
Committee Meeting

of

ASSEMBLY EDUCATION COMMITTEE

ASSEMBLY BILL No. 3625

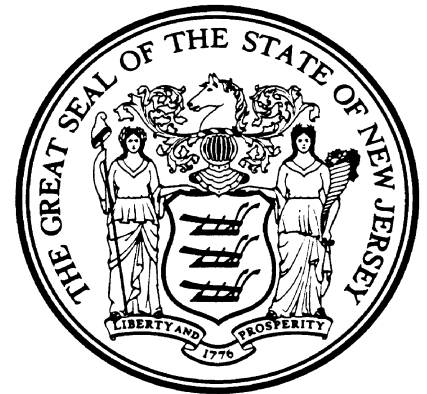
(The Educational Facilities Construction and Financing Act)

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: December 16, 1999
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman David W. Wolfe, Chairman
Assemblyman Joseph R. Malone III, Vice-Chairman
Assemblyman John E. Rooney
Assemblyman Gerald H. Zecker
Assemblyman Raul "Rudy" Garcia
Assemblyman Craig A. Stanley



ALSO PRESENT:

Kathleen Fazzari
Theodore C. Settle
Office of Legislative Services
Committee Aides

Natalie A. Collins
Assembly Majority
Committee Aide

Jason Teele
Assembly Democratic
Committee Aide

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ASSEMBLYMAN DAVID W. WOLFE (Chairman): I'd like to welcome all the great minds to our meeting today. As you know, this is a hearing on Assembly Bill 3625. This is a session of public comment. There will be no formal action taken by the Committee. But this is the beginning of the process, a resolution of the issues involving school construction for schoolkids in New Jersey.

Our first speaker today will be Assembly Speaker Collins.

Before we begin, I just would like to ask if the other members who wish to testify -- I'll try to certainly accommodate your time schedules. But we would ask that if you have comments to make -- we certainly welcome your comments -- and you have written testimony, that you present them to us, and that you paraphrase your testimony before the Committee rather than sit and read a prepared statement to us. We have those statements, which you can give to us.

Again thank you for coming, and we'll try to be as expeditious as we can at having the hearing, making sure everyone has a fair opportunity to express their opinions.

Mr. Speaker, it's nice to see you. Welcome to our Education Committee.

ASSEMBLY SPEAKER JACK COLLINS: Thank you very much, Mr. Chairman, members of the Committee, and particularly Assemblyman Malone, the co-prime sponsor, along with me, on this particular piece of legislation.

First off, Mr. Chairman, again thank you for setting up this hearing. I think it's quite appropriate. I think what we are looking at here, if not in this

bill or a bill that's been introduced in the Senate, in particular, but an issue that has been a long time coming to New Jersey -- a comprehensive school construction plan. The concern that I have, in the broadest sense is, and fully understanding that there are some judicial pressures appropriately brought on this issue, I want to point out that we, as we look at the biggest construction program in the history of this state, that we do it right.

Now, as with most pieces of legislation as it goes through -- or -- and I'm quite comfortable saying this before the Education Committee and, particularly with many, either current or former, teachers in the room--

I often view legislation the same way I view teaching a subject. You really learn it when you teach it. Well, when I see legislation over the 14 years that I've been here, it gets better as it's put into effect. We do not know all of the nuances of any particular issue, let alone what exactly will happen in a particular piece of legislation. But, having given us that little bit of coverage for whatever comes out of this effort in both houses and through the Governor's Office, I surely don't want to allow it to put us in a position where you can say, "Well, let's pass this thing. Everybody's waiting for it," and have it done poorly.

Now, only time will be the judge of that. And that's why I'm excited that you're having the hearing. The piece of legislation that I am sponsoring is one that is very, very similar, in most aspects, to one that's already been introduced into the Senate. And though they had a hearing on it and then had anticipated more committee meetings already passed, they have not held them. Some -- I am not one of them -- have said, "Well, the Senate's slowing it down because the Assembly version is so radical." I smile. The Assembly version is just almost on point with the Senate version. No, I would project that

the Senate has slowed down because of what happened in their first hearing. People were there with the old -- and we're all familiar with it -- "I support the concept." We all know what happens next.

But here is what I want. If every organization or demographic representative put forward, as they should, what they thought would make this bill better, coincidentally, for their constituents -- that's the system. I accept it. I believe it makes this the greatest country, and excuse me, this the greatest state in the greatest country. And that's what we're going to be doing through this process and, very honestly, I believe, in the introduction of this legislation.

Now, you are familiar, in the broadest sense I'm sure, with what we're about here. And some are more aware of the particulars. Many behind me will come to this microphone with much more expertise than I as they look at what this holds in the future, but they too will not know until it's into effect. And I'd like to point out why I think this piece of legislation is so important.

Now, I am one who may be somewhat different, after 30 years in education. I understand we need good facilities, but what we really need, and what I think we have-- We have, through the efforts of many who sit behind me, through you and the rest of us in the Legislature, through the Governor, and yes, through the Supreme Court of this state-- We are stronger in producing an educational program than we've ever been. It's been working, and we have it.

But now we're going to another aspect, school construction, and in my thoughts, we're changing. And that's one part that's got a lot of attention. How much should we spend in all school districts, but particularly in some school districts?

I'd like to come back to that in a moment or two, because I'd like to first focus on what seems to be a great deal of agreement. One, we want to have a building program. We want to have it that the State will be overseeing it and having some controls over the amount of money that is spent.

One of the biggest fears I have -- by far the biggest fear -- it's gotten little attention because many who like this concept are saying, "Well, it's for the kids." And others aren't real sure where it's going to go. The question has been asked. We've been somewhat knocked a little because we don't have the answer, but it's how big is this going to be? I don't know, but I'm scared because we have fiscal limitations on what we can do, even for the kids.

I don't know where it's going, and I'm the sponsor of the bill. But I don't know. You know why? Because the way we've set this up, and what I firmly believe in, is that every child in every community who goes to a public institution should have the opportunity to be the benefits of this school construction bill. And both pieces of legislation, but I'll just talk about ours, gives every community an opportunity to be part of this construction plan -- some that have never received a penny ever from this State. I think that's good. The Governor's position, since she's been the Governor, is one family, many faces. Well, this is a chance that every community in this state can be a part of something so important as to build schools.

The question is, how big a part should they be, and what should be the constraints? See, my fear is this. I'm a former school board member. I have great respect for school board members. They care, and so do teachers, and so do citizens, and yes, so do we, proudly I would say, as legislators.

But what is it? Let's look at this room. You know, the lighting in here could be a little brighter. I think the kids could learn better if there was better lighting in this room. Let's go and put better lighting in. Who stops them? There's nothing in this bill that stops it, other than the oversight of the Commissioner, who I have great respect for, and even projecting out to future commissioners, maybe 100 years from now when Commissioner Hesper steps down, that they, too, will have the right and the power to say no. But there is nothing in the legislation thus far, even as I've introduced it with Assemblyman Malone, that gives some parameters as to what his decision making should be. I think as we go through not just the hearing today, but the full Committee meetings to come soon, that we give the Commissioner some guidance from the Legislature of to how much-- We should be able to say, "Yeah, it's for the kids," because we all care.

But, should it be better lighting, better this, better that? We focus in early on schools that are falling apart, and rightfully so, but the legislation, thus far -- and again I'm sort of castigating myself -- does not put some controls or whatever it be. I read now-- I remember when it started, at least reading the media -- and we all have great faith in the media. It started at \$5 billion, and then it was more than \$7 billion just on requests from the *Abbotts*, and then it was going to be a \$7 billion to \$10 billion project. Now I read, continually, \$11.5 billion. It could be \$20 billion. That will be in the paper tomorrow. "Collins said \$20 billion program." Let me really go for it. It could be \$50 billion.

TREASURER ROLAND M. MACHOLD: I resign.

SPEAKER COLLINS: The Treasurer just resigned. (laughter)

I think we have to look-- Everybody's focusing in on, "Well, we have community development. Will there be so much for the *Abbotts* or so little for the *Abbotts*? What about these, one of my favorite terms, "wealthy school districts?" There's an objective term, wealthy, whatever that means. I know one thing, I've been able to get by without representing any wealthy communities because the wealthy that I'm told about aren't in my district. I don't know what that term means. So I think we have to be very concerned. I hope that, as the detailed testimony comes forward, that we'll start to piece together where this will be.

Another question that's come up so far, and we've tried to deal with it in our bill, is where will the money come from? Well, we do know, and I appreciate this personally since I was the mover of increasing the tobacco tax to have some money for school construction. We'll have, roughly, \$50 million from that, \$62 million from the Big Game Lotto, and then a few million more here, there, and other places, and the rest from general revenue is where it started. We have put into this legislation that we can use up to \$100 million out of the tobacco settlement money if or when we get it. That has lead to people saying, "Shouldn't it go to health?" Well, health is, again, a relative term, like wealthy. What about the health of the children in classrooms in schools that are free of the fear of health problems? What about the development of their minds so they're mentally healthy and on and on and on? Health is a word that many of us can spin any way we want. But at least we have here a concept -- one I believe in -- that will pay for some of this. But in the so-called out-years, there are real questions. I think we have to deal with it.

It's easy. We know it. It's easy to say, "We're going to build schools everywhere. Let's do it. And sometime in the future, someone pay for it."

I'm not saying, and I don't support, knowing every single dollar and where it will come from. They are challenges that we have to deal with as a society as we move on. But I do think that we have to put something in this bill, and I believe it should be the tobacco settlement moneys, to help ease this general revenue burden, particularly as every day more and more issues are brought forward that we need money to help our society.

Particular to the bill-- Our bill enables those communities that I feel have been overlooked through the years to be eligible for a loan pool. I think that that loan pool should be front-loaded. Schools have waited for years. And that's why this legislation makes \$400 million the first year, while the Senate version, that they will again discuss on January 6, is somewhat less. I think that what we should be doing is putting the money up front, with everyone realizing it is limited, and that the Commissioner, hopefully with our guidance, will make those determinations so that it doesn't become a \$20 billion or \$50 billion program.

We've expanded the number of individuals on the Building Authority and put a requirement that they have some educational experience, whether it's building schools or being part of educational organizations, school boards, etc., so they have an idea of what's going on there. And overall, I think that there will be basic agreement on what we're trying to do here. This is good legislation.

What has gotten all the attention, and I understand that, is a position that I feel should be discussed and I strongly believe in, and it has

nothing to do with not caring about kids. It has to do with what we can do for all kids. We've already, I think, pretty much been in agreement that the policies and the programs that are being taught are pretty good and getting better because of the efforts, as I said earlier, of so many individuals and groups.

But now we come and people say, "But when it comes to building schools -- a certain select group" -- a question of determining what that group is, to my mind, has never been answered and something that the Legislature, according to my readings of the Supreme Court, has the right to do -- and I would suggest to you and others listening, we will do, if not now, soon, as to what schools should be in a special group.

But they say, "Well, all of the schools in that town should be built -- the special needs districts." And people quickly point out-- They say, "Well, Justice Handler said that in his opinion." I read it. I read the words. I don't know exactly what he was meaning there, in the broader sense, but I can read those words. But what about the words that started that paragraph where Justice Handler says the State has agreed -- the State has agreed that they will fund 100 percent in special districts. Well, my question is, who is the State? I didn't agree. Granted, I'm only an Assemblyman. I don't know if you agree. Heck, no one asked us.

The way I see the Constitution working is the State is all of us, the three branches and those that we represent. In fact, if I may, the State's proposal is based on the premise that the State will fund 100 percent of approved costs. In making its rulings, the Court believed it was simply blending its imprimatur to a plan to which the State had agreed. Since the Court was approving the State's plan, the Court felt it was ordering compliance with a

funding scheme with which the State was willing to comply. No one asked the Legislature.

Now, I understand the pressures that the Executive branch was under, and I sympathize with the Judicial branch, which has gone down this road and doesn't know how to get out of it. There is one hope, the Legislature. We can give every child in this state an opportunity to get a full, thorough, and efficient education not based on dollars.

You spend all this money, it must be the right thing. Says who? I haven't seen any educational reports that say what is being spent, in districts that spend the most, is what we all should be doing. The Court has said it. And we, and me personally, has maybe been a little reluctant to deal with it. I think the time has come. We have opportunities now. We are educating children, everywhere, better than we have ever done. And then all of the sudden to say -- as what we're saying here -- Camden receives 86 percent of its aid, roughly, from the State. That's what we're doing, educating children at that level. And then we're going to build new schools. We'll build 100 percent.

Why? Why not do 100 percent of the educational program? How do we say I'm not worried about those who have already spoken? How do we, as legislators, say, "Okay, you're in a community that gets 37 percent of its money from the State?" We assume that's a determination based on ability to raise money. It's a special needs district, though. We will pay to build every brick, every piece of mortar that goes into your schools.

Oh you, you represent a town that gets 75 percent of its aid from the State of New Jersey. I would assume, I could be wrong, that's a poorer community. But they don't have this magic determination of special needs. So

guess what? You taxpayers, who are poorer, you get to pay 25 percent for your school. And it's town after town.

Members of the media said, "You mean there are towns that are poorer than the special needs districtS?" We all know there are. This is illogical. It is wrong. It has nothing to do with taking away. It has to do with giving. But already there were murmurs when I said it could be billions of dollars more. Say if we had to make decisions -- what I would call fair decisions. We have an urban-- We have a special needs district that doesn't receive any money from the State -- no money because over the years, through the great work of their local leaders -- and very honestly supported -- the county level and the State level -- they don't get any State aid for education, the real core of a child becoming better for the future.

Guess what we're going to do? We're going to pay for the whole school. Yet I'll take you to districts -- not in my town but all over this state -- that don't have the money. We're going to make them pay. This is logical because the Court said it? I don't think so. And that's why I've sponsored the bill the way it is.

And I'll close with this. A lot of attention has been paid to that aspect. I understand. People said, "Why would Collins do that?" And then the fertile minds of imagination-filled thoughts go running off. I'll tell you why I did it, because *Abbott v. Burke* is wrongly decided from the beginning. This just perpetuates that wrongness. I believe it's wrong. I have the opportunity, as a member of this Legislature, as do every one of you, to put forth an idea that says, "Listen. It's time we really started looking at the bigger picture." And I

will say we may have been part of the problem, but I think we can start moving out of it.

We can treat children, no matter where they live. You've heard it. No matter where they live, we can treat them equally, not just those that brought a lawsuit or was determined, in a system put forward that, yet, to my understanding, does not have regulations to it or whatever else. We have a judicial decision that says that because of the lack of bonding capability of these special needs districts, we have to help them, when the 21 special needs districts that have bonding ratings all have solid bonding ratings. The Court just accepted the arguments. Check the record.

This isn't against anyone. It's for all. And that's why I believe this piece of legislation, when we pass it in our house, after we analyze it and look at the future with optimism, will make New Jersey a better state for all children.

And I thank you, Mr. Chairman, for the opportunity to come before you today.

ASSEMBLYMAN WOLFE: Thank you, Mr. Speaker.

SPEAKER COLLINS: I'll respond to any questions.

ASSEMBLYMAN WOLFE: Here comes a question.

ASSEMBLYMAN GARCIA: Sure.

Thank you very much, Mr. Chairman.

And, Mr. Speaker, thank you very much for a really very eloquent presentation and all of your hard work on this issue.

I know that you fought for that cigarette tax that partially funds this money. I support you in your efforts to put part of the tobacco settlement money into this construction portion of it.

Let me just say this, Mr. Speaker, though. You know, the wrong person argued the case for the State in *Abbott*. Peter Verniero argued that case, and he lost, Mr. Speaker.

Today you made a very eloquent presentation, and your arguments may be taken by some as very well founded, very strong, and very defensible. But unfortunately, not from where I stand, maybe from where some others stand, that the case has already been decided.

You know, you pointed to just one provision in that decision, but that decision has been coming since 1975, first with *Robinson v. Cahill*, then, in the 1980s, when it began with *Abbott v. Burke*, finalizing in *Abbott V*. And in that decision, which was many pages, not just the provision that you read, with many different components, with many different, I guess, reasonings as to why this decision should come out, it said, very clearly, there should be 100 percent funding for the *Abbott* districts. The only thing that worries me, and I share, I really do share your efforts to get this construction done-- We both recognize, as well as all the other members of the Legislature, that we need to have these school facilities approved in all districts, not just the *Abbott* districts. Unfortunately, the way this bill is before us today, it flies directly in the face of the decision and will only lead, if it's passed as it is presented today -- will only lead to further court challenges, which will only create one thing, delay. And that is the only thing.

Coming from one of those-- I represent four of those districts that you were talking about before -- special needs districts -- and many other districts that are nonspecial districts that are also being helped as a result of this bill. We cannot afford the delay. And I am one to make sure that this bill has

to be done right -- has to have the safeguards that are in this bill. It does have the Educational Facilities Authority, the Building Authority. Every single penny should be directed. It should be accounted for. And that is fine. We have no problem making sure the moneys are allocated directly to where they belong, in the construction of school buildings now waits on roofs.

The truth is, Mr. Speaker, that as presented, we're always going to go into a protracted battle back into the courts. I think, since 1975, we've been there in the courts. Let's move forward. And let's move forward to the building.

Secondly, I think what's important here, as well, is if you add up the cigarette tax, the Big Game Lottery, and even the \$100 million tobacco settlement money, which I pledge my support to you on, it's still way short. And I was wondering if, maybe -- you can't account for every dollar -- but maybe can you come up with another \$200 million or \$300 million at this time?

SPEAKER COLLINS: I'm working on that.

ASSEMBLYMAN GARCIA: Okay.

SPEAKER COLLINS: I'll call you when I get it.

ASSEMBLYMAN GARCIA: All right.

ASSEMBLYMAN WOLFE: Any other--

SPEAKER COLLINS: If I may, Mr. Chairman, let me just say -- and fully understand and I have listened to others, both privately and publicly, who expressed the same positions as you, Assemblyman Garcia, fully understand that and fully understand that we have children waiting to go into classrooms where they can learn. I understand all that.

All I'll say is this. I do not accept this carte blanche statement by many, including what you just said, that this bill is unconstitutional. Of course, it's easy to say it's unconstitutional. But, and I've read the words of Justice Handler in *Abbott V*, but still, how much impact did the fact that the State said we will do it have on that? And secondarily, from 1975 on -- and really the Chief Justice who, I think, we most pay homage, if that's the right word, or respect to Chief Justice Wilentz through these *Abbott* decisions, says one thing continually, and they say it in *Abbott V*, the Legislature is the appropriator of the moneys and so on.

Now, I understand what he's saying. If you don't appropriate, at least in your interpretation, 100 percent for the special needs districts, then it's in violation of the Constitution. That's what many would interpret. I don't know if the Court would. And if it were to go back to Court, that would be in the Court's hands, with regard to how quickly they want to deal with it.

But I hear your argument, and I've heard it from many people. And it may be an argument that carries the day. I don't know.

ASSEMBLYMAN GARCIA: Mr. Chairman, if I may, just one last point.

What's important here is to remember that the State did not go to court, in *Abbott v. Burke*, saying to the Court that we will fund all these construction programs. *Abbott v. Burke* was not filed by the State of New Jersey to put more money into the *Abbott* districts. Rather, it was filed on behalf of the children of those districts so that the Court can rule that the money would have to follow the child. And it was the State's responsibility, not the local district's responsibility, to make sure that the school facilities were built. That's a pivotal

point in *Abbott*. And I think what we're doing is really saying that the State went in there and agreed to this. Really, it was the Court's imposition upon the State, after careful review of many years of inadequacies in the local districts, out of a recognition that those local districts-- And maybe you can come up with one example. And maybe that example won't have to build any schools anyway.

