income generated, existing municipal debt and overall capital needs." However, the Act did not establish guidelines for the Board or OCA to use when assessing a locality's fiscal capacity. OCA officials assume that localities can afford the capital plans they submit. OCA officials have stated their reviews of a locality's fiscal capacity only come into play if the proposed plan does not fully meet the needs of the court. OCA then conducts a fiscal review and works with the locality to develop a capital plan that is affordable and acceptable to the locality, OCA and the Board.

Local officials have also stated that the Act's incentive is not sufficient to encourage localities to incur large amounts of debt. The Act reimburses the localities 25 to 33 percent of the interest paid on borrowed funds for the portion of court related renovations. Officials from six localities in our sample that have not started construction stated that if OCA was able to reimburse the localities a portion of capital

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costs, their projects would be currently in construction or completed. OCA officials observed that interest rates have declined since the passage of the Act, reducing their significance as a financial incentive. When the Act was first drafted, consideration was given to reimbursing localities for the capital costs. However, the final bill only provided for partial reimbursement of interest costs. This issue could be revisited as a possible way of increasing program progress. It is some local officials' opinion that these projects, which they consider to be a State mandate, should be at least partially funded by the State. Such a change in State policy would have a big impact for the localities. For example, one locality has a capital plan with an estimated cost of \$5.5 million; about \$1 million has been expended and about \$73,300 in incentive aid has been received. This locality would have received over \$250,000 if localities were reimbursed between 25 and 33 percent of capital costs, not just interest costs.

In addition, the only penalty that OCA may assess on localities for not complying with the Act is to withhold State aid payments. This penalty may be too severe and difficult to impose as it could have a significant effect on local finances. In fact, instead of imposing the penalty, OCA has allowed some localities to receive interest payment subsidies even though their final plans did not have final Board approval, as required by the Act. We found that five (12 percent) of the localities in a sample of 40 localities (other than New York City) issued bonds and received over \$314,000 in interest aid prior to receiving final approval for their capital plans.

Localities are also reimbursed a portion of the cost incurred to clean the courts. These payments are referred to as Operation and Maintenance funds, which are part of the Court Facility Incentive Aid Fund, and paid directly to the localities from OCA. If the Act was changed to allow OCA to withhold a locality's Operation and Maintenance payments when a locality was not complying with the Act, the sanctions would be less severe to the locality, yet still could act as a persuasive measure. For example, for the period April 1, 1988 through March 31, 1994, the six upstate localities that have not started or have not completed construction have received nearly \$1.6 million in Operation and Maintenance payments. Withholding these funds would have demonstrated the State's serious intent, but would not have significantly disrupted vital local services.

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## Questions

1. Should the Act be amended to include a new deadline for submitting completed capital plans?
2. Should the incentive aid reimbursement percentages be reduced for localities not in compliance with the Act by a new submission deadline sometime in the future?
3. Should OCA withhold State aid payments from localities whose capital plans are not completed as a method to motivate localities into compliance?
4. Should OCA develop capital plans for localities without final approved capital plans?
5. Should the Act be amended to require deadlines for implementing approved capital plans?
6. How can OCA ensure that approved capital plans will be implemented even if local government administrations change?
7. Should other enforcement mechanisms be developed, such as withholding Operations and Maintenance payments, as a means of encouraging the localities to comply with the Act?
8. Should the State fund a greater portion of the construction costs of these projects?
9. What additional steps can OCA take to assist New York City in implementing the approved capital plan timely?

(OCA officials did not respond directly to these questions. They did indicate, however, that they will continue to consider ways on which compliance with the Act can be improved.)



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# Major Contributors to This Report

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David DeStefano  
Frank Houston  
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APR 03 1995

H. Carl McCall  
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E. Leo Milonas  
Chief Administrative Judge

March 30, 1995

Hon. H. Carl McCall  
State Comptroller  
A.E. Smith State Office Building  
Albany, New York 12236

OFFICE OF THE STATE COMPTROLLER  
ROBERT H. ATTMORE  
DEPUTY COMPTROLLER

APR 4 1995

MGMT. AUDIT &  
FINANCIAL REPORTING

Dear Comptroller McCall:

The Office of the State Comptroller has forwarded draft audit report (No. 94-S-70) resulting from an audit of the status of the implementation of the Court Facilities Act of 1987. The report makes does try to present the various factors affecting the Court Facilities Program and the complexities of the environment in which court facilities renewal must be undertaken.

