

APPENDIX



Education Law Center

Standing Up for Public School Children

TESTIMONY OF EDUCATION LAW CENTER ON SENATE CONCURRENT RESOLUTION NO. 39 JUNE 9, 2008

ELC serves as counsel to the school children Abbott v. Burke, and our comments are informed by our efforts to bring about improvements in deplorable, overcrowded and inadequate school facilities in poor communities throughout the state.

SCR 39 raises a serious constitutional concern: the amendment would appear to foreclose the future use of contract bonds to finance school construction, a mechanism expressly authorized by the Supreme Court in Abbott V (1998); implemented in the Educational Facilities Construction and Financing Act of 2000; and upheld in the Lonegan v. State of New Jersey decision of 2002.

As you know, contract bonds issued under EFCFA have financed urgently needed school construction projects in not just urban districts, but districts across the state. This financing method was presented by the State and approved by the Court in Abbott V and Abbott VII (2000) as the means for the State to meet its obligation to ensure a thorough and efficient education to school children under the Education Clause of the Constitution.

Thus, the EFCFA contract bonds are unique, and the Supreme Court has recognized in Abbott and Lonegan that they do not violate the Debt Limitation Clause of the Constitution.

While we have made significant progress in replacing dilapidated and outmoded school buildings, there remain unmet needs that will require additional bond financing in future years. The State estimates those unmet needs in urban districts at \$12 billion, and we are awaiting similar estimates of need across the state, especially in lower wealth districts that have been unable to raise construction funds through local bonding.

In the meantime, while State support for school construction in poor districts would be placed in serious jeopardy under SCR 39, the State funding of projects in wealthier districts just rolls on. For FY09, the State will provide \$58 million in building aid, an increase of 75% in just two years. So if you're wealthy enough to pass a bond, regardless the need for the project, the State will fund it. But if you're a student in a decrepit building in a poor district, that's just too bad.

Support for SCR 39 as written is a vote for inequality, something abhorrent in our constitution.

Let's chart a different course and make every effort to avoid a clash between provisions within the Constitution, and between the Legislature and the Court. I am providing today amendatory language which will make certain that SCR 39 does not impair the State's ability to fund needed, and constitutionally-required, school facilities improvements.

We stand ready to work with this committee to expeditiously resolve this problem.

b. On and after the date on which this subparagraph b. becomes part of the Constitution, the Legislature shall not enact any law that, in any manner, creates or authorizes the creation of a debt or liability of an autonomous public corporate entity, established either as an instrumentality of the State or otherwise exercising public and essential governmental functions, which debt or liability has a pledge of an annual appropriation as the ways and means to pay the interest of such debt or liability as it falls due and pay and discharge the principal of such debt, unless a law authorizing the creation of that debt for some single object or work distinctly specified therein shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon. Voter approval shall not be required for any such law **providing for the maintenance and support of a thorough and efficient system of public schools required by Article VIII, Section IV, Paragraph 1 of this Constitution** or providing that the ways and means to pay the interest of and to pay and discharge the principal of such debt or liability shall be subject to appropriations of an independent non-State source of revenue paid by third persons for the use of the single object or work thereof financed thereby, or appropriations of a source of State revenue otherwise specifically authorized by the voters pursuant to another paragraph of this Constitution to be appropriated for debt financing purposes. No other paragraph of this Constitution for any other purpose whatsoever shall be construed as providing any other exception for voter approval of any law described in this subparagraph.

Typical Types of State Debt

RANs

Revenue Anticipating Notes
 Short-term renewable notes
 Not ratified by voters
 Full faith backing of taxing power*
 Repaid by following year revenues

GOBs

Government Obligation Bonds
 Authorized by law
Ratified by voters
 Primarily for capital improvements

COPs

Certificates of Participation
 Capital leases
 Legislative appropriations
 No voter approvals
 Construction and equipment funding

AKAs

State Agency Debts
 State Guaranteed Debts
 State Moral Obligation Debts

Capital Budgeting Commission 06 Members
 Cryan and Rousseau

01 to 06 Budget Increases of 57%
 \$21 billion to \$33 billion

Debt reconciliation to CAFR >>>>>>

June 2007 List of non GOB Debt

| | |
|----------------------------|----------------|
| Eco Dev Authority | \$12 billion |
| Trans Trust | \$ 8 billion |
| Preservation Trust | \$ 1.2 billion |
| Ed Facil Auth | \$ 0.7 billion |
| Bldg Authority | \$ 0.6 billion |
| Sports & Expo Auth | \$ 0.6 billion |
| Health Care Facil Fin Auth | \$ 0.3 billion |
| So Jersey Port Auth | \$ 0.1 billion |
| Capital leases | \$ 0.4 billion |
| County College Bonds | \$ 0.2 billion |
| Marine Lab | \$ 5 million |
| Line of credit | \$ 53 million |

| | |
|---------------------|-----------------------|
| Total RANs and COPs | \$24.15 billion |
| GOBs | \$ 2.8 billion |
| Other Debt | \$2.7 billion |
| TOTAL DEBT | \$29.7 billion |

About 40% is callable
 Defeasement approach not required
 \$650 million of debt can be retired

Additional Obligations of \$8.4 billion

* = Taxpayers have no legal obligation to pay when full faith is not pledged by ratification