But the real truth here is that those *Abbott* districts do not have the financial wherewithal to build these local school buildings. But, irrespective of that, the Court has ruled, and it's the State's responsibility to meet the needs of these children in terms of the educational facilities. And it wasn't the State going there, agreeing with the Court, but rather the Court--

After careful review from '75 with *Robinson v. Cahill*, from 1980 with *Abbott v. Burke*, ending up in *Abbott V*, that that's how the Court ruled. And I just do not want to -- because I share your commitment to making sure that these children have adequate facilities. And I just do not want it delayed.

Thank you, Mr. Speaker.

ASSEMBLYMAN WOLFE: Thank you, Assemblyman Garcia.

Several Committee members have comments.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Thank you very much, Mr. Speaker.
It's always a pleasure.

I'm just trying to refresh myself. This is my first term on the Education Committee. And having not dealt with this -- having heard from sidelines-- What we're basically saying in this bill is that regardless of what the formula is -- the percentage formula funding to the *Abbott* districts, your bill will

propose to give them 90 percent of the construction costs, even though, as you said, Camden might be 83 percent, other cities might be even less, 70 percent or what have you.

Obviously, these formulas, were set up by previous decisions. Is that correct?

SPEAKER COLLINS: Well -- and the Commissioner will be coming up after me-- The Department of Education, through their factor grading, has made determinations as to where various schools fall and the amount of moneys available for the traditional debt service, etc.

Let me just say, if I -- though -- since I have the microphone, Assemblyman, the 90 percent figure is as arbitrary as the 100 percent arbitrary figure that the Court set.

ASSEMBLYMAN ROONEY: That was my next question.

SPEAKER COLLINS: But, you know, somewhere through this process -- I think there will be a political component to it. And 90 percent is a number that, literally, will make moneys available for other districts. They would be saved instead of putting it all into the *Abbotts*, or saving it for other State projects that we're looking at all the time. And it is my contention, based on bonding ability and the system that the Department has set up to fund educational programs, that the *Abbotts* could afford this.

I don't have a problem with anyone wanting to say, "Well, if someone else will pay, why should we pay?" I'm not totally living in a cave.

ASSEMBLYMAN ROONEY: Mr. Speaker, you went exactly where I was going. It was an arbitrary number -- 90 percent. Why not start off with the basic numbers that we're funding at today, such as 83 percent in Camden

or wherever it may be, and 50 percent, or whatever the numbers are? Those are established numbers. Those are numbers that they're used to having.

SPEAKER COLLINS: Well let me tell you two reasons.

One, again, I already said 90 percent has led to some people's concerns. And there is, in giving full respect to Assemblyman Garcia and many others, there is concern that 90 percent may be unconstitutional. But, I must say this, the debt service numbers that have been used in the past-- And we, as the Legislature, the last year, finally, fully funded it 100 percent -- have not fully funded the debt commitment that we had. But even more so, even if we were, obviously -- not just in special needs districts, but many districts throughout the state-- They have decided they don't have the wherewithal in the community to put that extra amount in, Assemblyman Rooney.

So I believe the State should step in. And we will. I mean, there's no question we're going to have a bill. And hopefully, it's going to be sooner rather than later. And that was my thought process in this, and I think Assemblyman Malone agrees with me.

ASSEMBLYMAN ROONEY: Thank you, Mr. Speaker.

ASSEMBLYMAN WOLFE: Assemblyman Stanley.

ASSEMBLYMAN STANLEY: Thank you, Mr. Chairman.

Mr. Speaker, thank you for the work that you've done on this issue -- work that you've done on this bill.

I think I heard something that I've been waiting to hear. And hopefully I didn't miss you.

One of the issues -- of course, the issue that Assemblyman Garcia raised, concerning the 10 percent that the *Abbott* districts will be required to fund

themselves, it causes a tremendous hardship on some of those districts. I can't speak for all of them. I can just speak for the ones that I deal with directly -- Irvington, of course -- Newark.

One of the problems in those districts and in some of those districts -- East Orange -- is that you currently have people who have the highest equalized tax rates in the State of New Jersey. One of the major problems with those -- another -- a compounding problem is the fact that you have some of the lowest per capita incomes in the state in several of those districts.

And then you add to that the fact that you have the greatest need for facilities in some of those districts because some are very old. Most of them are the-- For instance -- Elizabeth -- a very old school district, where you haven't had a lot of building over the last several years because of problems with the tax rate and per capita income, etc.

You know, that-- Is there any-- Well, let me just say this. Ten percent is too much. What you're going to find is that because the needs are so great that the dollars that would have to be generated within a local unit would be so insurmountable for the people there that we would have a negative affect on those districts. So that's a major issue for myself.

Now, I know, as you said, there may be one or two districts that may be able to work it out, but there are other districts that can't. And I'm very, very concerned about them.

SPEAKER COLLINS: And I can understand that. That's why the legislative process, I believe so greatly in -- legitimate concerns.

Let's take, for example, Irvington. Now, under the parity ratings, with regard to funding, that 61 percent of the money for Irvington comes from

the State. Now, I'm no expert on that number or what it means beyond the fact that if the Department says this is how we will fund-- Again, think of what we are talking about here -- educational program. The real thing-- Maybe it's in a dilapidated school. This is what we're teaching the kids with, 61 percent.

Now, how they come up with that-- Maybe the Commissioner can respond to that when he comes up. But there are communities -- let's say, for example, Woodland, small community just outside of Camden, they're at 75 percent; or Chesilhurst, a small community, predominately minority community in this particular case, 64 percent; or down in my district, Lawrence Township, 70 percent -- getting from the State.

They're in difficult situations, too, even more so. But the point where I would like to agree, and I think it's something we could look at here -- absolutely right because the population is much greater in a Newark or a Camden or a Bridgeton, which I represent. I represent a special needs district. Maybe the idea would be, "Sure, in Chesilhurst, they might only need one school." In Irvington or Newark you might 10 schools, we'll say. That's a lot more money. Maybe there could be some kind of proportion of this idea. Or, how about we do this? There are special needs districts that--

Obviously, anytime you put a group of anything together-- You have 30 of them. Are they all equal? They're equal in the eyes of the Court because they're all in the Court decision. And then we, in the Legislature, have put forth, back in 1991, this whole concept of well here's the schools. And we haven't really evaluated them since. I think we should. I will be making that move in the next term. But all 30 aren't the same. They're not. So maybe we can have breakdowns in there.

But that's the legislative process. To totally just throw it out and say, "Let's do it the easy way because the Court said." If that's what the Court really said. But anyway, let's just give everybody all that. I don't know that that's good. I don't know that's best for the State of New Jersey, and I know it's not the best for little kids who are in dilapidated schools that no one has even acknowledged exists because they're not special needs, and they're not wealthy.

ASSEMBLYMAN WOLFE: Assemblyman Malone.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

I just have a few comments.

Mr. Speaker, I appreciate having the opportunity to be on this bill with you. I think this is probably going to be one of the defining moments of my career.

SPEAKER COLLINS: I'm afraid you might be right. (laughter)

ASSEMBLYMAN MALONE: I guess, in having the opportunity-- I serve in a district that has rural, suburban, and, in some cases, some urban areas in Lakewood. What I'm starting to feel is a very large degree of unrest amongst people in New Jersey. We're looking, basically, at trying to solve the problem for 25 percent of the school children in the state. And basically, if certain people had it their way, they would say, "To hell with the rest of the children and the people of the State of New Jersey."

I find that appalling, disgusting. I find it discriminatory. I find people-- If we do not come up with a formula that is perceived by the public to be fair-- I think the pressure on us to change the constitution, to take this

totally out of the hands of the Court. We don't have a Court of justice or law. It's a court of social engineering. They have done whatever they want to do, and I thought justice was supposed to be blind. Well, they've lifted up that blindfold and deliberately tinkered with the political process. They have no conscience, in my opinion. They have no conscience for the poor that live in the 75 percent of the rest of the State of New Jersey.

And we can sit here-- And there's a lot of interest groups sitting out here today whose livelihood depends on maintaining these lawsuits and playing these petty games. Their incomes, their whole life has been wrapped up in this. And I find it to be very disgusting.

We have a serious decision to make. We have a lot of socioeconomic, economic problems to answer. And I think if we're going to be spending \$10 billion or \$15 billion or whatever the number ends up being, we better have some real defined answers for the general public of the State of New Jersey, or we're going to have a revolt.

I mean, there are kids in my district that go to school in trailers. There are a lot of poor people. There are a lot of people that are truly angry. They feel that their children have been disadvantaged and have been spit on, basically, by the State of New Jersey, the Department of Education, Education Law Center. And they have a deep sense of resentment.

If I could do one thing as part of being involved with this piece of legislation-- Don't be surprised if I ask some very sharp, critical questions of people who come up to testify. Don't be personally offended. I think it's about time that the public needs some straightforward kind of answers.

I don't know how we really, in the long run-- We can talk about how we're going to fund this. We can come up with suppositions. We can come up with this, that, and the other thing. But believe me, with all that we have on our plate for the next two years, with all of the different bond issues that have to go forward, and to look at \$10 billion and how we're going to divvy that up-- Believe me, I hope we don't kill the goose that laid the golden egg. And I hope the Education Law Center isn't feasting at the Christmas table this year and the eggs don't start coming.

I think that some of the kinds of things that I've heard from the general public about how they feel about the way we've spent their money -- and the results have not been forthcoming.

I taught for years in New Brunswick. I look at-- It was never a question of money. What are we going to do about the social ills that surround the school? We could build a Camelot in every special needs district, but what are we going to do about the surrounding areas? What has been done by the local officials to make sure that these areas have been improved? It's nice to send a child to a nice, shiny school. Then he has to run home -- whether he's going to be shot or knifed as he leaves that nice, new, shiny school building.

My wife teaches. She's taught for 27 years in an inner-city high school in Philadelphia. So I don't want to have anybody tell me I don't understand or I don't have feelings.

You know, there was a shooting outside of a high school in Philadelphia a couple weeks ago. I didn't know until I got home whether my wife was involved in that or what the story was.

So I want to hear the truth. I want to know some answers as we go through this process. I just want to see, really, where people's real feelings are, if it's personal gain, greed. I hear about wanting to have, basically, this humongous barrel of money. And then people won't abuse community projects. It's like there's one spigot on one side of the bucket -- or the barrel for education, and the other spigot on the back that's going to be used, in some of these urban areas and some of these other districts, for real pork barrel projects.

Every cent of this money, whatever the amount turns out to be, better be spent appropriately on education, school construction, to better the educational process of this state. If people think they're going to dip into this for petty projects and for patronage and for whatever else their purposes are, I may be uncontrollable because I just don't want to see that happen because the public trust-- Believe me, you just don't go out like this, on this amount of money. The people are going to go crazy on us.

So I would just ask-- If I offend somebody when they come up, I apologize ahead of time. But I want some straight answers. And I may ask questions like, what is your interest, how much money do you make in this business and these lawsuits. So don't be offended if I ask those kinds of questions because 90 percent of the people who are going to come up here and beg, borrow, try to finagle, wiggle, have a personal interest. Their livelihood depends on what dollars they bring back to the representative groups. There's going to be a heck of a lot of lobbyists that are lobbying for everything in the world. Be prepared to answer those kinds of questions because I'm going to ask them. If you don't want to answer them in front of the press and everybody, that's fine, don't answer them. But I think the public has the right to know

each and every person that's coming up here, what their interest is, and what they're going to make out of this.

So Mr. Chairman, Mr. Speaker, thank you very much. Let's get on with the show.

SPEAKER COLLINS: Mr. Chairman, before Assemblyman Malone starts asking me any of those questions, I really request to take leave. And I'd like to thank you and all of the Committee members for the opportunity to be before you today. And I look forward to what results you have through this Committee in the upcoming days.

Thank you all very, very much.

ASSEMBLYMAN WOLFE: Mr. Speaker, before you go to take leave, I want to thank you for coming. I just want to say that this is, perhaps, a rather unusual hearing for us to hold because I try to have a very open and free discussion among our members. I really don't want to "politicize" this issue. We're not here to debate the *Abbott v. Burke* decision. I feel, really, that's the way in which our hearing is going.

As Chairman, I will say right now, if the future discussion and questioning goes in that direction, I will really have to call somebody out of order. This is about school construction in the entire State of New Jersey.

Again, I have to really reiterate some of the things that Assemblyman Malone said. I have worked on this legislation for over a year with other members of the Legislature, Republicans and Democrats. And I know there are some very interested groups that are concerned about this. But I think--

The question is-- We're now at the twelfth hour. We have to make some real decisions. And what we're trying to do is something that is going to benefit all of the children of the state. And I think it's very incumbent on all of us that we listen to what these groups have to say because most of these groups have been talking to each other for over a year. I think they know each other's positions.

So we're really here today to talk about school construction, not *Abbott v. Burke*. And if I offend some people by saying that, then again, I don't really apologize, but I try to be very fair in our Committee hearings. But this is not a hearing on *Abbott v. Burke*.

Thank you, Mr. Chairman. (*sic*)

SPEAKER COLLINS: Thank you.

ASSEMBLYMAN WOLFE: I would just like to go through the procedure. We have some people who have indicated their position on the legislation. Some have taken no position. So what I tried to do was balance it. We'll have some people speaking in favor of the legislation and some people opposed to it.

ASSEMBLYMAN GARCIA: Mr. Chairman.

ASSEMBLYMAN WOLFE: And the first person I'm going to call on -- two people really -- Commissioner Hesper, of Education, and the new Treasurer, Treasurer Machold.

ASSEMBLYMAN GARCIA: Mr. Chairman, even before-- I don't want to interrupt the Commissioner, but I really think that some of the things that have been presented here today can just be left said without being unanswered.

First of all, I know there are many groups out there--

ASSEMBLYMAN WOLFE: Mr. Garcia, you're out of order. We're going to proceed with the hearing.

Mr. Commissioner.

COMMISSIONER DAVID HESPE: Good morning, Mr. Chairman and members of the Assembly Education Committee. It's good to see you all again, especially on an issue as important as the one we have before us today. It's important in a whole host of reasons, but I'm glad Chairman Wolfe reiterated that it's most important to the 1.3 million school children in New Jersey and to each and every one of them. And, certainly, I reiterate that we need to look to the needs of each one of those 1.3 million school children in New Jersey.

I certainly thank the leadership of the Assembly, and Speaker Collins and Assemblyman Malone, in moving this piece of legislation forward. I know you're struggling with a most difficult issue today, how best to address the serious school building needs in all districts, and that's urban, suburban, and rural, in a fair manner, in an equitable manner, in a manner that ensures that all needs in all these districts are taken account of.

Certainly, I visited districts with facilities needs many times over the past nine months, and I've seen needs in urban districts, certainly, but I've also seen needs in suburban districts, our wealthier districts, so to speak, and also in our rural districts. They're out there. There's no separate classification where these are, where our needs are, or these are where are needs are. You'll find needs everywhere in the State of New Jersey.

Indeed, this has been an issue this administration has been working on and struggling with for the past two years. Coming off of *Abbott IV* in the spring of 1997, we at the Department, the Commissioner of Education was ordered, by the Supreme Court, to conduct a study of how best to fund urban education improvements in the 28 *Abbott* districts at that time. The Commissioner responded, developed a plan, presented it to Judge King, the remand judge. Judge King issued an order. I issued a recommendation, I think is a better way to put it -- to the Supreme Court. Arguments were made before the Supreme Court, and the Supreme Court issued its order in *Abbott V* as to how we should proceed with addressing facilities needs in the urban districts.

From that point, a lot of the conversation has been about addressing the needs not just of the *Abbott* districts, but of all districts in the state, recognizing that there are reasons that facilities in various school districts have not been constructed during the recent past, not all having to do with tax rates or things like that, but more fundamental issues. And we need to address all those issues.

And that's what we've tried to do here. How best to be fair. How best to be equitable. I certainly believe the best way to accomplish that is to establish standards that will provide for the necessary spaces in these schools for a safe and healthy school building, spaces that are conducive to learning, and then to do something else, and that's to establish a construction and financing mechanism which ensures efficiency. And I think these provisions allow the State to use its resources to address building needs in all those school districts, not just urban, not just *Abbott*, not just suburban, not just rural, but in all the

districts. I think that's the way to accomplish that goal, being fair and equitable.

I do not think it is necessary to prorate funds in any particular district, especially not in the urban districts, which we have an obligation, under the Supreme Court order, and we cannot believe that the change in the millennium erases all history on this urban education reform -- history of the last 25 years.

There's an obligation, under the Court order, and certainly others behind me will speak directly to that issue, of what the constitutional parameters of *Abbott* are, and certainly those are areas, as Speaker Collins indicated, that many will have some concerns. And I think those are issues which need to be debated, need to be debated, but the history of this is clear in my mind, and we should also keep in mind whether or not this is the most appropriate vehicle to be discussing -- this issue.

Facilities are driven by programs. What educational programs do we want to put in place in these *Abbott* districts, because student performance is the issue? We're not talking about building schools for schools' sake. We're talking about how to build schools to aid our children in leading successful lives. And I think, if you look at student performance indicators in the *Abbott* districts, you will see that these districts need our help, they need our assistance. And we think we in the administration crafted a proposal to address that issue head-on.

I certainly urge the Committee to look at that issue seriously today, and I know you are. I've already heard many comments that indicate to me that you will be looking at that issue very seriously this morning.

Let me just address one last issue because I know there are many people behind me who wish to speak on this issue as well, and certainly the Treasurer has some thoughts as well.

But in terms of the decision-making process, which Speaker Collins alluded to, we think we accomplished that by setting specific standards in this bill for necessary spaces. However, we have to be cognizant of the fact that, under our constitution, the Commissioner does have the obligation to ensure that, when necessary, schools are built. And that goes back to the decisions of the courts in Upper Freehold cases. Certainly, Assemblyman Malone is well aware of that case where the Commissioner has that obligation.

And this bill tries to reflect that underlying constitutional obligation that, where necessary, we need to have, perhaps, additional spaces in some buildings. But we try to establish standards in order to provide that -- those criteria, which I think the Speaker was referring to -- that we just don't want to have unfettered discretion in any public official. We do want standards, and I think that's what we put in the bill. But we do have to be cognizant of that line of cases which says that, when necessary, the Commissioner needs to go beyond that point, not least of which was the *Abbott* decision, referring to the 30 *Abbott* districts as well.

So I just wanted to address that issue, that I think we did accomplish that in this bill by defining, quite clearly, what our spaces, which we believe are necessary, with everything else being discretionary spaces to be funded locally, except where a district can make a demonstration that that additional space is needed for a thorough and efficient education.

With that, I just want to close with that I do think we do need to move ahead on this legislation. The needs are great. Our children are seeing what we are doing here. They see what we think of them when they go to school -- when we send them to a school with classrooms that leak and with paint chipping on the walls. They get a message. And I hope that when we pass this legislation they'll get the message that we care about them, we expect great things about them. And I certainly know that that will be on all of your minds this morning as we work through these issues.

We know they're difficult, we know these are long-standing issues, and we're certainly willing to work through any issue with you as long as it takes to address your concerns. But I do believe the time is to move forward.

With that said, before I turn it over to Roland, I certainly want to introduce Madeleine Mansier, my Chief of Staff, and Mike Azzara, Assistant Commissioner of Finance, who are with me today.

And with your permission, Mr. Chairman, I will turn it over to the Treasurer.

ASSEMBLYMAN WOLFE: As long as you will remain for some questioning.

COMMISSIONER HESPE: Oh, absolutely.

ASSEMBLYMAN WOLFE: Very good.

COMMISSIONER HESPE: I will be here as long as it takes.

ASSEMBLYMAN WOLFE: Mr. Machold, welcome.

TREASURER MACHOLD: I would like to start by introducing my colleagues, Dave Mortimer and Mark Lohbauer, who are with the Treasury Department, and, of course, myself, Roland Machold, the new State Treasurer.