***However, the audit does not fully reflect the considerable progress that has been made since 1987 in improving court facilities and implementing the Court Facilities Act.*** Across the State, many cities and counties have renovated their courthouses and/or built new ones. By the end of 1994, 46 of the 62 cities and 32 of the 57 counties had substantially completed their Capital Plans. In the first three months of 1995, several localities, including Orange and Schoharie Counties and the City of Utica, that had experienced inordinate difficulty in deciding how to meet the needs of the courts, finished the planning process and moved to the final design stage. In April 1995, Genesee County and the City of Rome will reach this phase. Dutchess, Orange and Rockland Counties have successfully revised their plans to reflect the fiscal and programmatic realities of the 1990's and are in the detailed design stage. The report should be revised to give a better description of this continuing progress.

***The audit report appears to criticize the various forms of interim approval used by the Board simply because they "are not explicitly provided for in the Act".*** While technically correct, the report does not acknowledge that the Act's description of the Board's role is very summary and general. In the absence of detailed statutory instruction, the Board was left to develop rules, policies and procedures for many issues. In fact, it is reasonable to argue that the creation of a Board and the general description of its role in the statute reflected a deliberate decision by the Legislature that a broad range of discretion could and should be given to such Board in the exercise of its duties. That is one reason why a Board, rather than a sole arbiter, was created.

\*  
Note

***The report suggests that more help from OCA to localities outside the City of New York might have helped those localities complete their plans at an earlier date.*** In fact, OCA closely

\*  
Note



monitored the development of all capital plans, including those for which "help" was never formally requested, and helped many. There was only one major problem with the assessment portions of the Plans (parts I thru V), many of which were submitted informally prior to August 1989 as recommended by the Manual. The only locality that had a major problem with the assessment portions of the Plan was Broome County. To help Broome County, at the request of the County and the Review Board the Sixth Judicial District Administrative Office corrected and completed the County's assessment of its existing facilities.

The problems came with the "solution" portions of the Plans. The questions local governments had to answer before finalizing plans frequently involved issues, such as sitting or a decision on the relative merits of new construction versus acquisition of a building or renovation of an existing facility, that were outside the scope of OCA's expertise or jurisdiction. It would not have been appropriate for OCA to directly address such questions, and it has not done so. Wherever asked, OCA's staff has tried to assist local governments in evaluating whether specific proposed solutions would meet the needs of the courts, and if so how, and has helped local governments identify cost-effective funding solutions. Over time, as localities that had continuing problems asked for and received such assistance, many such questions are being or were resolved.

***The report's discussion of problems created by lack of cooperation from local legislatures is too narrow.*** The statute said that Plans were to be submitted by the Chief Executive Officer of each city and county. It is true that neither the statute itself nor OCA or the Board foresaw the problems that could arise due to conflicts between the CEO's and their legislatures or councils in counties and cities where the CEO is independently elected. This has not been a problem in localities where the CEO is the Chair of the Legislative body; e.g., Boards of Supervisors. Once the problem was recognized, OCA and the Board began to require public evidence of legislative concurrence wherever needed or appropriate, and where needed, the approval process has been extended to allow legislatures time to participate in a meaningful way in the planning process.

***The discussion on delays experienced by New York City should include important background information.*** For example, any references to the hedge bond test problem should note that the bond issue had to be re-sized only after it was learned that the original drawdown schedule would not meet the Federal hedge bond test. In April, 1992, OCA was explicitly assured by the Dormitory Authority and its financial consultant that a bond sale for up to \$985 million in project costs would meet the hedge bond test. After New York City decided that all projects would be subject to Uniform Land Use Review Process (ULURP) (a decision formally articulated by the City in late December 1992), further analysis in 1993 showed that ULURP compliance would profoundly affect the third year of the drawdown schedule. The ULURP decision triggered the hedge bond test problem. The hedge bond test issue was settled in late May 1993. The six months that elapsed from that date to the sale reflected City debt issuance priority and scheduling concerns.

And, any discussion of schedule delays should take note of the fact that, two years after the passage of the Act, New York City began its 3 1/2 year slide into the worst economic crisis the City has faced since the Great Depression. The City, and to a lesser extent the State, experienced severe job losses in the last recession -- over 450,000 jobs lost in the NY metro area alone (the Statewide total is similar, since the metro area includes parts of two other states). The financial crisis and

crippling uncertainty of this period were unusual and were not predicted or foreseen. Without doubt, they contributed materially to the delays experienced by the City.

