

STATEMENT OF EDUCATION LAW CENTER
SENATE BILL 2796 (SCHOOL CONSTRUCTION)

SENATE EDUCATION COMMITTEE

JUNE 21, 2007

Thank you for the opportunity to comment on Senate Bill 2797, which is intended to implement the recommendations made by Governor Jon Corzine's Interagency Working Group on School Construction in September 2006.

As you know, ELC is the legal representative for the 340,000 urban school children in the landmark *Abbott v. Burke* education equity case. We obtained the 1998 Supreme Court ruling directing the State to address the long-neglected facilities' needs in our urban districts, and worked closely with the Legislature to secure passage of the Educational Facilities Construction and Financing Act (EFCFA) in 2000.

Since then, we have carefully monitored implementation of the school construction program by the Economic Development Authority and the Schools Construction Corporation (SCC). More recently, we have vigorously advocated for providing more funding to ensure continuation of numerous stalled projects in the Abbott districts, and for reforming the structure, process and delivery methods in the construction program.

We also assisted Governor Corzine's Working Group in developing its recommendations. Finally, we recently filed a motion with the Supreme Court asking for a deadline of June 30th for the Legislature to authorize additional school construction funding.

We appreciate the tireless efforts of Scott Weiner and the SCC leadership to get this legislation drafted and introduced. Several key provisions related to governance, land acquisition and project prioritization are based on the Working Group's recommendations, and we fully support those provisions.

However, several other critical and urgently needed reforms recommended by the Working Group are missing from this proposed legislation. Accordingly, we urge the legislation be quickly revised to address the following issues:

1. *Additional Funding:* The Working Group cited the "immediate" need for additional funds to restart over 100 already-approved school facilities projects in Abbott districts, and many other projects on non-Abbott districts. These projects have been stalled since July 2005 when the SCC announced it had exhausted the initial allocation of \$6 billion in funding for Abbott projects, and \$2.6 billion for projects in urban, middle and wealthier suburban districts. The Working Group specifically requested the Legislature authorize an additional \$2.5 billion for Abbott projects and \$750 million for other districts.

Aside from Working Group's recommendation for immediate action on additional funding, the Supreme Court, in an order issued on May 24th, determined that a court-imposed deadline was "premature" based on the Court's "assumption" that the Legislature would move to authorize additional funding "in the context of the FY2008 budget."

It is essential, therefore, that this legislation implement the Working Group's funding request. Section 14 of EFCFA should be amended to raise the ceiling on the EDA's authority to issue bonds in the amounts, totaling \$3.25 billion requested by the Working Group.

2. *Project Priorities for Non-Abbott Districts:* We support the provisions in section 20 of the proposed bill that implement the Working Group's recommendations for more carefully prioritizing projects for construction both within and across the 31 Abbott districts.

The Working Group also recommended similar prioritization process for non-Abbott district, finding that the prior "first-come, first served" basis for allocating limited state grants shortchanged many districts with severe facilities needs. The Working Group made clear that the future allocation of the requested \$750 million in construction financing should "be prioritized based on objective criteria that align the State's public policy and educational objectives." We recommend language be developed and included in the bill to direct the Commissioner of Education, in consultation with stakeholders, to develop a priority ranking of non-Abbott projects and a "statewide strategic plan" for allocating state grants based on those priorities.

3. *Abbott District Involvement:* The Working Group made clear that "an essential element to the success of the school construction program is the active and meaningful involvement of school districts as a partner in the design and construction of school facilities." The Group also recommended that this "objective should be institutionalized as part of the statutory scheme" for the program.

The proposed legislation does provide for district "consultation" during the process of establishing project priorities, but does not sufficiently embed the requirement for "active and meaningful district involvement throughout the pre-development, site acquisition, design and construction phases. We strongly recommend such a requirement be included in the legislation.