I'm going to make just a few remarks here, and limit my remarks to the financing issues that are associated with the proposals. We have been reviewing many school financing proposals, and there are a great many uncertainties that remain. At last count, I think we were over 30 different projections and there were enormous variances between another, depending upon the underlying assumptions, and those assumptions, of course, are subject to a continuing debate, as we've already seen.

We have previously provided, to the Legislature, four computer schedules showing the effects of financing of between \$4 billion and \$7 billion of school -- financing for the *Abbott* districts alone. And these are just for the purpose of illustration. But I use those as a benchmark because that material has been provided to the Legislature before.

Dave has already commented on the appropriateness of this range, but I will take a middle figure of \$5 billion, just for purposes of discussion and comparison.

Under the schedule -- \$5 billion schedule that was previously provided to you, we assume that the \$800 million revolving loan fund and the \$200 million cap per year and the total of \$9.6 billion of total school financing, that includes the non-*Abbotts as well*-- The State's share of the \$9.6 billion was projected at \$7.5 billion.

Now, by way of allocating where that would go, we had, out of the \$9.6 billion, about \$70 million on a pay as you go, but only at the year 2000. There was \$5.7 billion of State bonds, \$2.1 billion of local bonds, \$.8, obviously in the billion, in the revolving loan fund, and \$.9 billion, which was

the reinvestment of the revolving loan fund as the payments were made back from the towns.

Now, the prospective debt service under this set of assumptions started out at about \$44 million in the year 2000 and ramped up to a figure of \$597 million in the year 2010. One of the questions, of course, that was most asked was, how are we going to pay for that. The payments that were listed in that discussion piece were \$50 million of tobacco dedication, and Lottery -- \$62 million. This is in the current budget, of course. And then there was a small item of about \$5 million of the income from the trustees for the Free Public Schools Fund, which was established in 1946 by the State Constitution. And then the General Fund payments, starting in the year 2000 -- Fiscal Year 2000, would have been \$128 million, up to \$240 million in 2001, which is our perspective budget year, and then to a high figure of \$478 million in the year 2010.

Now, we have also taken a look, under the same circumstances, at the Assembly bill. Our original look at it would show, again, that we have \$5 billion for the *Abbotts*. And now we have a total of, again, \$9.5 billion total. The assumptions here is that there's 90 percent support for the *Abbotts* and that the revolving fund is \$1.05 billion, and that there is the 5 percent CEIFA add-on.

Now, this would be financed as follows. It would be pay as you go -- \$.2 billion, and that's spread over three years, several hundred million dollars from 2000 and 2002 budgets. State bonds would be \$5.2 billion; the revolving loan, \$1.1 billion or \$1.05 billion, as it was noted; the loan reinvestment, \$.5 billion; and then local bonds would be \$2.5 billion, for a total of \$9.5 billion.

The prospective debt service, under this particular set of assumptions, starts out at \$49 million in the year 2000, and that ramps up to a high of \$563 million in the year 2010. So there are some differences between the sets of assumptions.

Now, here the payments would be provided by the tobacco settlement of \$100 million, the tobacco dedication of \$50 million, the Lottery would be -- it moves upwards here from \$42 million to \$262 million. And again you have the \$5 million from the Trustees Fund, and then the General Fund payments would be ranged between \$31 million and \$147 million, for a total of \$248 million up to \$563 million, which was the top number I quoted before.

I would just say now, by way of concluding, that we have done dozens of projections. There is a wide variation of results coming from these projections. We do need consensus on the variables. We are still, as an administration, in favor of a \$400 million revolving loan fund with a \$200 million cap.

We are concerned, very much, with the cost drivers that are behind this bill, and that group, again, returns the issues to the definition of the scopes, decides the loan fund and the degree of aid to the *Abbotts* and the non-*Abbotts*. So we stand by, ready to discuss all of those variations as they are discussed more boldly in the Legislature and the public.

So I will conclude at this point, merely having provided to you, I hope, a sense of the scope of the financial issues that remain.

Thank you.

ASSEMBLYMAN WOLFE: Thank you very much.

Assemblyman Malone has a question.

ASSEMBLYMAN MALONE: Treasurer, I guess really in the long run-- What might the total cost of this thing be throughout the life of what we're trying to do?

TREASURER MACHOLD: Well, there are numbers that have been--

ASSEMBLYMAN MALONE: You can't calculate that high, right?
(laughter)

TREASURER MACHOLD: No, no, I worked on the pension funds before. They're higher.

ASSEMBLYMAN MALONE: Okay. Not much, probably, at the long--

TREASURER MACHOLD: A bit higher.

Anyway, the total costs -- the number that was used earlier, and it was an outside number of \$7 billion for the *Abbotts*.

ASSEMBLYMAN MALONE: I don't--

TREASURER MACHOLD: You're talking about the interest costs?

ASSEMBLYMAN MALONE: Everything. The total cost of that money over the length of the time that we're going to have to pay it off, it will be estimated at what?

TREASURER MACHOLD: The total debt service and so forth?

ASSEMBLYMAN MALONE: Correct, everything.

TREASURER MACHOLD: I will--

ASSEMBLYMAN GARCIA: Can we just stipulate it's a lot of money? (laughter)

COMMISSIONER HESPE: Just give us one minute. Just give us 30 seconds.

ASSEMBLYMAN MALONE: But I think the public ought to know this. I mean, we're talking about a lot of money here.

COMMISSIONER HESPE: What we're trying to do is--

ASSEMBLYMAN WOLFE: That's it, a lot of money, he just said it.

COMMISSIONER HESPE: We think the number is still probably \$7 billion to \$10 billion of principal, and now what we're trying to do is just to calculate the debt service. So just give us a second and we'll have the total number for you.

ASSEMBLYMAN MALONE: Sure.

Let me ask you another question, Commissioner.

COMMISSIONER HESPE: Go to the Commissioner, and the Treasurer will get it for you.

ASSEMBLYMAN MALONE: I'll leave the Treasurer alone for a minute.

In many cases, in some of the school construction I have seen around the state, individuals, be they architects, or whomever -- artists in general, like to have signature statements on buildings they built that are very, very costly. I would hope that in any building process that we use, that any kind of signature statements by architects and other kinds of people be either nonexistent or kept to such a minimum that it would be a -- that you wouldn't be able to notice. Is this something that your Department or whomever -- the Authority would be looking very closely at? I know we're talking about possibly

having certain models to emulate and so forth. But I think, in the long run, I think some schools I've seen, which almost give me real pause to see the nonfunctional, decorative aspects to some of these schools that, really, could have been better used, either for classroom space, equipment, or adequate use of facilities.

COMMISSIONER HESPE: Well, definitely, what we've done is establish standards, which divide out what, we think, is classroom-necessary and what do we think is discretionary spaces.

Now, if you're talking about, for example -- don't want to violate any trademark, but Vittetta Group has a window -- a little window scenario. I don't think that adds tremendously to the cost of the project, so I'm not-- I don't know which of those trademarks you're thinking about. I know windows -- we have some of those, but I don't think those really float to additional cost factors.

ASSEMBLYMAN MALONE: I think you would be shocked to find out the costs of some of the doodads that people do, not only in the cost of the installation, but the cost of the maintenance of doing some of the decorative things that are done on buildings.

Now, it's nice. If we want to pay an architect to put his signature on a building, that's nice. He ought to pay for that for advertising purposes. But I think, in the long run, I'll bet you these architectural niceties are probably costing 5 percent to 10 percent of the cost of a project just to have it so that everybody knows who designed what building with the niceties on them. I would really hope that whomever's going to review this keeps those kinds of niceties down to a bare minimum.

COMMISSIONER HESPE: Yeah. Well, I think in terms of-- There are really two questions folded in here. The first one, for us, and then I'll ask Dave Mortimer just to follow up on how the Building Authority would treat that sort of thing, but in terms of our group, I think our standards are very clear. And certainly any architect who's going to spend a lot of money out of those standards on a discretionary space like that, I think, would definitely fall foul of what we're trying to accomplish. But I think the greater question you're trying to get at is what would -- how would the Building Authority treat that sort of request. And for that, I would turn it over to Dave.

I know you were working on the numbers. It was-- Some architectural firms have signature pieces of the plans. And how would the Building Authority react to that?

DAVID MORTIMER: In terms of--

I apologize, I didn't hear quite the first part of that question because I was trying to--

ASSEMBLYMAN MALONE: Well, the question I have is, at times, in seeing some of the construction that has been done on school buildings, in particular, and public buildings, in general, architects like to use some artistic flair and have what they affectionately call their signatures on buildings. And to me, that is a frivolous waste of money. And I would hope that the Authority or whatever entity is going to end up reviewing that does a very scrupulous job of making sure that if moneys are being spent, that they be spent on practical, usable facilities, space, or whatever the case, rather than advertising for an architect or some type of other purpose.

MR. MORTIMER: Well, Assemblyman, through the Chair, we believe that, for those districts that utilize the Authority, the first task that we will undertake, after the Commissioner has approved a project and assigned a preliminary of eligible cost, is to go through the design regiments that will be necessary to make sure that it meets the facilities standards and that it uses acceptable design standards that are necessary to perform the educational function and make recommendations to the Commissioner as to whether or not the design can be done at the cost level, or perhaps through value engineering ways, that the same educational outcomes can be performed at a slightly lower cost.

And, frankly, that's the area in which the Authority will be able to add value to the process and perceivably be able to make sure that every penny that's being spent is going to the functionality of the building. I don't want to create the impression, however, that we're not going to see some buildings that aren't aesthetically pleasing and won't fit in with the community's overall decor, if you will, but we will, obviously, be able to make sure that we're not adding fluff.

ASSEMBLYMAN MALONE: How did you make out?

TREASURER MACHOLD: Well, I can add to it, but I'm not sure that I can give you the full, 20-year brunt on it because what we've done is a 10-year run here. I said, originally, that we were looking at \$9.6 billion again, with \$5 billion for the *Abbotts*. Under those assumptions, the critical issue is the maximum debt service because that's the part that's going to test our ability to carry. The maximum debt service that we have here would be about \$786 million, and that's in the year 2010. We would expect that it would then level

off and continue into the future and be paid down. Of course, if the debt is paid down--

Of that amount I mentioned before, \$563 million would be the maximum debt service that we project right now for the State in the year 2010. That would be the State's portion of it.

ASSEMBLYMAN MALONE: At some time in the future, could I maybe get your overall projection as to the total cost of this money?

TREASURER MACHOLD: Well, there are many, many different ones. If we have a set of assumptions-- Under this set of assumptions, certainly, we can provide you with a figure.

ASSEMBLYMAN MALONE: Just give me a ballpark figure--

TREASURER MACHOLD: Sure.

ASSEMBLYMAN MALONE: --under the set of assumptions you currently have, as to the total dollar value cost all the way out.

And have you taken into account downturns in the economy as to the ability of the State to meet the payments that might be necessary?

TREASURER MACHOLD: Well, this will be part of the State's overall debt structure. And, obviously, downturns in the economy will effect the General Fund and could very sharply.

ASSEMBLYMAN MALONE: Okay. Thank you very much.

ASSEMBLYMAN WOLFE: Thank you.

We have some questions from the Committee. I'd like to start with Assemblyman Stanley, and then we'll come to Assemblyman Rooney.

Assemblyman.

ASSEMBLYMAN STANLEY: Thank you, Mr. Chairman.

I have a question for the Commissioner of Education.

And that actually pertains to the new criteria in the Collins bill that's basically different from the Department of Education's criteria for *Abbott* districts, which those districts used to do facilities -- long-range facilities plans already and the fact that now we're coming up with a different criteria in this bill. Does that mean that these districts that already painstakingly -- because, you know, in talking with a lot of the superintendents and the boards and everyone involved, this was not an easy task. This was something that took a long time. A lot of resources and energy were dedicated to this. Now, does that mean they're going to have to go back and-- I imagine, according to this legislation, they're going to have to go back and redo this -- go back through this process again? And to me, that would be a tremendous, I guess, waste of what's already been done.

COMMISSIONER HESPE: What change, I think, the Collins bill has in that area doesn't necessarily relate to the five-year plans as much as it relates to who's going to pay for the five-year plans. The five-year plans are what's necessary to be constructed in that district to provide a thorough and efficient education. I think what the Collins bill does is indicate that, in terms of who pays for that -- who pays for that necessary construction -- that the State will pick up 90 percent of that and that the local district must generate revenues to pay for that other 10 percent of it.

ASSEMBLYMAN STANLEY: Right. Well, I have tremendous issue with that. But aside from that, there are also -- there is also a difference in the actual specifications that are in the Collins bill when contrasted with the Department of Education's current criteria.

COMMISSIONER HESPE: I think the standards are the same. If you'd give me a -- because I think the square footages are similar. Yes, the square footages are exactly the same, so I don't think the five-year plans would need to be resubmitted. I'm not following.

Maybe you could help me a little bit, Assemblyman. Are you focusing on the 90 percent issue, or something else?

ASSEMBLYMAN STANLEY: No, actually I was focusing on the building regulations -- the building criteria. They're exactly the same as the Department of Education's?

COMMISSIONER HESPE: Our understanding is that they're-- As the Senate bill.

ASSEMBLYMAN STANLEY: No, I'm not talking about the Senate bill. I'm talking about the--

COMMISSIONER HESPE: They're exactly the same as our regulations.

ASSEMBLYMAN STANLEY: --Department of Education's.

COMMISSIONER HESPE: They're exactly the same as our regulations.

ASSEMBLYMAN STANLEY: Oh, because I've got conflicting information.

COMMISSIONER HESPE: Originally, the standards were as those presented to the Court, but those were then raised in the springtime in our initial proposal. Those were raised, and those raised standards were incorporated into our regulations.

ASSEMBLYMAN STANLEY: So the standards are different from the Court's -- from those submitted to the Court.

COMMISSIONER HESPE: They're higher, yes.

ASSEMBLYMAN STANLEY: Okay.

COMMISSIONER HESPE: Yes.

ASSEMBLYMAN WOLFE: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Thank you, Mr. Chairman.

There are two things. I have issues with the 90 percent also but for different -- completely opposite reasons than Assemblyman Stanley. And I feel that if we're funding, at a certain level, a percentage for education, we should be funding construction at the same levels.

So having said that, one other thing Assemblyman Malone had said was on school construction.

I want to give you a little bit of personal history. It happened prior to my moving into Northvale. Our school was built in, I think, 1968 or 1969 -- grammar school. Somehow, it got built as two separate buildings, K-4 and then 5-8. The underhanded reason for that is somewhere buried in State law. It says if you have two different buildings, you have to have two principals. So that sneaked in. And one of the buildings was built as, supposedly -- and this is what we talk about architectural -- whatever you want to call it-- One of the buildings was built as the first round school. Now, how the hell do you expand a round school? Which way do you go out? You could go up, but they didn't build the foundation suitable to take a second story.

So we're stuck with a school that's, basically, nonexpandable. We have to go to a brand new building. Fortunately, the second building was built

as a regular, square building. Now I can't see the reasons why one was built differently.

But these are the kinds of things we are concerned about, the little hidden things that cost us in the long run. I don't know how many times they tried to put in a second principal for that second building, and we beat them down every time. Thank God the State didn't really press it because the buildings are about 30 feet apart. Why would you need a second principal for that. It's a small school district. It's only K-8.

Currently, we only have 450 -- 500 kids in the school, but we are still expanding, and we need the extra room for all of the additional equipment that's been required by the State -- the mandates, the computer rooms, etc. So we know that we need to do something.

My district gets less than, I believe, 3 percent funding from the State. We're not a rich town by any stretch of the imagination. We do have some ratables, but we're not a rich town. And what happens is, the commercial, the industrials, keep getting tax reductions, thanks to our Department of Taxation. We've appealed that. This is my own personal experience, which I have many, many problems with taxation -- the Treasurer's Office, etc. -- and who gets hit. It's the residents that get hit with the higher tax increases. We're going through another reevaluation because of what the State did to us.

So these are the things that you have to take into consideration when you're building these buildings, when you're looking at the financing, etc., the design -- K-8, whatever -- K-12. We have a regional high school. It seems to work well for us. We have two different school buildings. You know it very well, you've been up there -- and basically blue-ribbon schools, etc.

So I just want that on the record as to what -- some of the bad experiences some of us have -- the bad taste that we have in our mouth for what has happened under, basically, even local construction. At the time, we had to close the old school under State mandate. So then we were forced into the building of the new school. And they just went wild.

Now, again, I wasn't there, so I don't know what happened or how it happened, but believe me, it isn't going to happen again.

COMMISSIONER HESPE: Yes, exactly. I think it's one of the best arguments I've heard for why the Building Authority should be doing the majority of the construction under this proposal. It's because we can certainly ensure--

ASSEMBLYMAN ROONEY: And design -- and design. That's the main thing.

COMMISSIONER HESPE: The design phase is very important, and that's something we will also be involved in. But I think it's an excellent argument for using the Building Authority for the majority of the projects and putting that discipline into the process to ensure that we make every dollar go as far as possible and make sure the public has great confidence in what we're doing. So again, I couldn't have argued it better.

ASSEMBLYMAN WOLFE: Thank you, Assemblyman Garcia.

ASSEMBLYMAN GARCIA: Thank you very much, Mr. Chairman, for giving me the opportunity.

First, let me thank the Commissioner of Education and the Treasurer for participating in today's hearing.

Let me just begin by saying it's amazing to me that everyone's talking about the requirements for the building and maybe it's not strong enough on the part of EDC and maybe they're lax.

For months now, you have been very specific. I'm going to defend the Commissioner and the EDC here for a minute and say you've been very careful as to exactly what you will fund, exactly what the costs that you're going to be able -- you will pay to the districts per square footage. And it's been very specific. Allowable costs, nonallowable costs, every school, *Abbott* districts have had to submit a five-year facilities plan that's being reviewed by the Commissioner now as to what exactly -- what will be funded. So the concerns about whether or not the money is going to be spent for special architectural signature on the building is really unwarranted. I think it's already safeguarded. So we can feel at ease with that.

My questions -- and let me just really put a very precise question to the Commissioner, if I may.

Commissioner, I've heard you testify today. Is it your belief that if we proceed with a 90 percent funding of the *Abbott* districts, that it will fly in the face of the decision in *Abbott V*, that you believe there should be 100 percent funding as prescribed in *Abbott V*?

COMMISSIONER HESPE: Yes, I think if you want the definitive answer, I think that should come from the Attorney General's Office, but I will give you my perspective on this, briefly. And that's given the history of *Abbott* and all five *Abbott* decisions, including *Abbott IV*, where the Department was ordered to come up with a solution to this, and *Abbott V*, where the Court adopted a particular solution to this problem. We are going down a very, very,

very dangerous course. What I don't want is for this to be ruled unconstitutional in a period of time where we were not able to do any construction for a lengthy period of time. There are needs out there. Those needs need to be addressed. And I do think we are going down a very dangerous road by doing this. I do think that, if that's a question you want a definitive answer to, we will ask the Attorney General's Office to give you a very definitive answer to that.

ASSEMBLYMAN GARCIA: That's fine, but I do accept your answer. I think, and I don't mean to put words in your mouth, but I think the prudent course here would be to pass a bill that complies with the Supreme Court's mandate in *Abbott V*, and provide 100 percent funding for the special needs districts. Is that a fair assumption?

COMMISSIONER HESPE: I think what we should do as the administration proposal provides, and that's we need to be fair and equitable to all districts. And I understand Speaker Collins's and Assemblyman Malone's desire to approach that issue in a certain way. But I think you can be fair and equitable to all districts by setting rigorous standards between what's necessary and what's discretionary and a rigorous funding and construction mechanism. That's the best way to be fair and equitable.

ASSEMBLYMAN GARCIA: Thank you.

A second question, if I may, Mr. Chairman, through you, to the Commissioner, is-- In the Senate version of this bill, it provided a 2 percent loan fund for any district, regardless of whether they were entitled to 0 percent State aid. And I think one of the things that we're hearing today is that--

Stay a while. (addressing Assemblyman Rooney as he is exiting the room) This pertains to you.