***The report acknowledges that external factors may delay public construction but does not enumerate, discuss or evaluate them.*** The omission weakens any discussion that statutory changes in the Act could accelerate compliance. Factors that contribute to delay include environmental and land use review processes, public hearing requirements, historic preservation concerns, and the need to reconcile conflicting public priorities, such as historic preservation vs. life safety codes and access for people with disabilities. These are some of the reasons why it takes much longer to plan, program, design and build public structures today. A State Budget Division study in 1992 concluded that, while it took less than four years in the early 1930's to build the Empire State Building, a similar project today would take seven to ten years. Such delays are largely beyond the control of local officials and are not peculiar to the Courts' program. Further, planning for court facilities renewal is complicated by the fact that courts are frequently "embedded" in multi-use facilities, thus requiring planners to consider many non-court related needs. In upstate New York, the experience since 1990 has been that these non-court needs have been "rethought" as a result of State aid cutbacks, continuing economic problems, and the unexpected availabilities of additional real estate (buildings) as an alternative solution to local needs.

***The problems experienced by the City of Glen Cove are not described correctly, nor does Glen Cove's experience support the conclusion the report tries to draw from it.*** The audit report uses the history City of Glen Cove project to argue that a change of administration can destroy a consensus as to project scope and affordabilities, thus delaying needed projects and increasing costs. This general point is true; however, Glen Cove's experience doesn't prove it and in fact proves a different point; namely that local governments that display a serious lack of discipline in the management of the design development process can cost their taxpayers significant sums of money. The Glen Cove project was delayed for four years as a result of repeated poor project management decisions by City government, resulting in the expenditure of millions of dollars to no good end. The City government itself originally insisted on a grandiose project (e.g., including a relatively massive concrete plaza and over 100 spaces in an underground parking garage) despite the fact that the needs of the court could have been met more simply and in a less costly way. The City then mismanaged the design development process against the advice of the Dormitory Authority and OCA, thus materially contributing to a serious cost overrun. The City also changed its mind about what it wanted to build and where many times after the initial project was begun. The City Administration that was in office from 1988 through 1993 paid local consultants to develop at least 15 different proposals for a court facility and police station. Some of these were intended to address totally unrelated municipal concerns, such as urban renewal and "saving" financially distressed buildings.

A new City Administration took office in 1994, hired outside experts, and promptly developed and advanced a new proposal that is now under construction and will be completed later this year.

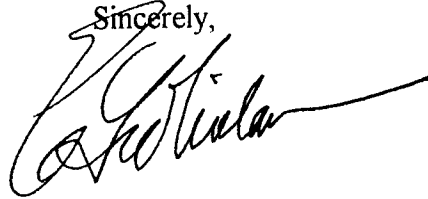
***The report's discussion of financial incentives is incomplete.*** The reason the Act provided an interest subsidy is that the decade preceding the passage of Chapter 825 was characterized by the highest interest rates in modern American history. The eight years since have seen interest rates

decline dramatically. Since lower interest rates mean less state aid, a good argument can be made today for extending the subsidy to include some portion of capital costs.

*The report's discussion of fiscal capacity is incorrect.* The Act does not require the Board to perform a financial assessment of local finances prior to approving a capital plan. It does require that, in evaluating the adequacy of a plan, that the Board balance the need for court facilities with competing capital needs and fiscal conditions. A common-sense reading of the language supports OCA's position, which is that the need to balance comes into play if and only if the plan proposal does not, on its face, fully meet the needs of the courts. If a locality deems a plan affordable, there is no logical reason for OCA or the Board to second-guess that decision.

*Finally, it should be noted that the questions posed by the report have been raised over the last few years in a variety of contexts.* The Judiciary is and will continue to consider ways in which compliance can be improved and to discuss these with the other branches of State government and with local governments as well.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lippman", with a long horizontal flourish extending to the right.

cc: Jonathan Lippman, Esq.  
Nicholas P. Capra, Esq.  
Mr. William L. Clapham  
Dennis W. Donnelly, CPA

#### State Comptroller's Note

Certain matters addressed in the draft report were revised or deleted from the final report. Therefore, some agency comments included in Appendix B may relate to matters no longer contained in this report.