ELC EDUCATION LAW CENTER

TESTIMONY ON ASSEMBLY BILL 4496

ASSEMBLY EDUCATION COMMITTEE

December 8, 2022

Chairwoman Lampitt and honorable members of the Assembly Education Committee, thank you for considering this testimony from Education Law Center (ELC) on Assembly Bill A4496, which proposes various changes to the laws governing the construction of school facilities projects and the operations of the Schools Development Authority (SDA). As the legal representative of the Abbott plaintiff schoolchildren, ELC cannot support this bill in its current form. A4496 as written is not consistent with this State's judicial mandates, public policy, and the law ensuring that students are educated in physical facilities that are safe, healthy, and conducive to learning.

ELC strongly objects to the bill's attempt to amend the state funding mechanism for school facilities projects in SDA (former Abbott) districts, established by the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 to 48 (EFCFA), to incorporate school projects undertaken by charter and renaissance schools located in those districts. EFCFA was specifically enacted to implement the New Jersey Supreme Court's mandate for State-funded school facilities improvement resulting from the Abbott v. Burke litigation – a mandate which does not include students in non-traditional public schools.[1] The sole beneficiaries of that judicial mandate are the Abbott

[1]The Abbott mandates for State remediation of "unsafe, overcrowded and inadequate facilities" apply only to the poorer urban districts – now denominated "SDA districts" – that were the subject of the constitutional violation found in the Abbott litigation. Abbott v. Burke, 119 N.J. 287, 295 (1990) (finding violation of a constitutional thorough and efficient education only in designated poorer urban districts); Abbott v. Burke, 153 N.J. 480, 519 (1998) (directing State remediation of "school buildings in Abbott districts" found

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plaintiffs: the class of students who attend school in those district buildings and who "have been denominated victims of a violation of constitutional magnitude for more than twenty years." Abbott v. Burke, 206 N.J. 332, 340 (2011). There has been no analogous judicial determination that students in charter and renaissance schools have been denied a thorough and efficient education or are "deserving of special treatment from the State." Id.

We have several additional objections to the amended bill.

First, although progress has been made in constructing and rehabilitating school facilities over the years, tremendous needs remain in the SDA districts and must be addressed before expanding the construction program to an entirely new set of schools. The funding provided in FY22 and FY23 – the first new money added to the program since 2008 – does not cover all the projects in the SDA's 2022 Strategic Plan. Needed projects to address overcrowding in nine SDA school districts have yet to be specified and are not included in the list of projects for "first tranche advancement." In addition, the Strategic Plan references 50 aging school buildings in need of replacement in the SDA districts, which are also not included on the priority construction list. Expansion of the school construction program to include charter and renaissance schools prior to appropriating funding for this unmet need in the SDA school districts will impede implementation of the State's legal and constitutional obligation to address the remaining projects in those districts.

Two provisions in A4496 will heighten its undermining of the Abbott facilities mandates. The first is the bill's irrational designation of the "[t]he State share of a school facilities project undertaken by a charter school or renaissance school project located in an SDA district" to be "100 percent of the final eligible costs." See Replacement for Section 4, paragraph 5(a). The second is the bill's permitted diversion of up to 50 percent of school facilities funding in any given year to projects that have not been

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to be "crumbling and obsolescent" and in a "grave state of disrepair"); Abbott v. Burke, 164 N.J. 84, 86 (2000) (clarifying State obligation "to provide the full cost of school construction in the Abbott districts").

constitutionally mandated. See Replacement to Section 9, paragraph 14(j). Further dividing up a limited pot of money and restricting the amount eligible to fund SDA district projects violates the State's clear legal and constitutional obligation to "fund **all** the costs of necessary facilities remediation and construction in the Abbott districts." Abbott v. Burke, 164 N.J. 84, 90 (2000) (emphasis added), and simply prolongs the time it will take until students in the SDA districts obtain the relief that has been judicially ordered.

Second, public money should not be used to construct or renovate private property. Many charter schools lease facilities or operate in privately owned buildings, and any work done with taxpayer dollars will benefit the property owner should the charter school close, change location, or if a landlord simply decides to terminate the lease. While the statute limits construction funding to charter schools with a ten-year lease agreement, that does not provide enough protection to warrant investing tens of millions of dollars in public funds that could ultimately benefit private corporations.

Furthermore, the Legislature must take into consideration factors that are unique to charter schools and make it unwise to invest taxpayer dollars in these facilities. Charter school closure is not an unusual occurrence; charters may be revoked or denied renewal by the Commissioner of Education or a charter may be given up by the school's board. Since enactment of the charter school law, approximately 40 schools are no longer in existence for these reasons. Given that the State currently has only 91 operating charters, 40 closures seems to reflect an extraordinarily high rate of failure in the charter industry and investment in charter facilities can rightfully be considered an investment that is too risky for taxpayer money.

Third, there has been no comprehensive determination of need among charter and renaissance schools. Unlike SDA and regular-operating-districts (RODs), these schools are not required to prepare Long-Range Facilities Plans, which provide an analysis of demographics and building conditions and must be approved by the New Jersey Department of Education (DOE). They are also not subject to the educational facilities needs assessment conducted by the DOE every five years in the SDA districts to assess capacity needs. There has been no analysis of the scope and type of space

deficiencies and/or building conditions of charter and renaissance schools. Before the State commits millions of additional dollars to fund building improvements and new construction, we think it is prudent for an assessment to be completed first, as is required in SDA districts and RODs.

Fourth, ELC has concerns about the bill's requirement for the SDA and the DOE to establish a model school design program. The size and types of instructional areas and administrative spaces that can be included in the design of school facilities are already regulated under the Facilities Efficiency Standards (FES), which ensure all buildings are educationally adequate to support the achievement of the core curriculum content standards. The current process gives districts the flexibility to eliminate or add spaces differently than the FES based on a demonstration of the adequacy of the school facilities project to deliver the standards. N.J.S.A. 18A:7G-4(h). There has been no showing that the FES are inadequate or that the standardization mechanisms already adopted by the SDA are problematic. The mandate to develop additional model school designs seems to be a solution in search of a problem.

While the bill has been amended to include a provision allowing the SDA to exempt projects from conforming to model designs, it is too restrictive. Exemptions are allowed only if changes to model design features are limited to the lessor of 10 percent of total estimated projects costs or $2 million. These provisions will stifle the consideration of community needs and educational adequacy in project design. They will also add another level of inequity to the construction process. While the bill includes some incentives for RODs to choose model designs, they are not required to do so, and school facilities in those districts will likely include features that are not available to students in the lowest income, racially segregated school districts in the state, perpetuating injustice.

Thank you for considering these comments which should be considered preliminary. We will continue to review the extensive changes to A44496 and may submit additional comments. Please do not hesitate to contact Theresa Luhm, Esq., at tluhm@edlawcenter.org for additional information or to answer any questions.