Mr. Rooney, come back one second.

One of the things we've been hearing is that some of the *Abbott* districts that only -- that may receive 86 percent of their funding from the State may now receive 100 percent for school aid and construction aid. One of the things that's in this bill, which is-- In the Senate version, those districts that are entitled to 0 percent State aid are receiving 2 percent loans, which really equate to about 25 percent of State aid, in terms of when they repay their bonding costs. So they're receiving 25 percent more than they would be entitled to if we just looked at State aid. But in the Assembly version, the loan fund is 0 percent interest, which would grab those districts that receive 0 percent State aid, over 25 percent in State aid, for the repayment of the loan funds.

I was wondering, do you have any opinion as to whether or not we should keep the Senate version of the 2 percent loan fund -- go with the Assembly version, which is a 0 percent loan fund, recognizing that districts that are entitled to 0 percent State aid are receiving additional moneys, or if you would, in talking about the fairness issue, say that they should be only entitled to what they receive in State aid, which is zero?

COMMISSIONER HESPE: We want to allow every district to meaningfully participate in this program. The administration fully supports below-market interest rates for all districts. And that's what we try to accomplish through this loan fund.

Now, the difference between 0 and 2 percent, I'm going to hand over to my colleague, and I'm sure he has a better idea of what the ramifications

of that would be. But I think we need to provide assistance to all districts, and this allows us to do that. The difference between 0 and 2 percent, I'm not really too--

ASSEMBLYMAN GARCIA: The difference between 0 and 2 percent, what I believe it's-- If it's 2 percent, it's 25 percent State aid. If it goes down to 0 percent, it's 41 percent State aid. Is that correct?

TREASURER MACHOLD: I haven't checked those numbers, no.

ASSEMBLYMAN GARCIA: All right. We-- I just tell you, I got those numbers. I didn't make them up either. I'm not going to engage in that. But Mary Messenger was our budget officer, I think, who's been doing this for a long time.

So some districts, just so everyone knows-- We were discussing before that some of the *Abbott* districts may receive a few dollars more in their building aid than they receive as a total part of State aid. Under these versions of both these bills, districts that are entitled to 0 percent State aid may be receiving as much as 25 percent in State aid as a result of the Senate version. And this Assembly version gives districts that maybe only receive 3 percent State aid, like Mr. Rooney's, will be entitled to 41 percent State aid. So they're receiving a large portion of that as well.

COMMISSIONER HESPE: But I think we have to understand that-- What is our goal? Our goal is to provide meaningful assistance to all districts. And I think this is a vehicle to do that. But if you want to get back to the difference between zero and two, I'll bring it back to the Treasurer.

TREASURER MACHOLD: We haven't looked at any specific numbers as the difference between the two. I stand with Dave in saying that we

do -- the administration does want to provide an incentive for all schools to partake in the program. And having a return to the fund and to the State, obviously -- part of other funding possibilities down the line, whether it's to the State or to the school districts.

I think that it's part of a whole package. When the final discussions take place, there are a number of factors in play here. And, obviously this is just one of them, of a range of those factors. So we're concerned with the whole package.

ASSEMBLYMAN GARCIA: Could I just follow up, Mr. Chairman, if I may, with a question to the Treasurer?

How long will it actually take, after whatever bill we pass, to actually go out and issue the bonds? And when will we actually have the money in hand to actually go to the districts and say, "Here's the money that's available for the construction of these schools"?

COMMISSIONER HESPE: I think you have to narrow that down under which-- Is it the loan fund that you're asking?

ASSEMBLYMAN GARCIA: Or even, let's say, for-- We're going to have to issue bonds to construct the schools in any version, not even -- not for the loans, even just for the direct aid to the *Abbott* districts, for example.

COMMISSIONER HESPE: There's got -- multiple answers, I guess--

TREASURER MACHOLD: I think that -- to begin with the limiting factor, at least at the outset, is going to be the five-year plans, getting those plans in. What we have budgeted for, which I think is around is \$40 million in debt in the first -- debt service in the first year or two, is readily

manageable, and we will issue bonds in accordance with the needs of the school districts, obviously, in concert with our own view of what the markets are, just like we do any other kinds of financing bonds in the State for Green Acres or public buildings or anything else.

ASSEMBLYMAN GARCIA: But from the day that-- Let's say the five-year plans are mostly for the *Abbott* districts.

Is that correct, Commissioner?

COMMISSIONER HESPE: Yes, that's correct. Most of the five-year plans are in some -- some need some work. But I think the critical point is not how quickly do we issue bonds, because I don't think that's a very difficult or time length process.

ASSEMBLYMAN GARCIA: Okay, I just wanted to get a clarification.

COMMISSIONER HESPE: It's really-- When do we move to ground break.

Let's put it this way, I don't think any ground breaking will be delayed because of the financing area. I think what we're-- The real issues are going to be how quickly can we move through design and then into the first initial construction areas, and then I don't think it's going to be a financing issue that will, in any way, delay any of these projects.

TREASURER MACHOLD: No, I don't think financing is going to be delayed. We already have \$117 million in the budget now for 2000, and additional -- that's in the base for next year as well. So even though the debt service numbers are going to ramp up fairly quickly under what I would consider an optimistic construction type of program, certainly we have the finances in

hand. There is going to be no limitation on that score. I would expect, of course, that some of the renovation work and so forth and design work can go ahead, but we have the money for that.

ASSEMBLYMAN GARCIA: Thank you very much.

ASSEMBLYMAN WOLFE: I'd like to thank all of you for testifying today. Before you leave, I just would like to come back to something Assemblyman Malone said and ask for some assistance.

I think it's very frustrating, as the Legislature -- legislator or legislators to be asked, how much is this going to cost. Well, we don't really know that, and neither do you.

So what I would ask is if you could supply us, the Committee, with the breakdown that you read to us before using the 90 percent scenario and also the 100 percent scenario. I mean, I think this is important -- at least so we're talking about chickens and eggs together here.

COMMISSIONER HESPE: Let me just-- Can I just take one second to respond to that, Mr. Chairman? I don't want to take away your prerogative on that one. I don't know if you're closing here or not.

ASSEMBLYMAN WOLFE: Is today Nicholas's birthday?

COMMISSIONER HESPE: Excuse me?

ASSEMBLYMAN WOLFE: Is today Nicholas's birthday?

COMMISSIONER HESPE: Is two weeks close enough?

ASSEMBLYMAN WOLFE: That's okay.

COMMISSIONER HESPE: Okay, very good.

Thanks, Nicholas.

No one is going to know until we know what the legislation is going to be. Is it going to be 90 percent *Abbott*? What's the square footages? So we always, by necessity, have a range here. And we have -- we came prepared with debt service out 10 years because that's really that framework that we think the Legislature is working with.

Assemblyman Malone asked a very good question. We'll get that extended framework, but I just want to let you know, it's not a lack of preparation, it's just a-- We don't know what the actual cost is going to be. We came with a range. We worked on \$9.6 billion as a reasonable estimate of the principal, and then we came with debt service out 10 years. What's that other 10 years? That's what we'll run now. We didn't realize that was going to be a question, but certainly it's a legitimate question. We'll get that for you.

ASSEMBLYMAN WOLFE: Okay. Again I'd like to thank all of you for your very detailed information.

Now, here is the procedure we're going to follow. I know you all would like to speak. And we certainly have the list of people who early on indicated their desire. We're going to continue with the hearing. We're going to keep on running right through. We're not going to really take a break. But I will let you know the order in which you will be speaking, so if you want to take a break you may.

Next, we'll hear David Sciarra. Then we'll hear from the School Facilities Coalition. Then we'll hear from Kevin Jarvis of the AFL-CIO; then we'll hear from Mayor Schundler, Jersey City; then we'll hear from Judith Cambria, the League of Women Voters; Eric Wagner and Mike Soriano of the American Institute of Architects; and finally, Joseph (*sic*) Tomicki of the League

of American Families. If anyone else has not signed up and wishes to, please do. We'll continue on.

So, David, welcome.

DAVID G. SCIARRA, ESQ.: Welcome, Mr. Chairman--

ASSEMBLYMAN WOLFE: Thank you.

MR. SCIARRA: --and members of the Committee. It's a pleasure for me to be here this morning.

With me-- I just want to introduce Joan Ponessa, who is a member of our staff. Many of you know Joan. Joan has been working diligently over the last months with the *Abbott* districts in helping them develop their five-year facilities management plans.

I want to thank you for the opportunity to present our views on Assembly Bill 3625. As you know, we provide legal representation and a variety of other assistance to plaintiffs in the *Abbott v. Burke* case. And the plaintiffs in that case, as you know, are the over 300,000 children who attend public schools in the urban communities throughout our state. And I appear here today on their behalf.

Unlike the School Construction Bill in the Senate and the Governor's proposal, this bill was flawed for two reasons. The first is, by providing only 90 percent State support for the facilities improvements needed in the *Abbott* districts, the bill does fly directly in the face of the Supreme Court's order in *Abbott V* and the recommendations of the Commissioner of Education, on which that ruling was based.

As the Court, in *Abbott*, found, both in *Abbott IV* and *Abbott V*, school buildings in the *Abbott* districts, for a variety of reasons that are obvious

to most of us here and most of us in this room-- Those school buildings, the Court found, are crumbling and obsolescent, and this great state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety everyday.

To address these dangerous and decrepit conditions -- that's the Court's language -- the Court accepted the Commissioner's proposals for a State program to assess, finance, and construct facilities improvements in the *Abbott* districts. And the Court's order for the level of State funding for that program was clear as the Court states, and I quote, as the Court concluded -- they used the word concluded -- and I quote, "any funding formula that does not fund the complete cost of remediating the infrastructure and life cycle deficiencies that have been identified in the *Abbott* districts, or that does not fully fund the construction of any new classrooms needed to correct capacity deficiencies, will not comport with the State's constitutional mandate to provide facilities adequate to ensure a thorough and efficient education." A-3625 does precisely that, therefore it is unconstitutional. We urge you to amend this bill to make sure that it does comport with the State's constitutional mandate as delineated in the *Abbott* ruling.

Second, and also very importantly, this bill does not contain the provisions in the Senate bill, which gives *Abbott* and other urban districts -- not just *Abbott* districts, but other urban districts as well -- the option of building their schools as a component of larger neighborhood and community redevelopment efforts.

Building community schools, as they're called, promotes several important statewide objectives beyond simply ensuring children in our urban

districts, both *Abbott* and non-*Abbott*, a thorough and efficient education. And those objectives are contributing -- that the schools then contribute to neighborhood improvement. There is an opportunity to maximize Federal, State and local funds. It will ensure that schools become the hub of community activity; it will make our urban areas more attractive and economically viable; it will foster urban redevelopment, generally which -- I know you're all aware -- is a larger State objective -- reducing urban sprawl and revitalizing our cities; and it will enable schools to offer educational, health, social service, recreation, and important meeting spaces for the entire neighborhood and community, young and old. So we strongly urge you to amend this bill to include the community school option, which is contained in the Senate version.

I urge you to align this bill with the Senate proposal in these two ways, one by providing 100 percent State support for the *Abbott* districts and by giving those districts -- not just the *Abbott* districts, but all urban districts -- the option of building community schools as the Senate sets forth.

I further ask, as well, that you amend this bill to incorporate several *Abbott* changes, changes that we have proposed -- amendments that we have proposed to the Senate. You have those amendments in our testimony to the Senate Committee, and I commend those to you and urge you to take a careful look at those to get the -- as amendments to this bill as well.

These *Abbott* amendments would put the Commissioner's process of reviewing the *Abbott* districts' five-year facilities management plans, which has been mentioned-- The districts have already spent enormous amounts of time, money, community effort because a lot of those five-year-- Under the Commissioner's regulations for doing the five-year facilities plans, there had to

be a facilities advisory board comprised of community residents and local leaders. The districts hired planners -- used their own planners, went building by building in accordance with the Court's decision, assessed the condition of every room, every space, almost every inch of these buildings now in those five-year facilities management plans. And those plans, as has been mentioned, are sitting in front of the Commissioner now.

So these amendments would ratchet up that process and move it forward for review, get those on a fast track, make sure that the standards for review are consistent with the proposals that were presented to the Court. And it would enable us to meet the Court start-up deadline, which was spring 2000, the last day of which, I should say, is June 20, 2000.

Also, as well, these amendments -- these additional *Abbott* amendments would require the *Abbott* districts to go back and take a look at the issue of preschool facilities, which I know is of concern to many of the members on this Committee because of the confusion over the standards for preschool education and also because of the tight time frames last year.

I want to report to you that the *Abbott* districts did not do an assessment of the facilities needs for preschool education, which is a complicated issue, because it includes now not only preschool facilities that the schools themselves operate, but many facilities which are now providing preschool education under *Abbott* that are owned and leased by community-based organizations and Head Start. So there's this whole issue of how do we get the community-based facilities for preschool, and the school facilities that are used for preschool, up to standard. So there's a need for the districts to actually go back and do a second assessment in that area, including the

community-based programs. And so -- would provide for an amendment to the five-year facilities management plan in that area.

Let me just close by saying we, as always, have supported and endorsed and worked hard for children not just in the *Abbott* districts, but in all districts so that they receive a thorough and efficient education.

We are, as you know, very supportive of the administration's approach and the approach in the Senate and the approach in this bill to ensure that all districts receive additional assistance to provide their students with educationally adequate facilities and that the needs of both *Abbott* and non-*Abbott* districts are met.

And so I think it's important that, as we move ahead, we try to look at this holistically and make sure that the long-standing -- and I can't emphasize that more -- I know Assemblyman Garcia knows this well -- and Assemblyman Stanley having been intimately involved with these *Abbott* districts-- There has been a decades, decades-long situation that's been brewing in this state in these districts where there's been deferred maintenance and, essentially, no construction. That's caused an enormous need -- enormous, unmet need.

So we have to meet the needs of the *Abbott* districts, as proposed by the Commissioner to the Supreme Court and as the Supreme Court has ordered, and also begin to meet the needs of non-*Abbott* districts as well, as has been proposed. And we are fully supportive of that.

So with that, Mr. Chairman, I will close and take your questions.

ASSEMBLYMAN WOLFE: Thank you, David.

MR. SCIARRA: You're welcome.

ASSEMBLYMAN WOLFE: Assemblyman.

ASSEMBLYMAN MALONE: A few questions for you, Mr. Sciarra.

Over the last number of years, we've put an inordinate amount of money into urban districts -- the *Abbott* districts. What has been the educational advances that have been made in those districts? Have we seen significant gains in educational results in those districts as a result of the money that we have put into those school districts currently?

MR. SCIARRA: Well, if-- I'd make a couple comments in response to that. One is that you have to remember that the Court's--

Let me back up.

ASSEMBLYMAN MALONE: I don't think that's a real difficult-- Either they've made some gains or they haven't. We've spent--

MR. SCIARRA: The answer is yes.

ASSEMBLYMAN MALONE: Okay. Significant gains or minimal gains? I mean, since you are, in essence, the Education Law Center, I would assume that you would have, as part of your documentation -- that's something that ought to be really off the top of the pile as to knowing exactly what gains have been made, vis-à-vis all of the legal time that you have spent in court cases and so forth. You really ought to know, pretty closely, what the gains have been in the *Abbott* districts, educationally. So that ought to be something that ought to be a relatively short answer.

MR. SCIARRA: Well, let me answer it this way. If I have to explain a little bit, bear with me.

There have been substantial improvements in the educational programming, staffing, curriculum, materials, books, all of these things in our

Abbott districts as a result of the additional State aid that those districts have received. So that's one answer.

The second answer is that we did not reach a point-- Keep in mind that *Abbott IV* came down in May of 1997 -- required the additional State aid to get the districts up to parity. *Abbott V* is a decision, if you read it, as has been pointed out -- really is the Court's mandate for ensuring that this funding translates into classroom-level improvements in the education that these children receive. And I wish the Commissioner was still here. But a lot of what we spend our time working on now with the Commissioner is the implementation of the *Abbott V* decision, which is now just beginning its second year. And those requirements -- Court requirements for Whole School Reform, curriculum alignment against the Content Standards, standards based reform, improvements in professional development, class size reduction programs, early literacy programs, success for all these kinds of programs -- they are just beginning to take hold.

So, the answer -- the other answer is we've got a lot of work to do in the urban districts to ensure that these dollars translate into significant and substantial improvements at the classroom level consistent with a lot of the reforms that were just beginning.

ASSEMBLYMAN MALONE: Okay. Now, if I can go back and ask the original question again. Can you tell me, definitively, what advances have been made by the students, in either tests scores and any kind of other statistical data that you have collected, that show there have been improvements in the education of those children? I agree with everything else you've said. But do you have any statistical data or any information?

MR. SCIARRA: I don't have that with me. I'd be glad to talk with you about that and share with you.

ASSEMBLYMAN MALONE: Can you show me something in writing that we could both look at to say this has been the educational advances by these students in the 30 *Abbott* districts?

MR. SCIARRA: I will call you up, and we'll set that time and sit down and talk about that.

ASSEMBLYMAN MALONE: I just need to see it on a piece of paper that says, in this school district, these are the advances that have been made in education. It shouldn't--

MR. SCIARRA: I would just say, Assemblyman, one of the things we've talked a lot about with the Commissioner and what we need-- I know-- I wish Assemblyman Wolfe were here because he's heard me say this a number of times. I would add that, as we speak today, there is an important hearing going on with the Joint Committee in Newark right now, which is taking a look at, appropriately so, legislative oversight of the State's limitation -- State and district by the way -- implementation of the first year of Whole School Reform.

One of the things we have to do, and I -- as an educational community -- and I would include us and the Legislature and many of the groups that are over there, on the side over there (indicating)-- We've got to -- we, frankly, have to build up more capacity to assess and evaluate educational programming and progress in our urban districts. It's something that we have little capacity at the moment -- not enough-- I don't want to say we don't have enough capacity to do that -- to give us the kinds of detailed information that you're asking for, but I will happy to call you, and we can discuss it.

ASSEMBLYMAN MALONE: As part of your ongoing working with school districts, have you really seen or have you had any cause to be concerned about waste or inefficient use? And I don't mean trivial stuff. I mean significant inefficiency or waste in extra dollars that had been given to the *Abbott* districts.

MR. SCIARRA: You know, the answer to that is really no. I don't want to say that there aren't instances that come up now and then.

ASSEMBLYMAN MALONE: I guess-- I'm not sure-- But, you know, you look at the buyouts of superintendents, you look at computers going to board members, cars going to board members, things like this.

ASSEMBLYMAN GARCIA: Mr. Chairman, can we just-- This is not-- Obviously-- Mr. Malone, if we may, this has nothing to do with this bill. If we want to talk about inefficiencies or some boards of education doing something improperly, I think there's enough in all districts to go around. And certainly, I don't think the Education Law Center is responsible for that. I don't think the children in the community are responsible for that. What we're talking about is the education facilities bill--

ASSEMBLYMAN MALONE: I--

ASSEMBLYMAN GARCIA: --that's for the benefit of the children. So can we just stand--

ASSEMBLYMAN WOLFE: Okay, guys. I think Assemblyman Malone is--

ASSEMBLYMAN MALONE: I think we're trying to find out if we're spending -- potentially going to spend billions of dollars-- The Education Law Center has been an integral part of this process. And to say that they don't

know or don't have a part in it, I think, is not quite accurate. And I think if they are going to be a part of this process then they ought to be a part of the process, and they ought to be able to give constructive criticism where necessary, praise where necessary, to be able to guide us in a way of better understanding what we're about to undertake. I think I'm asking appropriate questions because if we're going to be spending billions of dollars, which is part and parcel of a lawsuit that was initiated by the Education Law Center on behalf of *Abbott* districts-- I think these are reasonable questions to ask as to what their involvement will be in the future.