4. *Emergency Repairs:* Abbott districts have been placed in an untenable "catch-22" regarding emergency building repairs, a problem that must be addressed in this legislation. The Department of Education does not allow districts to set aside operational funds for such repairs in a capital reserve fund, as other districts can do, and instead directs districts to the SCC. The SCC currently lacks funds and emergency procedures to ensure that districts can promptly undertake this work.

We recommend inclusion of a provision that would require the new authority to set aside funds and establish emergency procedures for districts to obtain approval to undertake emergency repairs. The provision should also make clear that the Department is not prohibited from allowing districts to carry capital reserve funds in their operating budgets for both repairs and ongoing building maintenance.

5. *Facilities Efficiency Standards (FES):* The legislation eliminates the requirement in section 4h of EFCFA that the Commissioner revise and republish the facility efficiency standards every two years, leaving it to the Commissioner's discretion concerning whether -- and when -- to update the FES.

Last year, under the leadership of former Assistant Commissioner MacInnes, a working group was convened to analyze the FES in light of new educational programming and advances in educational facilities planning, design and program delivery. The group made recommendations to revise the FES to allow for a more flexible "envelope" that could be adapted to unique local conditions, instead of the current inflexible "model school" format. Unfortunately, the Department never acted on these revisions. The Department's Facilities Division also had made these changes to the FES, but they were never officially adopted.

Accordingly, we strongly recommend that section 19 of the proposed bill be changed to require the FES be revised within six months of the bill's enactment, and every two years thereafter. It is essential that New Jersey's school construction program evolve to address changes in educational delivery and other advances in preschool and K-12 facility design.

6. *Community Preschool Providers:* The legislation removes the provision of EFCFA authorizing districts to seek funding for preschool projects for non-profit community providers operating Abbott preschool programs for three- and four-year olds on the basis that "no such projects have been initiated since the enactment of EFCFA."

The removal of this provision eliminates the only mechanism available to address preschool facilities needs in Abbott districts community providers. These providers serve over 65% of the 42,000 Abbott preschoolers currently enrolled in the program. Moreover, the State is constitutionally obligated to ensure these children attend preschool in safe and adequate facilities, whether operated by districts or community providers under contract with districts. Finally, the districts were required to conduct preliminary assessments of the conditions of the provider facilities in their 2005 Lefts, so the Department is now in possession for the first time of basic information on provider facility needs.

We recognize the EFCFA mechanism was complex and cumbersome, resulting in district unwillingness to utilize the process. It is essential, however, that alternative procedures and methods of financing be developed to address the unique needs of community providers. We recommend this legislation be revised to direct the Department and the new Authority convene a working group to study the issue, and make recommendations

for the repair, replacement and construction of community preschool provider facilities, including recommendations for financing through public/private partnerships and other means. The working group should include key stakeholders, along with representation from the Department of Community Affairs. The group should be required to issue its report and recommendations to the Governor and Legislature within six (6) months of the enactment of the bill.

7. Department Capacity: The School Facilities Division within the Department of Education is severely understaffed, and lacks sufficient expertise to perform its critical functions in a timely manner. The most current example of this “capacity deficit” is the Department’s inability to process and review the districts Long Range Facilities Plans (LRFP) within the timeframes established by statute and regulation, leading to serious delays in the school construction program.

We recommend that the bill be revised to include a requirement that the Department retain consultants and engage critical stakeholders in evaluating the staff, resources and other capacities necessary to perform the essential and mandated functions related to the ongoing implementation of the school construction program.

8. Students with Disabilities: We recommend that section 5(g) and (n) of EFCFA be clarified to ensure that the Department and the districts make every effort to comply with the “least restrictive environment” mandate of the federal special education law (IDEA). We also recommend that the language in the proposed bill be changed to describe “students with disabilities” in a manner consistent with existing statutes and common current usage. Our proposed language to address these recommendations is attached.

ELC stands ready to work with this Committee to ensure prompt adoption of legislation that fully implements the Working Group’s recommendations for both immediate funding and reforms to the school construction program.

Thank you.