So, I think that it's important to understand their depth of involvement in this process. And, you know, we're not talking about little amounts of money here. And I think-- I would really like to clear-- The public would like to know. I think there has to be a degree of public confidence that if we're going to spend this amount of money and it's going to be, basically, because of a law suit that was instituted by the *Abbott* districts, which was put forth by the Education Law Center, that these are questions that should be able to be answered by the attorneys that are handling this case. So I don't think it's inappropriate.

Have you spoken out on inefficiencies or waste?

MR. SCIARRA: Where-- Yes, we have. But let me--

If I could answer the question.

ASSEMBLYMAN MALONE: Sure.

MR. SCIARRA: And I also want to clear up the record to make it clear as that I don't represent school districts. I never have. I don't represent--

I just want to make sure that the understanding is clear. My clients are the kids of the district.

ASSEMBLYMAN MALONE: Okay, can I--

MR. SCIARRA: Let me answer the question.

ASSEMBLYMAN MALONE: But let me--

MR. SCIARRA: The question is, on school construction--

ASSEMBLYMAN MALONE: Let me first have a clarifying question.

Since you don't represent school districts, then you receive no funding from any *Abbott* school district for the Education Law Center for lawsuits.

MR. SCIARRA: No.

ASSEMBLYMAN MALONE: Where do you-- Do you get any money from *Abbott* school districts?

MR. SCIARRA: We-- Well, our-- We're a nonprofit organization. Our incumbent expenses are audited. They're a matter of public record.

ASSEMBLYMAN MALONE: I didn't ask that question.

MR. SCIARRA: We get a variety of--

I'm trying to answer your question, Assemblyman.

ASSEMBLYMAN MALONE: I want-- What percentage of your funding comes to you from *Abbott* school districts?

MR. SCIARRA: None.

ASSEMBLYMAN MALONE: You receive no funding from *Abbott* school districts?

MR. SCIARRA: No.

ASSEMBLYMAN MALONE: Okay. You're absolutely sure of that?

MR. SCIARRA: Well, we have a grant with the urban--

ASSEMBLYMAN WOLFE: Assemblyman, you're making this sound like the million dollar question. He said he doesn't receive the money.

ASSEMBLYMAN MALONE: You don't receive any money from urban school districts or any of the *Abbott* school districts?

MR. SCIARRA: I just want to make it clear. We do get grants from foundations and from associations that represent schools and school districts. We get a grant from the New Jersey Education Association. We have a grant in which we provide services to the Urban Superintendents Association. And so some of that money, obviously, comes from school districts, but it doesn't come directly from school districts.

ASSEMBLYMAN MALONE: So your organization has never received a check--

MR. SCIARRA: I don't want to say-- I didn't say never.

ASSEMBLYMAN MALONE: Well, I'm going-- Have you ever-- Has the Education Law Center ever received direct funding from any *Abbott* school district?

MR. SCIARRA: Oh, yes, we have.

ASSEMBLYMAN MALONE: Okay. How much money have you received?

MR. SCIARRA: Oh, I-- I've only been there-- We've been around 26 years.

ASSEMBLYMAN MALONE: Do you know if you received--

MR. SCIARRA: I have no idea.

ASSEMBLYMAN MALONE: Could we find that out?

MR. SCIARRA: We can talk about this. I'd be happy to discuss it with you.

ASSEMBLYMAN MALONE: No, will you be able to give me--

MR. SCIARRA: I'd have to go over 26 years of financial records.

ASSEMBLYMAN MALONE: Just this past year.

ASSEMBLYMAN GARCIA: Mr. Chairman, this really has no relevance. If he gets paid by the school district 26 years ago -- whether or not they received money-- Yes, the question -- he's not being paid by any *Abbott* district now. I think we should just go on with the questions so we can make it more productive, please.

ASSEMBLYMAN MALONE: Rudy-- Assemblyman, I would accept the--

You have not received any funding whatsoever in the last five years from any *Abbott* district?

MR. SCIARRA: Oh, that's not-- I wouldn't say that.

ASSEMBLYMAN MALONE: Okay.

MR. SCIARRA: I'm not going to say that because I actually have only been Director for three years. I'd have to go back over our prior records.

But I did want to answer your question--

ASSEMBLYMAN MALONE: Go ahead.

MR. SCIARRA: --to get back on the relevant point here about the waste and the construction program that you're talking about.

I would remind you that the Commissioner's proposal, which was accepted by the Court -- we supported -- gives the *Abbott* districts only two options, really, for building schools. One is through the Building Authority itself. So the State is going to be directly in control. Not only will the State be providing 100 percent of the funding, the State will be directly in control of those construction projects. So that, I think-- That is a dramatic issue in terms of the question you're raising.

The second option, which is in the Senate bill, which we also support, would require -- would give districts the option of having community schools built through the community redevelopment process, which has happened in some of the *Abbott* districts now, with substantial State oversight. The testimony on that issue in the Senate Committee-- The testimony on that issue from the Senate Committee has been that there is a substantial reduction in costs by having community redevelopment arms undertake projects in that way.

ASSEMBLYMAN MALONE: Let me ask you one last question for right now. And I asked you this question, basically, in Pemberton several years ago.

If you were king, how much money do you think it would take to satisfy all of the educational and constructional needs for the school children of the State of New Jersey?

MR. SCIARRA: Oh, I have no idea. I have no way of answering that question.

ASSEMBLYMAN MALONE: Do you think this amount is sufficient?

MR. SCIARRA: This amount being what?

ASSEMBLYMAN MALONE: The \$9 billion or \$10 billion that we're currently doing.

MR. SCIARRA: I don't think-- I don't know how to answer that question. I do know that, with respect to the *Abbott* districts, the districts have done, as a result of the Commissioner's work -- the assessments done by the Department of Education and by the districts themselves, have done -- as I said, inch by inch, room by room assessments of their facilities and have submitted plans.

Now, the estimate of those plans that went in -- the total cost was around, as the Commissioner has reported, around \$7 billion. He's also reported that there are a number of duplications and problems in the software and that that number will likely be somewhat lower.

So if those plans were accepted, you'd have some sense of what the need is in the *Abbott* districts. Now, beyond the *Abbott* districts, I think there have to be more detailed assessments. And this bill, as you know, requires all districts to do five-year, long-range plans to get a sense of what the total need is in the non-*Abbott* districts.

ASSEMBLYMAN MALONE: Given the amount of money that's been appropriated for, let's say, general purpose use -- and if the amount that was funded or requested, let's say, in the administration or the Senate's bill, which was, basically, supposed to be at 100 percent -- given the \$9 billion to \$10 billion-- Is that sufficient to handle the needs of the *Abbott* districts?

MR. SCIARRA: I'm not sure I understand your question.

ASSEMBLYMAN MALONE: Currently, we fund *Abbott* districts at an amount of money. Is the current funding of those *Abbott* districts, for general operating expenses and the current expenses that they have -- taking out the construction for a moment-- Is that amount of money adequate?

MR. SCIARRA: I'm not quite sure I--

ASSEMBLYMAN MALONE: Currently, we give *Abbott* districts money from the State of New Jersey.

MR. SCIARRA: Are you talking about per pupil funding?

ASSEMBLYMAN MALONE: Yes, the money that the State currently gives to *Abbott* districts.

MR. SCIARRA: Right. There is a per pupil funding amount, which is--

ASSEMBLYMAN MALONE: Is the amount of money that is given to *Abbott* districts, currently, sufficient in your estimation?

MR. SCIARRA: For what?

ASSEMBLYMAN MALONE: For the purposes that we currently give them money.

MR. SCIARRA: Clearly, the parity level funding is an adequate amount of funding, as the Court has determined, to -- per pupil funding to assure that behind each pupil, there is a sufficient level of resources to provide the core curriculum -- the standards-based program that is now defined by the New Jersey Core Curriculum Content Standards.

ASSEMBLYMAN MALONE: So you are satisfied with the amount of money that the *Abbott* districts are currently getting?

MR. SCIARRA: For that purpose, yes.

ASSEMBLYMAN MALONE: Okay.

MR. SCIARRA: There are some additional needs, as you know. I know members of this Committee are well aware that there's the issue of preschool education--

ASSEMBLYMAN MALONE: Early childhood--

MR. SCIARRA: --which is an additional requirement in these districts. Clearly, there is, as has been -- as you know -- has been the subject of much debate -- clearly to provide that program at the kind of quality level that the kids need. It's going to require more resources over time and investment in that program.

There are also some other supplemental programs which the Court has ordered, and the districts are beginning to implement, that are very important to kids, such as class size reduction, early literacy programs, technology, security, safe schools, these sorts of extra issues which are currently funded through the DEPA stream that districts have a right, under the *Abbott* approach, to come in and say, "Well, we have a significant problem in this area, and we need some additional resources." So I don't want to leave you with the impression that there are what we call supplemental programs that may require additional State support over time.

But in terms of the basic funding amount for the core curriculum for the basic instructional program, which, as you know -- the Court has accepted the Core Curriculum Content Standards as the substantive definition of thorough and efficient education not for children just in the *Abbott* districts, but for all children. But parity funding, surely, is a sufficient amount to deliver that.

ASSEMBLYMAN MALONE: Now, if we took the Senate's bill rather than this version, giving, let's say, anywhere from \$9 billion to \$11 billion under the Senate's version of the construction bill, would that be adequate funding for the *Abbott* districts?

MR. SCIARRA: The \$9 billion to \$11 billion isn't just for the *Abbott* districts.

ASSEMBLYMAN MALONE: I understand that. What I'm saying to you is, given the structure that we have with the Senate bill, is there enough funding in that Senate bill, given the structure of that bill, to handle the needs in the *Abbott* districts?

MR. SCIARRA: The answer to that is the Senate bill doesn't determine that amount. Let's be clear about this. The Senate bill-- And that amount, frankly, will be determined-- That amount is not determined in the Senate bill.

ASSEMBLYMAN MALONE: Okay. Let me ask you in another way.

MR. SCIARRA: The Senate-- The Commissioner-- This goes back to the amendments that we--

ASSEMBLYMAN MALONE: Let me ask you in another way that might be easier.

If you have the entire, let's say, \$9 billion and it was sent all to the *Abbott* districts, would that be enough?

MR. SCIARRA: No, clearly, I don't think the *Abbotts* need that much. I mean, that's--

As I said-- As I--

Let me try to answer your question.

ASSEMBLYMAN GARCIA: Yes, Joe. Send us \$9 billion. Go ahead. We'll take it, Joe.

MR. SCIARRA: As I mentioned to you earlier, Assemblyman, the *Abbott* district five-year facilities management plans, done under DOE supervision and direction-- So let me be clear about that -- done, actually, on Department of Education software, with tremendous oversight--

Those 28 plans have gone in to the Commissioner. There are two districts, which this Legislature added to the *Abbott* class last year, Plainfield and Neptune, whose plans are not yet in -- that are due in now in the next couple of weeks. But if you look at those 28 plans in total-- As the Commissioner has reported, the total estimate, in those plans, is about \$7 billion. He has--

Now, those plans have not been reviewed by the Commissioner. He has not issued his final decisions on those reviews, and he's indicated-- I wish he was here. He could talk about this. But he's indicated that there are lots of duplications in the software and some of the other guidelines that the Department set up for those plans, so that that number may be lower. But I would also add that preschool, as I mentioned earlier-- The need for preschool facilities for three- and four-year-olds has not been assessed, so that has to be done.

So that's all we know at this point. And the Senate bill doesn't set a funding amount for the *Abbott* districts, it merely requires that the Commissioner fund, at 100 percent, the projects -- the approved projects in the *Abbott* districts, which come out of those plans.

So what we need to have happen now is a full review of those five-year facilities management plans and some sense back from the Commissioner as to what the approved costs -- approved -- I don't want to say costs because that's determined later because costs will change over time, but what the approved projects are and the educational adequacy level in those projects.

Does that satisfy you?

I can't give you--

ASSEMBLYMAN MALONE: I just don't want to see us go three-quarters of the way down this process, look like we have an agreement amongst all parties, and then the Education Law Center pops up and says, "You know, we need another \$2 billion more." And then you take it to the Court, and then we're haggling in court again because the Education Law Center says, "You know, we don't like the Commissioner's decision on what he feels is the appropriate construction." And then we go through the same thing again.

What I'm trying to do, since I will be hearing this again in Appropriations -- I'm trying to do two things at one time so I don't have to waste duplicate time -- is to just get a feel for where the Education Law Center is going financially, what it's going to mean in the overall sense so that if we strike a deal or strike an agreement with all parties involved that all of a sudden, out of the blue, it doesn't pop up -- "Well, we need another \$2 billion more because we didn't anticipate wanting to do this in this district and that in this district." And then we end up going through the same process again.

MR. SCIARRA: Well, let me just, Assemblyman, if I may-- The last thing that we want to do, and I've made this clear, is return to the Court for anything. As the Chairman knows, that is the last thing that we want to do.

That's the purpose for my recommendation today, to get this bill in line with the Court's decision so that we don't have to go back there and argue over things. The amendments that we recommended to you -- that we recommended to the Senate would ensure that the process of review in completing the *Abbott* district plans and getting construction underway would be consistent with what the Court has ordered. If we get that done, that's it. That's the end. Let's go.

ASSEMBLYMAN MALONE: Thank you very much, Mr. Chairman.

ASSEMBLYMAN WOLFE: Assemblyman Garcia.

ASSEMBLYMAN GARCIA: Yes.

Have you or have you ever been a member of the Communist Party? (laughter)

ASSEMBLYMAN MALONE: Have him answer it, Rudy.

ASSEMBLYMAN GARCIA: And let me interrupt you before you answer that question.

MR. SCIARRA: How many years back do I have to go? Ever? I hope I don't have--

ASSEMBLYMAN GARCIA: Let me--

David, if you would, we would have problems.

ASSEMBLYMAN WOLFE: Assemblyman, the newspapers may report that question that you asked of our distinguished guest here.

ASSEMBLYMAN GARCIA: That's always very important to us.

MR. SCIARRA: I just didn't want to answer for -- may she rest in peace.

ASSEMBLYMAN GARCIA: The important point here, I think, and I think you alluded to it when you started, but I just want a clarification.

You argued the *Abbott V* case, is that correct?

MR. SCIARRA: Both *Abbott IV* and *Abbott V*.

ASSEMBLYMAN GARCIA: And *Abbott V*.

In the Court's decision, was there any equivocation on the percentage that the *Abbott* districts were supposed to receive in terms of the facilities funding from construction?

MR. SCIARRA: No.

ASSEMBLYMAN GARCIA: Was it very clear there was 100 percent, and was that -- did the State give that voluntarily, or was it part of the overall plan?

MR. SCIARRA: I think Commissioner Hespe answered that very well when he was here. I mean, he laid that out very succinct. And I would urge all members of this Committee to really take a look not just at the *Abbott V* decision, but--

As you know, the Court has published Judge King's recommendations. And there's a record of what happened. In *Abbott IV*, the Court said to the Commissioner, "We want you to come in here and deal with several issues that haven't been dealt with." One is facilities. The other is programs -- additional programs and strategies that will -- this goes back to your question, Assemblyman -- that will ensure-- The Court has always been--

I think one thing-- We need to keep in mind that the Court has always been concerned, first and foremost, that the resources that the *Abbott* districts have, whether they be State or local, translate into improvements at the

classroom level for the children because the children are the plaintiffs in the case. So the Court said to the Commissioner, "Come back in with a set of recommendations for programs to improve curriculum and instruction and meet health and social services and other needs these kids bring with them to school."

The Commissioner came in with a set of recommendations, put his hand on the Bible and said, "This is what we're going to do." He took the stand. Commissioner Hesper, himself, in fact, took the stand in front of Judge King on the facilities question. Both former Commissioner Klagholz and Hesper testified. There was someone from the Educational Facilities Authority who testified about this approach. And their assessment was -- their recommendations were that in order to address the long-standing facilities needs in these *Abbott* districts, districts in which we have -- like Newark, where the average age of the school is 60, 65, 70 years, Paterson, where we have schools in service that are 100, 120 years old now -- that this is what we're going to do.

They laid out a comprehensive plan which included, for the first time ever, a State building program. Not only would the State finance 100 percent, but because the State was going to pay for 100 percent, it was going to actually oversee and directly construct these buildings to ensure that the issues that you raised, Assemblyman, about extras and things of that nature, would be appropriately and properly addressed with proper State direction. And that was accepted by the -- Judge King.

ASSEMBLYMAN GARCIA: So it was 100 percent.

MR. SCIARRA: And it was accepted -- went up to the Court. And in fact--

Let me just make one more point.

ASSEMBLYMAN GARCIA: I just want to--

MR. SCIARRA: When we went up to the Supreme Court, in *Abbott V*, and argued *Abbott V*, there was no dispute on that issue in front of the Court.

Then Attorney General Verniero and myself, we were in agreement on this -- on the whole facilities package, which included 100 percent of funding. As you know there were some disputes about preschool and some other issues, but not that issue.

The Court said, "This is a solid recommendation. The State's promised us that this is going to address these needs." And it accepted those and directed that it be done. It's as simple as that.

ASSEMBLYMAN GARCIA: Okay.

Secondly, and this is just another question I throw out there. Just try to answer it briefly because I know we want to move on.

The whole idea of once the urban special needs districts do submit the plans to the Commissioners and the turnaround from those plans to the time that they actually approved-- Do you foresee or-- We just want to make it clear -- I think from my point of view-- Maybe it's more a statement -- that those plans, whether approved or denied, the local districts should know about them and there should be an expedited appeals process so that we can make sure we know exactly what we're building, and quickly.

MR. SCIARRA: Well, I've spoken with Commissioner Hesper about the issue of the five-year plans. And he indicates-- I don't want to speak for him. He said this publicly, that the Department is very far along in their review of those plans and is getting close to a position where they can issue their decisions to the districts on those plans.

If you look at the amendments we submitted to the Senate-- We've set up a very truncated time table for resolving all of those issues. Obviously, you know, if the Commissioner comes back and says, "I have a problem with this decision or that decision," the *Abbott* districts have a right to take that on and go at it with the Commissioner. Our amendments would require that they work together to try to resolve those issues, but, of course, districts have a right to an appeal. We would hope these issues would get resolved and that we would very quickly get to a point where we have 28 approved *Abbott* district plans, from which -- including a set of project priorities and a construction schedule from which this can move forward.

ASSEMBLYMAN GARCIA: And the importance of that is that we could actually ascertain the amount that is going to be spent, exactly, in dollars.

MR. SCIARRA: You will know, at that point-- This gets back to Assemblyman Malone's question.

ASSEMBLYMAN GARCIA: Right.

MR. SCIARRA: You will know, at that point, the number of projects -- project by project within each district, the number of schools that are going to be renovated, the approved space in those schools that the State will fund, the number of projects that involve new construction, the approved space in those projects that the State will fund from which you can derive some current cost estimates, and I say current because, obviously, these projects, as the Commissioner correctly pointed out-- The actual projects themselves are going to take five to ten, perhaps even longer to actually do.

ASSEMBLYMAN GARCIA: Thank you.

ASSEMBLYMAN WOLFE: I'd like to thank you, David, for your assistance today and for answering the questions that were presented to you.

I just want to comment on something that Assemblyman Malone asked originally, and that was your awareness of inefficiencies in some of the *Abbott* districts. And I think that's a concern that's not just in the *Abbott* districts, but in all the districts, because if we're talking about \$9 billion -- recently-- I'm sure we're all aware of the SCI report on, apparently, some problems with roof reconstruction. I just read, I think it was in the *Asbury Park Press* -- had an account today that one of the most efficient projects was run by a school district where they employed two of their own employees.

I think these are, I think, generic concerns that the entire Legislature has. If we're talking about billions of bucks -- is it really being used for what it's intended? That, I don't think, is really something that you have the answers to. But I think he was really laying the groundwork for that.

MR. SCIARRA: Well, let me just comment briefly on that, Assemblyman.

I don't know if people really grasped this yet, but the *Abbott* districts are no longer going to construct these buildings.

ASSEMBLYMAN WOLFE: Right.

MR. SCIARRA: I mean, unlike every other district -- people forget this -- unlike every other district which will go to bond, hire their architects, do what, you know -- for some portion, depending on how much loan or grant they're going to get on it, they're going to do that. But the *Abbott* districts really lose that completely. And there are only two options for construction of

buildings in the *Abbott* districts, both of which are controlled by the State. One is the Building Authority--

ASSEMBLYMAN WOLFE: Excuse me--

MR. SCIARRA: Anyway.

So that issue has to be dealt with.

ASSEMBLYMAN WOLFE: I'm just saying generic for school construction or reconstruction, no matter where it is--

MR. SCIARRA: Oh, well that--

ASSEMBLYMAN WOLFE: --the concern is that--

MR. SCIARRA: Of course.

ASSEMBLYMAN WOLFE: --it's going to these improvements.

I'd like to thank you for your testimony.

ASSEMBLYMAN STANLEY: Mr. Chairman, I just have one question for Mr. Sciarra.

ASSEMBLYMAN WOLFE: Well, Assemblyman, we really got to get going.

ASSEMBLYMAN STANLEY: I will be very brief.

ASSEMBLYMAN WOLFE: Are you going to ask one question that's going to become three?

ASSEMBLYMAN STANLEY: No, no.

MR. SCIARRA: I will answer it briefly, Mr. Chairman. I promise.

ASSEMBLYMAN STANLEY: I guess-- It comes with the philosophy that what we're talking about is education performance. That's what we're trying to change. We do that through programs, and facilities house those programs.

So this isn't an overnight, kind of, success story that we're going to see. This is a long-- This is a process. And having served on a school management team -- or serving on a school management team, I see some of the -- I see where we're headed.

We're headed in the right direction, Mr. Chairman. I think the Education Law Center has done a tremendous job. And I think they should be applauded. And I-- This is the only income I have. I am a public servant -- \$35,000 a year, unless we get a raise. Then I got to win reelection again.

ASSEMBLYMAN WOLFE: Oh, well. Okay.

ASSEMBLYMAN STANLEY: That doesn't mean that I have ulterior motives in doing what I do. As a matter of fact, one of the reasons this is my only income is because I feel so strongly about the needs in our districts, and I'm very dedicated to that. And I want to applaud Dave Sciarra for the work that he's done.

What kind of time frame, I mean, should we be looking at? Should next year, once this, the second year of Whole School Reform or the second year of -- once we get a couple of facilities done, should we see -- like that next year -- are we going to see tremendous impact -- upward impact of these, of test scores and things like that? Or are we talking about a process, somewhere along the line-- I heard that it takes 10 years to really see the actual effect of an infusion of dollars on the -- in the test scores.

Can you speak to that a little bit, Dave?

Thank you, Mr. Chairman.

MR. SCIARRA: I have said, and I know the Chairman knows this, we have a long effort ahead of us that's going to require full commitment to the

implementation of all the *Abbott* remedies, particularly Whole School Reform, sustained over time in order to get the kind of progress we need in some of these districts.

Now, you also have to say that it varies among the *Abbott* districts. A lot of *Abbott* districts -- some *Abbott* districts have a lot of progress to be made in the area of test scores. Other districts don't have as much of a way to go. They're all on a continuum. We've got to commit-- My answer to this is we've got to commit ourselves, as you as legislators, us as advocates for the children, the educational community here, to recognizing that these schools serve substantial numbers of poor and disadvantaged kids. They come to school not as ready to learn -- lots of problems. It's going to take a sustained effort over time, focused on instructional improvement -- education reform, to make the kind of progress over time that we'd like to see. And we're just, frankly, beginning that process.

ASSEMBLYMAN WOLFE: Thank you very much.

Now we will hear from this mysterious group -- the School Facilities Coalition, who've indicated they're looking for amendments. So whoever is representing them is welcome to come on up. Bring as many chairs as you can bring with you.

Maybe, just for the record, once you get up here, you can -- although we do know you, this is being recorded, maybe you can indicate who you are and which group you are with.

E U G E N E K E Y E K, Ed.D.: Mr. Chairman, I'm getting picked on by people in the audience -- that I brought the crutches along for sympathy.

And these are my friends.

ASSEMBLYMAN WOLFE: You never know.

DR. KEYEK: You never know.

ASSEMBLYMAN WOLFE: Mr. Keyek, welcome. Would you like to introduce the folks, or do you want to have them introduce their real selves?

DR. KEYEK: I think I will allow them to start from my right and just introduce themselves.

BARBARA J. BOHI: Good afternoon, Mr. Chairman.

I'm Barbara Bohi, Governmental Relations Department of the School Boards Association.

JUDITH PEOPLES: Judith Peoples, Acting Director of Governmental Relations, School Boards.

DEBRA BRADLEY, ESQ.: Debbie Bradley, New Jersey Principals and Supervisors Association.

GINGER GOLD: Ginger Gold, NJEA Government Relations.

LYNN STRICKLAND: Lynn Strickland, Executive Director, Garden State Coalition.

JOHN DONAHUE: John Donahue, Assistant Director, New Jersey School Business Officials.

JOE HANCOCK: Joe Hancock, New Jersey Association of School Administrators.

ASSEMBLYMAN WOLFE: Thank you very much.

DR. KEYEK: Mr. Chairman, thank you.

The members of the Coalition--

What I'd like to do, Mr. Chairman, is just read a very brief statement and then go right into the amendments that we have proposed and provide you with the rationale for our amendments.

ASSEMBLYMAN WOLFE: Okay.

DR. KEYEK: The members of the Coalition would like to express our thanks to the sponsors of the proposed legislation for all of the opportunities we've been afforded in the initial review and revision process.

And what I'd like to do is to add just a comment here. In the 11 years that I've been with the Association, I would say that this has been the most open discussion of all of the issues with the Treasury, with the Department of Education, with the Governor's Council. We've had more opportunities for input than I have ever experienced. We are pleased that many of our concerns have been addressed and that some additional benefits have been included in the proposal.

We support the changes in the revolving loan fund, with the exception of the time limitation of 11 years. The fund should be an ongoing process, with the principal payments funding new construction. Providing the loans at 0 percent interest should prove to be an added incentive for districts to address their facilities needs.

The addition of 5 percent to the debt service allocation will assist the middle income districts in resolving some of their property tax concerns. We support every effort made by the State to equalize the fiscal burden of facilities construction.

The provision to reduce the funding of the *Abbott* districts to 90 percent does not have the support of the coalition since the Supreme Court

decision embraces full funding of facilities costs for the *Abbott* districts. This issue could generate another level of litigation, which would delay the necessary implementation of legislation to address the construction needs of the State.

There are other issues which the Coalition would like to bring to the attention of the Committee. They include space requirements, renovations, time lines, appeals process, cost overruns, lease purchase, and authority charge backs. I'd like to take this opportunity to review our specific recommendations with you and provide the members of our coalition the opportunity to provide background information for our amendments. And what I will do very quickly, I will not, in the interest of time, read all of the amendments. These amendments have been presented to both the Majority and Minority Offices in the Senate and the Assembly. They have been presented to the Senate Education Committee. But as we go through on Section 3 and all of these amendments are follow through or formatted to follow the sections of the particular bill.

Functional capacity -- we're in the process of discussing with the Department of Education, and I understand we're fairly close to achieving an agreement on the language for the definition of functional capacity. It is an important part of the process in determining eligible cost. Full-time equivalency -- we're looking that kindergarten students should be counted 100 percent. Whether they have the building now or will need it in the future, it is not an aid process. It is just the recognition that kindergarten students fill the spot, have a need for facilities.

On Section 4, essentially what it does is to address the concerns that the long-range plans the *Abbott* districts have already submitted should be counted and recognized as a requirement under that particular section.

In Section 5, the majority of the issues deal with time lines, and our recommendation for specific time lines. The legislation itself is silent on much of -- on the issue of time lines. Our concern is that, given all of the parties that participate, what will happen is that we will go back to the years in which it took a year and a half to two years to get an approval for a school project. And we think that the time lines are realistic. The time lines provide a framework for everyone to participate, and they are most important in getting this process under way.

On the bottom of the next page (indicating text), these are the cost overruns that we've addressed. The legislation itself indicates cost overruns under estimated labor and material costs by the Building Authority. This concerns us because labor and material costs are two easy items to designate. They are usually in a specification. Our concern is cost overruns in design, cost overruns in site preparation, and cost overruns in environmental costs. If the Authority is going to assume the responsibility for design and if the Authority is going to assume the responsibility for construction, they should also assume the responsibility for the cost overruns. They should not come back to a local school district. This could equate to significant amounts of dollars, which the districts would have to raise, over which they have no control.

Now along with that is a question which has just arisen. In the past we have had the opportunity for contingency funds. Contingency funds are not addressed anywhere in this particular proposal. And whether the Authority will

have contingency fund process or whether the districts who do not use the Authority will have the right to establish some contingency funds in their proposal is not addressed.

The next item, on the next page, the district may appeal to the Treasurer. Again, one of the major issues is the concept of appeals process. In the proposed legislation, much of the decision making stops with the Building Authority or with the Commissioner. It is our concern that we have an opportunity to expand our appeal process and to expedite that appeal process so that you will see throughout this document recommendations for an expedited appeal process to the Administrative Law Division and to the Appellate Courts and very clearly spelled out. And I think this is essential in any kind of a proposal which involves so many different partners in the process, so that we have identified all of these issues.

In Section 7, a concern that we really need to have the Committee look at because this is where you're going to hear some negative feedback from your constituents if the concept of renovations is not addressed. We have been working with the Department. I spoke to Ms. Fazzari ahead of time. We are close to coming to some agreement, but that is language that needs to be revised. Because, at the current time, the interpretation that we're receiving is that renovations could be funded at less than the current level of funding. So we're hoping that, in our discussions with the Department, we come to some agreement as to what their intent was with this language and they clarify the language so that the intent is very clear once the bill is passed.

In Section 8, that first part again applies to the whole concept of renovations and the calculation of the renovations process.

The next segment is an important issue to all of us, and this is the minimum area allowance. We had been successful in getting an increase in the original proposal, but we still feel at the middle school and the high school that these two area allowances are not sufficient enough to provide the kinds of programs that will be required under the Core Curriculum Standards. Our figures are based on analysis done by educators, architects, and we feel that these are more realistic in terms of what is necessary to implement the Core Curriculum Standards.

Section 9: This is the retroactivity. The first part is that we would remove the comment has not issued debt other than short term or entered into a construction contract since September 1, 1998. If a district got approval by September 1, 1998, they surely have not been sitting on all of their proposals waiting for this bill to pass. And we think that the inclusion of those two items would eliminate most of the districts who go back to that particular period of time.

Section 12: This is just another time line set in and provision for an appeal process.

Section 25 contains the language that we feel would meet the needs of all of our organizations and also make the process more equitable, and that is the process for the appeals.

The last page, Section 33, the lease-purchase agreement. There is a provision in there that lease-purchase agreements that exceed 1 percent of the district's net budget, or \$250,000, should be approved by the Department of Education. It is our contention that this statement has no place in a construction bill. It has no relationship to school construction, and we don't

understand the rationale. And if we were given the rationale, I don't think we would accept it in the first place, that there has been any abuse of \$250,000 in today's market with the kinds of lease purchases with technological equipment. This is not an extraordinary amount of money. And in large districts, we don't think that it's necessary to get Department of Education's approval. To me, that's micromanaging, and we don't really need that in there.

And the last section has to do with charge backs. If you read this carefully, what it says is that everything the two authorities do can be charged back to the district. Well, if the district, because of this particular piece of legislation, is going to see savings in the construction process, and then for the State to turn around and say that all of the costs of operating the Building Authority or the Financing Authority can be charged back on a prorated basis to the district, just refutes that entire concept of cost savings to the district. These departments are funded through General Appropriations and should not become a burden upon the financial requirements of the district.

So these are the amendments that we have proposed. And at this time, we would be happy to answer any questions any one of the Committee members have, and if any one of our members would like to make any comments, feel free to do so at this time. Everything is clear--

ASSEMBLYMAN WOLFE: Assemblyman, do you have any questions?

ASSEMBLYMAN GARCIA: No. I'd like to thank this group.
(laughter)

ASSEMBLYMAN WOLFE: Okay.

ASSEMBLYMAN GARCIA: They all talked to me individually, I know.

ASSEMBLYMAN WOLFE: Assemblyman Stanley.

ASSEMBLYMAN STANLEY: No thank you, Mr. Chairman. I'd like to thank the panel, though, for their efforts in this regard.

DR. KEYEK: And I would hope that you would take a very close look at the recommendations for the amendments and consider each one of them. Our final hope is that in the spirit of the holidays that you adopt every one of our recommendations. (laughter)

ASSEMBLYMAN WOLFE: Wait. Before you go, I would like to, number one, thank all of you. I know of the effort you've all put in, each of your groups. I'm sure it has compromised and come up with a set of recommendations that you feel maybe is in the best interest of the entire bill itself. I just want to thank you for that effort. I would hope that many of your concerns could be incorporated in the final version, whether it's the Senate version or the Speaker's version or Assemblyman Garcia's version.

ASSEMBLYMAN GARCIA: Mr. Chairman, could I just ask one question?

ASSEMBLYMAN WOLFE: Sure.

ASSEMBLYMAN GARCIA: I was just looking at this very briefly. There's no mention of the 100 percent funding.

DR. KEYEK: That was in my opening--

ASSEMBLYMAN WOLFE: That was discussed when you weren't here, Assemblyman.

DR. KEYEK: It was in my opening statement, Assemblyman.

ASSEMBLYMAN GARCIA: Which one do you agree -- what does the coalition agree with, if I just may get that on the record?

DR. KEYEK: Yes.

ASSEMBLYMAN WOLFE: Your version. They like your version.

DR. KEYEK: We do not support the Assembly version. I could read the statement to you.

ASSEMBLYMAN GARCIA: Well, thank you very much. That's all.

DR. KEYEK: That's sufficient.

ASSEMBLYMAN MALONE: Mr. Chairman, one last question of you.

ASSEMBLYMAN WOLFE: Sure.

ASSEMBLYMAN MALONE: Did they promise not to beat up on us again next time we meet them?

ASSEMBLYMAN WOLFE: They look forward to giving us pizza and cold soda (laughter) or cold pizza and warm soda.

MS. GOLD: Mr. Chairman, just one comment from all of us who have worked with you on the last year on this bill. We just want to thank you for your efforts and for listening to us from the very beginning.

ASSEMBLYMAN WOLFE: Okay. You're very welcome. Thank you.

Okay. Now we have Kevin Jarvis, of the State AFL-CIO.

Kevin, how are you doing?

KEVIN JARVIS: Good.

Mr. Chairman, members of the Committee, thank you for the opportunity to come before you today. I have with me, to my right, Don Weir, the carpenters; to my left is Mark Longo, the operating engineers. Pursuant to your request at the beginning of the Committee meeting, I will just paraphrase and try to keep our comments brief. I know everyone has already been here for quite a long time. I would like to begin by thanking the sponsors, the Speaker, and Assemblyman Malone, both of whom have been very good friends to labor through the years, for their hard work and their efforts in putting this legislation together. We do have some concerns with the legislation -- we think some significant concerns -- and also some recommendations for the Committee that we would like to share with you at this time.

I know there's been a lot of discussion about it up until this point, but we would like to mention that we do have some concerns, as well as our teaching affiliates, the AFT, with the legislation's provision only providing for 90 percent of the funding for the *Abbott* districts. I fully understand Assemblyman Malone's concerns that perhaps the New Jersey Supreme Court was maybe more active than it should have been in this field, but I think we do agree with Assemblyman Garcia's comments that, irrespective of what we think was the right decision for the court to make, the fact is they did make the decision, and it is for that purpose the law of the land. Any legislation that does not rise to that level will, in fact, wind up delaying the building of schools further, and also, really makes it a good chance that the legislation will end up being challenged in court and constitutionally infirm, which would just take longer to build the schools that we all know need to be built.

With respect to recommendations, we would like to recommend that the Committee consider adopting the provisions in the Senate Bill regarding the inclusion of school construction as part of a larger, overall municipal development project facilitated through a local redevelopment entity. We think that the local districts really do have to be involved and have some flexibility and incentives to construct their own schools to meet the standards of their communities and using development structures in their place. I understand the concerns about using the Building Authority, but we think that centralizing it further away from the municipality will wind up causing more problems and more confusion and more delays. Really, the school districts themselves, on the ground, they are the ones who have experience in building schools, and they should have an opportunity for input there.

We think the Senate's proposal is innovative in that it would return schools to the focal point of the community, where a long time ago they used to be, and also that these types of really public-private partnerships by using local redevelopment entities has met with some success in various areas of the state where it has already been used -- Atlantic and Middlesex Counties and Mercer County. And so, we think that's a good way to go because it will help keep many of these construction jobs, which are good jobs, in New Jersey and for New Jersey residents, while also generating additional tax revenue for the State and, of course, most importantly, rebuilding our public schools for our children.

We would like to comment to say that the emphasis on the prevailing wage that is contained in this bill we appreciate. We think that strengthening the prevailing wage is always the right way to go. We like the

language that would inhibit a contractor from being awarded a subsequent contract if, in fact, he's found to have violated the prevailing wage. The one problem I would point out with such a heavy reliance on the prevailing wage is that there are contractors out there, both in state and out of state, who have really made a profession out of getting around the prevailing wage law. And, unfortunately, because of the backlog of cases in the Department of Labor, it currently takes anywhere from three to five years to debar a contractor for a prevailing wage violation.

And what you'll get into because of that is a situation wherein a contractor who is maybe under investigation for having violated the prevailing wage on a particular school project will have already finished that school, bid, been awarded another one and be right in the middle of a second project by the time any final decision has been made. And then you come into the problem of having to decide, "Well, okay, this contractor is going to be debarred because of prevailing wage violation, but he's literally right in the middle of building this school. Do we want to slow this process down for this school any further? Do we let him finish the job? Do we try and rebid and come in with a new contractor?"

It is a problem, but we do recognize the urgent need for renovation of the schools. They've been, unfortunately, neglected, and they've suffered from deferred maintenance for many years. But we just want to remind you that any policy decision of this magnitude, whether it's building roads and bridges or building hospitals or building schools, it doesn't happen in a vacuum. Of course, the most important objective is getting the schools built that are safe and will provide for a good education for our children.

But, of course, there are also the issues of trying to keep the jobs in New Jersey and for New Jersey residents and generating tax revenue and those issues, too. So with that said, I'll cut off my remarks, and I don't know if Don or Mark wants to add anything to it.

ASSEMBLYMAN MALONE: Dave, just one -- couple short questions?

ASSEMBLYMAN WOLFE: Sure.

ASSEMBLYMAN MALONE: Relative to your desire to have it be the 100 percent versus 90 percent-- If the total dollar amount is basically the same, really, from the impact on labor, that really won't impact it. I mean, if the total dollar amount is \$11 billion, whether you build *X* amount in urban areas or *X*-minus in urban areas, you're going to get it in other areas. So, from a theoretical standpoint, the amount of construction will be basically the same, I would think.

MR. JARVIS: You're absolutely right. We don't dispute that. As I mentioned, this is really more of an issue for-- There are two sides to it. It's more of an issue for our teaching affiliates who have been working very close, I know, with the Education Law Center on the *Abbott v. Burke* decision; and the second side, of course, is the concern that if the legislation comes out and says 90 percent while the Supreme Court has said 100 percent, the chances are this will again be litigated and it will-- Even once the legislation is enacted into law, if it's enacted into law with that language, it's going to be litigated, and then again we're going to have that delay, pending the court's review.

ASSEMBLYMAN MALONE: And a second question. You probably don't have the answer. I don't know if any of us really have the

answer. What, really, has caused the school not to be one of the main centers of the interest in communities, in particular, urban communities? I mean, even going back 20 years, 30 years ago before they got into a dismal state of disrepair, there seemed to be a shying away of utilizing the school as a center in communities. We're going back to it now, I think, in some of the suburban and rural communities where they've had to economize, and they are utilizing the school facilities basically from 7:00 in the morning until 10:00 at night for a variety of community activities.

This was one of the issues I was bringing up earlier today in my comments. I think there has to be a conscious effort not to start after the schools are built, but I think in many cases there's no reason not to start that kind of activity now and making the school more of a center of activity as we go through this process. I think it's a mental process as well as a physical construction process.

MR. JARVIS: Yes. I--

ASSEMBLYMAN MALONE: I don't know if you have an answer. You don't have an answer.

MR. JARVIS: I would agree with that. I really don't know why the schools lost the position of being a focal point of their communities. I just don't have an answer for that, but regardless of a reason they had, and we think that maybe bringing them back to that position might be a good thing for the kids.

ASSEMBLYMAN MALONE: Thank you very much.

ASSEMBLYMAN WOLFE: Thank you.

MR. JARVIS: Thanks.

ASSEMBLYMAN WOLFE: I'm sorry, any questions over there?

(no response)

Thanks very much.

Jeff Stoller and New Jersey Business and Industry.

J E F F R E Y N . S T O L L E R: Thank you very much, Mr. Chairman. Just wanted to say, on behalf of the Business and Industry Association, that we are very strongly in support of the legislation. We've looked it over and clearly we believe that this project you're working on here is going to be a tremendous investment in the economic future of New Jersey. The businesses are looking to the schools to get these facilities and really be able to have the tools they need to prepare what's going to be our future workforce.

One of the things that we like the most about what the Speaker has put forward in A-3625 is that this construction is achieved through the competitive bidding system that's going to be a fair, open competitive bidding, which we believe has proven over time clearly to be the best way to assure that these projects are completed on time, that they are completed at a reasonable cost. And we really believe that that is something that we should preserve in this proposal.

There have been some suggestions, perhaps, that you look at changing the bidding approach for this particular project. Perhaps that the lowest responsible bidder's standard, which is traditional with the State contract, somehow shouldn't be relevant here. We feel strongly the other way.

We believe that you're embarking on, as you've heard earlier today, what may amount to be a 10 billion-plus investment, one of the biggest and most significant infrastructure projects the State's ever undertaken. We believe

this is not the time to throw the State bidding laws out. We really believe that those are the ones that we can use to get the results we want. And we are really concerned that were we to go with some kind of different standard for this one major project that everyone would pay a price. That it would hurt the taxpayer. It would certainly hurt the school districts.

I mean, do we start identifying people and simply saying we're not going to accept bids from people who would otherwise be qualified? That means delay. That means people with expectations that these projects were going to move ahead are suddenly being told, "I'm sorry. We defined some of these people out in the bill." Certainly, the communities will pay a price, as would the business community.

So we don't want to see those kind of delays. We don't want to see extra cost being added to what's already going to be a major, major investment. So again, we would end by saying again that we've reviewed this legislation, and we would like to compliment Speaker Collins, Assemblyman Malone, and this Committee for working on this proposal. We think it's a very strong proposal, and we thank you very much.

ASSEMBLYMAN MALONE: Thank you very much, Jeff.

ASSEMBLYMAN GARCIA: Can I just ask one question?

ASSEMBLYMAN MALONE: Sure.

ASSEMBLYMAN GARCIA: One of the initiatives, I guess, as part of this bill and actually part of the Senate bill as well, is that Treasury will prequalify architectural firms. They'll prequalify construction companies and really set the amount of money that they could actually go out and do work on.

The question that I have is, does it matter? These are people who have actually put forth their qualifications, who have been approved up to a certain amount, whether it be \$2 million or \$10 million worth of work. Would it matter or do you think it should matter whether or not these contracts are then given out by the Building Authority or by a local school board if they could only give a contract out to someone who has already been qualified by the Treasury up to a certain amount. So they have to be familiar with the type of work that they do already.

MR. STOLLER: Well, I'm not aware that we've taken a position on that particular element. I'd really have to defer to some of the experts here in the auditorium today. I really don't have an answer to that on that specific question. I know that there have been various proposals about how everything should be handled. Yet we're looking at just staying to the basic contracting standards that have been in place, and on that specific question I'd really have to defer, Assemblyman. I'm sorry I don't have a good, snappy retort on that.

ASSEMBLYMAN GARCIA: That's fine.

Thank you.

ASSEMBLYMAN MALONE: Thank you very much, Assemblyman.

ASSEMBLYMAN GARCIA: Thank you, Mr. Chair.

ASSEMBLYMAN MALONE: Thank you, again.

The next speaker is the mayor of Jersey City, Bret Schundler. (no response)

After that, Judith Cambria, The League of Women Voters.

J U D I T H C A M B R I A: Good afternoon. Thank you for the opportunity to speak to you today about the Educational Facilities Construction and Financing Act. Our testimony focuses on four major differences between the Senate and Assembly versions of the legislation, and also on the -- talks about the revenue sources to fund facilities.

Before I actually launch into this, I would like to say that probably the reason you are here today is because of The League of Women Voters. You may not realize it, but the reason that the Supreme Court acted on the facilities issue was because The League of Women Voters, in 1996, decided that it was essential that the Court act on its 1973 and 1990 decisions, which said that facilities were an essential part of a thorough and efficient education, but the Court never had the information on which it could make a decision. And it was in the League's amicus brief in 1997 that we provided the factual background of the kind of State spending for funding of facilities and the constitutional reasoning as to why the Court had to act. So you're here because of us, and we're very proud of that. We're very proud that we finally, after all these years where conditions in many of our schools were deplorable -- you wouldn't send your dog or cat to some of the schools we sent our children to -- that we finally got some action. And of course, the good part is the addition to action on the districts that were in the *Abbott* decision. The Governor appropriately and the Legislature appropriately said we need to address this serious problem across the state in every single district.

So we're happy to be here because we're the ones who brought it. I think the first point in this bill is that we obviously oppose the 90 percent payment for facilities rather than the 100 percent payment. And the reason we

do so is because, quite frankly, the rationale that's given in this legislation in Section 2e is that you're saying the reason we're going to drop it is because we're going to go with the principle that school districts should contribute to the costs associated with educating their students in accordance with the districts' ability to pay, and you will extend that principle to the construction cost. That's the rationale that's given. But I would like to point out to you--

Incidentally, we've been in amicus since back since 1985 in every single one of these. So we know these decisions quite well. It was in 1990, in the *Abbott II* decision, that the Supreme Court addressed the issue of the *Abbott* districts' ability to pay. And they found, quite frankly, and I have the quote for you, but the major one is, "Our conclusion concerning municipal overburden is that it effectively prevents districts from raising substantially more money for education because it relies so heavily on a local property base already overtaxed to exhaustion."

The Court's findings regarding the inability of the *Abbott* districts to increase school taxes also underlie their 1997 and 1998 *Abbott* decisions in which they required the State to provide facilities sufficient to achieve the Core Curriculum Content Standards. The Court reiterated what it had said earlier in saying, "You cannot depend on the district's ability to raise taxes," because frankly they didn't believe, based on the evidence, that they had the ability to raise the taxes to do so. And they went on, in 1998, to say, in that case, you have to pay 100 percent of the cost.

I'd like to introduce to you some further evidence about the ability, or lack of ability, of the *Abbott* districts to use school property taxes to pay for, in effect, what would be one-tenth of the facilities cost. We're talking probably

\$700 million to \$800 million which they would have to raise. The *Abbott* districts enrolled 21.2 percent of New Jersey students. They contain, however, only 7.7 percent of the equalized property net tax value, and its residents receive only 9.8 percent of personal income. In other words, the basis they have for taxing is so disparate, so different from what the number of children that they must provide them for. In addition, they are faced with a school infrastructure which has, over the years, is in-- The first State examination of their districts showed that over 49,000 children needed classrooms. They were in overcrowded classrooms -- 49,000.

So, secondly, we'd like to say that the League is very happy to support the 5 percent increase in the proportion of debt service to be made to the middle income districts. We have watched, during the decade of the 1990s, and we have seen that the middle income districts have experienced a serious erosion in basic State school aid, that is the foundation aid, Core Curriculum aid, and debt service aid. We note that more than 70 districts receiving such aid under early QEA have now become ineligible, and the rest have seen their percentage of aid reduced. It's this fact of life that has led the Legislature, at every budget year for the last two years, to add millions of dollars to the formula to try and overcome some of the negative effects of the formula.

These changes have occurred because of shortcomings in the aid formulas which were initiated under the QEA legislation of 1990 and the CEIFA legislation of 1996, and because of a massive shift in the distribution of personal income in New Jersey between 1987 and 1997.

ASSEMBLYMAN WOLFE: Can I interrupt you for one second?

MS. CAMBRIA: Yes.

ASSEMBLYMAN WOLFE: It sounds like you're reading. I really would appreciate it if you can just paraphrase.

MS. CAMBRIA: Okay. All right. I will try. All right.

ASSEMBLYMAN WOLFE: Okay.

MS. CAMBRIA: Basically what has happened is that because of these three factors, and I'd be happy at another time to go into detail because I can't, but we know that the taxpayers in the moderate income districts have seen reductions in the State aid, that means debt service, and that they simply cannot afford that, the amount of facilities debt that they will be forced to shoulder under the present load, under the present bills, both of the Senate and the Assembly bill. Therefore, at this point, we are supporting Senator (*sic*) Collins' recommendation of a 5 percent increase because at least it will, in an interim way, help to address this serious problem. However, it should only be an interim measure, and the Legislature should be looking at those formulas. They need to be reviewed, and they need to be changed to provide more adequate State support for the educational programs in these districts.

We do not support, and it is for fiscal reasons only, the 100 percent State payment of interest for districts using the revolving loan fund. That doesn't mean we wouldn't like to, but we went to Economics 101 and said, "You have to make choices. You haven't got money for everything." Our League has, since 1990, every time anything has come up in the Legislature -- it's been a number of times -- has supported providing some construction aid to all districts, including the wealthiest districts. We think in this case we just don't see the State being able to come up with that money, and they are receiving one of two benefits: they either get 10 percent debt service aid or they may choose

to use the revolving loan fund with either 2 percent or 0 percent, depending on which bill you're looking at. We just feel that we can't afford to give the extra 2 percent, that the 2 percent is a fair amount given the kinds of moneys the State is going to have to raise in order to fund the overall picture.

We also support the provision in Collins' bill which authorizes greater amounts of funding in the early years of the loan fund and increases the loan fund by \$50 million, rather than the Senate bill which says 200 million over five years. We know that most districts face immediate needs for facilities, over 200,000 additional children in our schools since 1989, and as I said, 49,000 unhoused children in crowded conditions in the *Abbotts*. The need is there, and they need it immediately. So we believe that providing \$700 million in the first two years in the loan fund rather than 400 would better meet the pent up demand that there is to get these facilities going and get those buildings built and the children into the adequate facilities that they need.

And finally the last point which we would like to make, which we made also before the Senate Education Committee, is that both the Administration and the Legislature have failed to address the issue of adequate revenue to fund facilities needs, which we're now talking anywhere from 10, 11, whatever, very large numbers. We do note the addition of \$100 million from the tobacco settlement is in this legislation, which does provide something more, and it's supposedly added to \$112 million earmarked from the cigarette tax and the big Lottery revenues. Altogether, they all fall far short of paying the projected costs, which I heard this morning went significantly higher than the numbers I had, but we're talking \$500 to maybe \$800 million in annual payments.

Our concern with this failure to identify the adequate sources of revenue is because it is not just this alone, but it continues a recent pattern of passage of programs and of borrowing where we have committed the future legislators, governors, to enormous costs without identifying appropriate and additional sources of revenues. We believe that it's irresponsible to pass legislation without identifying the revenue source and leaving the unpleasant and politically unpopular necessity of raising taxes or reducing other programs to later administrations, governors, legislators, and taxpayers. So we find that this is not acceptable, and we believe that it is essential that this issue be addressed because we cannot pay for it with the kinds of money we have now.

When I look at the number of things that are going to come out of the General Fund, including up to a billion dollars a year for the New Jersey Program, it isn't going to cut it. I want to thank you again.

ASSEMBLYMAN MALONE: Just a couple of questions?

MS. CAMBRIA: Sure.

ASSEMBLYMAN MALONE: Based on what the current level of funding is for the *Abbott* districts, in some cases it's 80 percent, maybe 85 percent, whatever it is, why do you think there should be a difference in the level of funding? If we fund the schools now at, let's say, 85 percent, why should we fund the construction cost? Aside from the Court case, in a sense of fairness and justice, why should we fund them at 100 percent?

MS. CAMBRIA: Our fairness and justice comes down to whether or not the children in these districts will receive the kind of quality of education which is -- matches up to what's provided in other districts, but also which clearly provides the kind of courses, the kinds of experiences that enable them

to achieve the Core Curriculum Content Standards. The facilities in the districts-- I haven't been working in Newark. I happened to raise money a while back for programs in the schools. I worked for a university. I wouldn't send my dog or cat to those schools. The point is they simply do not have the tax base, nor the personal income, that will enable them to pay to be able to raise their tax rates and to raise \$700, \$800 million. They simply cannot do it.

ASSEMBLYMAN MALONE: But that's not a one-year expense. I guess--

MS. CAMBRIA: Even over the number of years, they do not have the resources.

ASSEMBLYMAN MALONE: But how do you reconcile the two differences? The 85 percent, let's say it's Newark. I think Newark is somewhere around 80 percent of State funding for operating expenses now. How do you reconcile the differences between 80 percent and 100 percent?

MS. CAMBRIA: Because just to get to the 100 percent takes what capacity they have for taxing to get to their 100 percent. They don't have additional capacity beyond that to pay for the facilities as well.

ASSEMBLYMAN MALONE: And the question I would ask then is, have you looked at other school districts--

MS. CAMBRIA: Yes, we have.

ASSEMBLYMAN MALONE: No. I'm not talking *Abbott* districts. I'm talking about other--

MS. CAMBRIA: Yes.

ASSEMBLYMAN MALONE: --core school districts in the state that are not going to get the benefit of this kind of funding.

MS. CAMBRIA: Yes. We have looked at it. One thing now I'd like to make very clear is The League of Women Voters, while it originally started out in the cities, mainly has its chapters in -- its leagues are in the suburbs. I mean, we are not representing here the *Abbott* children per se. We are representing all the children of New Jersey. And it's one of the reasons why we've said to you we're supporting this 5 percent. With what we've seen in the last few years is this middle group is getting killed.

ASSEMBLYMAN MALONE: Correct.

MS. CAMBRIA: They are getting killed--

ASSEMBLYMAN MALONE: Absolutely.

MS. CAMBRIA: --and the reason they are getting killed is because the formulas are not working properly. They are saying that these districts are "wealthy." They are not wealthy, and the formulas are failing to reflect that. That's why we said this is an interim measure and an interim measure only. Because this Legislature who knows every time you come to budget -- every time you do the budget, you're putting in \$40, \$50 million because you see what's happening to the districts who are losing support when you know that the people out there can't afford it. So we recognize it. So we're trying to, at this point, say they can't afford it in the poorest districts, the *Abbott* districts, they also can't afford in the other. The best we see at this point is add 5 percent and then getting back to those formulas and looking at redoing them so that we get a much fairer distribution.

ASSEMBLYMAN MALONE: Assemblyman Rooney has a question.

ASSEMBLYMAN ROONEY: Not a question, I was just-- I pretty much answered the question. I looked in the context here, and you were talking about the equalized valuation, and it looks like the 1998 figure is at 7.7 percent.

MS. CAMBRIA: Yes.

ASSEMBLYMAN ROONEY: Because one of these, I'm looking at the districts themselves, and I see a town like Hoboken, which is a renaissance city--

MS. CAMBRIA: I agree with you. That's a composite figure.

ASSEMBLYMAN ROONEY: Newark is--

MS. CAMBRIA: And you are going--

ASSEMBLYMAN ROONEY: But what I'm saying to you is right now, the way it says, all of these *Abbott* districts are going to get 100 percent funding regardless of their ability to raise taxes, and especially in a changing world. I mean, we've seen changes, and admittedly, in Newark, even with the Performing Arts Center, with what's going on in Newark in a renaissance, and what Sharpe James has been bragging about, that there's a whole change going on. Jersey City is another excellent example of how it's changed. And yet, this doesn't take that into consideration. It just says the 30 *Abbott* districts are going to get 100 percent funding. That's why I object to it. That's why a lot of people-- Ninety percent might have been a compromise for me, but I could agree basically with Joe Malone that, hey, maybe we should be looking at the percentages that the courts established. The 83 percent for Camden, whatever it happened to be for Newark--

MS. CAMBRIA: The court didn't establish that. The State--

ASSEMBLYMAN ROONEY: --52 percent for New Brunswick, which that bothers me, too. Fifty-two percent funding for New Brunswick. They're going to get 100 percent funding for the building of schools. What about in the North Ward in Newark? I mean, there's a very affluent section. If they want to build a school, they're going to get 100 percent paid, and their taxes in Newark for years have been underassessed because they refuse to do revaluations for 30 years. Now, you tell me the answers to all those questions and maybe I'd vote for the bill. But right now, you don't have the answers. I don't have the answers. I don't even know if some of the buildings you're talking about-- I want to see the studies that say, "That building has got to be replaced, completely replaced rather than repaired." I want to see those studies.

MS. CAMBRIA: Those studies--

ASSEMBLYMAN ROONEY: Just a comment. It's rhetorical, please.

MS. CAMBRIA: Those studies have already been made, and something like over \$2 million has been spent in the last two years to do inch by inch what's there and what needs to be done.

ASSEMBLYMAN ROONEY: I have no problem with that.

MS. CAMBRIA: Going back to that, I think that, generally speaking, most of those districts are in the category. They're not in the Hoboken category. And, yes, while Newark has made some strides, it still has huge disparities in its wealth and its property value. Do you know how much percentage of Newark land is not taxable? Something like 70 percent is not taxable. They're off the tax rolls.

ASSEMBLYMAN ROONEY: Yes, again, is that our fault? That's another problem. What we've done--

MS. CAMBRIA: It's not your fault. It's not your fault, but it's also not their fault that it does not provide a property tax base for them to tax for the schools.

ASSEMBLYMAN WOLFE: Let me go on to Rudy.

ASSEMBLYMAN ROONEY: I don't think we should-- I just want to include, so Rudy can really hit me, the gold coast, with West New York, with Union City, with Weehawken, with Hoboken, that whole gold coast along there is really coming-- and a problem. I used to live in Union City. I'm glad to see that things are happening and that it's really coming up and the ratables are getting better and the conditions are getting better. But as long as they're on a list and not at 100 percent, I've got a problem.

ASSEMBLYMAN WOLFE: Assemblyman Garcia.

ASSEMBLYMAN GARCIA: You know, it's really amazing that in the same breath we're going to say that these districts-- The Court has already decided they should get 100 percent, and all we're going to do by this debate-- We can disagree as legislators on what it actually should be, but the Court has already ruled this. All we're doing is delaying the construction for everyone, the middle wealth, the poorer districts all throughout the state, so that's fine. And what's amazing is in the same breath that we're saying that these districts are made to only be entitled to 86 percent State aid should not receive 100 percent State aid. In the same breath, you're saying that those districts that are entitled to 0 percent State aid through the State formula are now going to receive, as a

result of this bill, 41 percent State aid because their bond debt service is going to be totally financed with a 0 percent loan. So the truth is--

ASSEMBLYMAN MALONE: You know that's a lie.

ASSEMBLYMAN GARCIA: No. It's true. It's absolutely true. It's in the bill. It's absolutely in the bill. So at the same time, you bemoan the fact that these poor districts that for -- and maybe it wasn't our fault because maybe we weren't here. Maybe it wasn't our fault, but maybe we weren't here, but for 30 years the needs in these districts have gone unread. That this Court decision was started in 1975, went to 1980. That even the Commissioner agrees is an appropriate level of funding. That the Court has ordered the appropriate level of funding, not spend another two years in court debating this issue and so that nothing will get built, except those children like--

I'll give you an example -- a great city, a shining city on the hill that's undergoing a rebirth as we speak, Union City. There were 1800 kids in Edison Grammar School. It's the largest grammar school in the state. No, the kids are not scared for their life. No, the teachers are teaching. But you know what, that's not where they should be learning. We need the additional classroom space. And all that we're saying is, let's go on with the needs of all the districts throughout the state. And I'll concede, yes, even maybe that some of those districts have now for the first time always received zero help from the State. Maybe we should give them some help as well. Maybe all bolts should be lifted. But certainly, let's not give them their help at the cost of the one reason why we're having this debate today, because the courts have ruled that the *Abbott* districts are entitled to this money. So I just want to thank The

League of Women Voters. I appreciate your position, and I think they're well taken, and let's go on to the next one.

Thank you.

MS. CAMBRIA: Could I make one comment to Mr. Malone? I wanted you to ask the question which you said you were going to ask all of us who got up in support of the 100 percent--

ASSEMBLYMAN MALONE: Yes.

MS. CAMBRIA: --of what we got out of this.

ASSEMBLYMAN MALONE: Yes.

MS. CAMBRIA: I should like you to know that for 30 years I have worked on public education as a private citizen. I haven't received a dime. I spent 19 years serving on the Educational Opportunity Fund at the higher education level. I didn't receive a dime. League members don't receive any money. We do it because we care about the good of the State, and we care about all the children in the State.

Thanks.

ASSEMBLYMAN MALONE: Thank you.

ASSEMBLYMAN STANLEY: Mr. Chairman, if I could just commend The League of Women Voters on their efforts on behalf of the *Abbott v. Burke* decision, their continuous, undying, unwavering support of the school children in those districts. I just commend you. I thank you. I think you're doing a tremendous job, and I hope you can hang in there.

MS. CAMBRIA: We will.

ASSEMBLYMAN STANLEY: Thank you, and God bless you.

MS. CAMBRIA: Well, the children are not going away. We're not going away.

ASSEMBLYMAN WOLFE: The next speaker is Eric Wagner and Mike Soriano.

ERIC WAGNER: Good afternoon, Chairman Wolfe and members of the Assembly Education Committee. I'm Eric Wagner, President-Elect of the New Jersey Chapter of the American Institute of Architects. With me today is Michael Soriano, Chair of our AIA-New Jersey Legislative Committee. I'd like to begin today by thanking the sponsors of this legislation for their willingness to listen to our concerns from the beginning of the process. I would also like to thank the Chairman and members for giving us the opportunity to speak today.

AIA-New Jersey strongly supports improving the learning environments of New Jersey's students. We applaud the use of State funds and the creation of a loan fund to accomplish this lofty goal. We also support placing financial restraints on the use of those State funds to ensure that taxpayers get the most bang for their buck.

While we have seen some improvements in the legislation, we feel there's still -- are some sections that could use some improvements, and we'd like to suggest some changes today. I'll go over the first of those, and Michael can touch on the last two.

Under this present legislation, the local school district must retain an architect to initially draft the documents required for a proposal. The architect that has done that initial work becomes very familiar with the site and the project. However, under this legislation, the Building Authority has the power to retain a completely different architect to finish the project. Switching

architects after the initial work will only increase the cost and time that the project would take. We feel it doesn't make sense to switch architects and think that the initial architect doing the initial schematic design should be retained on that project throughout.

While we understand the goal behind using two architects is to decrease costs by having the State oversight on the final design with the architect, we believe a better way to achieve this goal would be to require the local district to choose an architect that's been prequalified for school construction by the State Building Authority. The State will, therefore, ensure that only those architects who have the appropriate qualifications will be used for these important projects. And in our written statement, we've suggested some mandatory language to support that.

MICHAEL SORIANO: Our second concern this afternoon regarding A-3625 is that the State Building Authority will have property rights over construction of projects. Construction documents prepared by design professionals in hard or electronic media are a graphic depiction of a designer's creative effort. They're not a product, and the architect should, therefore, retain the property rights. Let me explain that a little bit. The property rights language in this legislation gives the Authority the ability to reuse the documents in other projects without further involvement of the architect. We feel this would be very dangerous.

Unauthorized reuse is a major liability problem. Experience teaches us that the original designer is exposed to potential claims in the future, by persons or institutions which rely on those original documents and those efforts, and as they are applied to unknown or unanticipated future projects in differing

site conditions. Further, transferring ownership allows for the potential unauthorized changes in the documents, exposing the architect to even further unanticipatable claims.

Finally, an expanding climate of liability has the potential for reopening the debate over the nature of drawings. Transferring ownership gives a court the opportunity to view documents which the creator has “sold” as a product, with the potential for product liability for errors and omissions -- for example, liability without demonstration of fault -- as opposed to substantial and historic protections afforded design professionals under the convention of negligent standard of care. Will any provider of professional liability insurance provide insurance to an architect or any other design professional who is subject to this potential litigation and liability?

In addition to the liability problems created in the transfer of ownership, subsequent design professionals asked to use those and apply those instruments owned by the Authority but created by another design professional exposes him or herself to still other potential violations of several New Jersey State Board of Architects regulations dealing with constant supervision and responsibility for the creation and subsequent use of those instruments.

Finally, minor differences in property characteristics make reusing plans from one project very difficult and, therefore, potentially very costly, too.

Our third concern with regard to A-3625 is that the revolving loan fund is scheduled to expire after its eleventh year. AIA-New Jersey believes that a permanent funding source should be one of the most important components of any school construction proposal made. While this massive legislation will be sure to benefit many communities right now without a permanent funding

source dedicated to assist municipalities far into the future, this legislation will become a one-time fix, and the State will find itself in the same situation many years down the line. While not creating a non-lapsing loan fund will continue to improve New Jersey's schools through the next millennium, a permanent funding source is necessary to ensure that the quality of the schools constructed through this program continues into the future.

In conclusion, AIA-New Jersey supports the goals of this school construction initiative. The three concerns we've outlined this afternoon, however, we believe are roadblocks to a successful school construction program.

It is also important to remember, as stated earlier, that buildings often become the center of life in a community and are critically important to the richness of that community. To that end, we would like to see the sponsors include a community redevelopment component similar to the State Senate bill so as to advance the concept of livable communities. Local involvement should not be sacrificed, and the construction process should be the most efficient.

We believe our suggestions and amendments that are enclosed in our testimony will help achieve these efforts.

Thank you all very much for listening to us this afternoon.

ASSEMBLYMAN MALONE: You mentioned the impracticality, I guess, using plans or designs at multiple sites. Do you see that as a 100 percent problem, 50 percent problem, 20 percent problem? In what percentage of the cases do you think that you really couldn't use off the shelf plans that have already been designed for most locales?

MR. WAGNER: I would estimate the majority of the times we feel it's a false economy. Certainly, you could carry forward a set of plans, putting

aside the copyright issues that we brought forward today, but the time that it takes to properly review those plans and modify them to that specific site, modify them for specific requirements of a community, create this false economy where you end up costing as much and more to modify the existing plan rather than develop a plan for that specific site and community.

MR. SORIANO: There are differing conditions throughout the state, seismic, soil conditions, urban versus suburban.

ASSEMBLYMAN MALONE: I guess, maybe the military has figured out a way of doing it. Because you go to most military bases, and I'm telling you I can't think of the ones I have visited, that if you go to Fort Dix or McGuire or you go to some other air force base out in Illinois or down in Texas, I'm pretty sure that the buildings look awfully similar.

There was an apartment complex design utilized throughout the state in the early '50s, and I'll bet you I could find 100 towns in the State of New Jersey where you would have a hard time, if you just looked at the building, knowing what town that building was in because they're identical. Because I know we had them at Bordentown. I know there's the same identical apartment complexes that were built in Somerville, and I know there's been other towns where I've seen those exact same apartment complexes that were built. Now, do they know something, does the military know something, or do the designers of these apartment complexes know something that we don't know today?

MR. SORIANO: There is economy, absolutely, in reusing concepts and ideas.

ASSEMBLYMAN MALONE: Now, I'm going to ask you the question again.

MR. SORIANO: Sure.

ASSEMBLYMAN MALONE: What percentage of the times couldn't you reuse, with the exception you might have to have some different site preparation, but once you get above the foundation and you correct for site problems, you build a proper foundation-- Most schools, I think, are built on a slab, if I'm not-- I mean, today they're mostly built on a slab. You mean to tell me that probably in 60 percent to 70 percent of the cases you couldn't use the same plans if you had a standardized plan in most places in the State of New Jersey?

MR. SORIANO: I think personally, and I have to agree, at least half the time that would be applicable.

MR. WAGNER: Well, you know, certainly, the *Abbott* districts are not the type of areas where you would go out and buy a former cornfield and plop a suburban site into it. I think that's kind of the scenario you mentioned, the army bases--

ASSEMBLYMAN MALONE: But even school buildings-- If you came to the Bordentown City and the school I taught in New Brunswick, you would have a hard time telling the difference between the two school buildings. Now, I don't know if the same architect did it, but I bet you there's a good chance it was the same architect. Looks like the same building. And I've been involved in a number of construction projects with water plants, with sewer plants, and I think -- and I might be mistaken -- that 90 percent of the stuff that they use is off the shelf. I think we should maybe -- granted, there might be

some unique situations in an inner city situation where you may have to build around something.

Our local grammar school was built around the old school. Now, that's somewhat unique. It was a horseshoe-shaped building when it was built because it was built around the old school, and then the old school was demolished. But I would hope that we bring some reasonableness to the table when we're discussing this, and I would hope the architects would be reasonably understanding that, I think, one of the major aspects of the school construction, as we move forward, is to try to get economies of design. And granted, there may be some unique situations in some urban areas and we may be doing some things, but I say by and large, I think we can do probably in, I would say, 60 percent to 70 percent of the cases a building that is very much similar to another building in another locale without too much difficulty given in correction and maybe the foundation work.

MR. WAGNER: Well, we support the government oversight and the efficiencies by the State Building Authority. We just warn against some of these false efficiencies, or perceived, that won't bear fruition. For instance, if you have a school that's designed for 500 students and the school district requires 600 student capacity, what do you do? You can't just simply add another couple classrooms because the boiler system is not large enough, the cafeteria doesn't have the capacity. So it's not just a simple, "Oh, we'll extrude it out and add four classrooms to get that added capacity."

So then the other option is take that cookie-cutter plan and build two of them. Now you've overbuilt. You built 1000 student capacity where the 600 is only required. Those are some of the concerns that we bring forward.

We're certainly in support of working with the State and keeping the efficiencies, but we just warn that they are not as evident and they will not bear out the way it's hoped, in our opinion.

MR. SORIANO: We appreciate the magnitude of this project. We're reduced to working within the constraints of codes and standards and rules and regulations, and we're challenged by this. Like Eric had mentioned, we're up to the task of employing the Core Curriculum Standards with the space allocations in making that our design challenge and meeting the needs of these districts.

MR. WAGNER: But those standing guidelines and criteria for square footage -- allowable square footage, they're really already in place, and they have established a framework that we have to work within. They're the rules that we have to stay within that will lead to a school to be very similar to another school, presuming that they don't want to spend extra money on noncovered areas.

ASSEMBLYMAN WOLFE: Assemblyman, you had a question?

ASSEMBLYMAN GARCIA: I just want to go over the first point that you brought up, which is something that I think would be beneficial to all the districts and actually save some money for the State as well. I understand that under the present plan that any architectural firms or any construction firms for that matter, before they are awarded any type of contract, will have to be preapproved through the Treasurer's Office. Is that correct?

MR. WAGNER: That's correct.

MR. SORIANO: Through the SBA. That's the way it's outlined in both Senate and Assembly proposals.

ASSEMBLYMAN GARCIA: So once you're preapproved by that entity, it means that they're familiar with your work and feel that you will be able to complete your work in a reasonable manner up to the amount, whatever that amount may be, based on your experience. Is that correct?

MR. WAGNER: Yes.

ASSEMBLYMAN GARCIA: The question then becomes, who actually engages your services? Whether it be that entity, or can the Building Authority, whatever--

MR. SORIANO: SBA.

ASSEMBLYMAN GARCIA: --pick and choose the architect that's going to do it for, let's say, a local school board? And the issue that you raised, which I think I happen to agree with, is that many of the local school districts have already engaged architectural firms, as required by the Commissioner and the Department of Education, with respect to generating a five-year facilities plan. Many of these architects are already very familiar with the local needs, the local tapestry of what the existing school structures are.

I do not see where the problem would be. If the local district can hire an architect, pay them the same amount of money that the Building Authority would pay that architect-- Anyway, the architectural firm or the construction firm, we're talking generally not only about you, although I know you get paid by architectural firms, that the architect will then be able to come off a list of preapproved up to the project amount. I really don't see how that would be detrimental other than that the local district will be able to work with their architect that's already prepared their five-year plan.

MR. WAGNER: Well, we agree with that. We feel that it's a very important component to have the architect familiar with the community, the needs of the community. The architect that did the initial needs analysis seems to be the appropriate plan to carry forth.

ASSEMBLYMAN GARCIA: But only as long as you're qualified by the Building Authority?

MR. SORIANO: Absolutely so.

MR. WAGNER: Absolutely. We don't question that prequalification process.

ASSEMBLYMAN GARCIA: And only for the amount that you qualify by the Building Authority?

MR. SORIANO: That's correct.

MR. WAGNER: Many of the smaller districts have local architects that they have been working with that live and work in those communities should they be displaced so as not to have the ability to help their communities grow and meet the needs of their students.

ASSEMBLYMAN GARCIA: Thank you.

ASSEMBLYMAN WOLFE: Okay. Thank you.

ASSEMBLYMAN STANLEY: I have a quick question just on that same point. I just wanted to ask if-- Now, the current legislation that throws everything that's been done so far sort of out the window with respect to architects or how does-- I just want to be clear on this.

MR. WAGNER: It gives the Building Authority to hire the architect, to decide who the architect would be for the project. It doesn't say that the architect that started the project wouldn't be carried forward, presuming

that they're prequalified, but it gives the Building Authority the final decision, final say as to who the architect of the project will be.

MR. SORIANO: And overrides the sentiments of the local board of education even if they already had an architect and/or engineer retained.

ASSEMBLYMAN WOLFE: Let me ask Mr. Mortimer. Excuse me, you've heard a lot of this testimony. Is there anything you'd like to say, from the Treasury's point of view, regarding this process?

MR. MORTIMER: Mr. Chairman, this is an issue that has been discussed at a number of forums, and there are some things that we have said pretty consistently that relate to this. First of all, the number of districts that would be in a position of having the architect become an issue with the Building Authority are only those that exceed the 50 percent or *Abbotts*, which is some number, approximately 70 to 80 districts out of the 564. The balance would all do the normal selection processes that they would go through today. And as the Assemblyman has pointed out, the prequalification does establish a base level.

In terms of the other districts that would be using the Authority, what we basically have been discussing is that a couple of, sort of, factors. First of all, if the local contract between the district and the architect has assignment capabilities in it, that is something that could be considered for assignment to the Authority. Second is the level of effort that has already been put in by the local architect working the local district. If they've done 10 percent schematics, as opposed to 90 percent design drawings, clearly there's some criteria we can use. I mean, if a district has only done the 10 percent schematics and there are

other issues like the prequalification level, like the existing contract language, like past experiences, those are all factors that could be considered.

So we feel that the language of the bills and the conversations about those kind of criteria are consistent with good and best business practices that should assure that well-placed, well-informed, well-experienced relationships at the local level are not destroyed or ignored, and the level of effort that's been put in on a particular district's plans. Clearly, our goal is to get the best quality schools built as quickly as possible. So assignment is a possibility.

ASSEMBLYMAN WOLFE: Okay. Thank you very much.

MR. WAGNER: Thank you.

MR. SORIANO: We do hope you'll review our amendment language and consider implementing it.

ASSEMBLYMAN WOLFE: Okay. Thank you.

Thomas Sharp and Associates.

RICHARD N. HARTMAN: Thank you, Chairman Wolfe.

ASSEMBLYMAN WOLFE: It's got to be red. (referring to PA microphone)

MR. HARTMAN: Red? Okay. Thank you very much.

Thank you, Chairman Wolfe, and members of the Assembly Education Committee. My discussion this afternoon will kind of dovetail with the one you just heard from the architects. My name is Rich Hartman. I am Executive Vice President of Thomas Sharp Associates. We are an insurance organization dedicated exclusively to providing professional liability insurance and risk management services to design professionals. We represent over 1000

architecture and engineering firms in the State of New Jersey, many of which are currently working on public school projects in our fine state.

I'm here today to discuss a potential liability concern with respect to A-3625. My discussion will not only center around the liability concerns as they impact upon architects and engineers, but they will also address how they impact on contractors, the project owner, as well as the general public.

Assembly Bill No. 3625 sets forth in various parts the definition of a school facilities project. The legislation states that included within this definition are the services of design professionals such as architects and engineers. By virtue of this definition, A-3625 grants the New Jersey Building Authority the right to own all or part of the services of architects and engineers, as well as the right to sell, assign, transfer, or convey the services of design professionals. Furthermore, most importantly and of most concern, A-3625 provides the Building Authority the right to modify, from time to time, plans, specifications, designs, or cost estimates prepared for a school facilities project. This proposed granting of authority creates concerns of expanded liability not only to design professionals, but also to members of the construction team, the project owner, as well as the general public.

Clearly, it appears that the proposed legislation is seeking to grant the Building Authority the right, by statute, to own a set of plans and specifications prepared by an architect or engineer for a school project and reuse those plans for another project or projects; thereby, realizing a savings in the cost of the project by reducing or eliminating the fees paid to architects or engineers.

ASSEMBLYMAN WOLFE: Excuse me, Mr. Hartman. We have your written testimony.

MR. HARTMAN: Yes, you do. Okay.

ASSEMBLYMAN WOLFE: Could you summarize it or could you--

MR. HARTMAN: I can.

ASSEMBLYMAN WOLFE: --or could you just give us a brief outline of what it is.

MR. HARTMAN: Yes. A couple of things. There is a real danger in reusing plans, as Michael and Eric mentioned before. Every site is different. There are, in my opinion and in my experience, there is no such thing as a final set of construction documents until a project is completed through construction and is occupied. With the design professionals of record having the opportunity to provide, through the construction phase, appropriate professional services to complete that design, continuously there are issues that arise during a construction project, especially in school construction, where contractors need interpretations of the plans to adapt to certain site conditions.

Only, in my opinion, can the architect and engineer of record for that project be -- is in the best position, and the right party, to answer and respond to those inquiries without having an unfamiliar design professional with the preparation of those plans respond to those inquiries. Not only are you looking at a problem for the original designer, the subsequent design professional responding to those inquiries, but the school district, the Building Authority, and the people that will be using that facility, which are the students and the community in which those facilities are located. I think there is a real danger.

One other thing. Changes in design made during the construction phase of a project lead to three to five times more claims against architects and engineers than the original design. Now certainly, the claim is made against the design professional, but that's just the start of it. We all know, and my experience shows, that the litigation just expands from there to involve all the parties that ever had anything to do with that project -- that it not only delays the construction of the facility which is sorely needed, but it is costly, it is time consuming, and nobody wins.

Those are the basic components of my concern. There are copyright issues that, I think, need to be addressed if the Building Authority is going to own the plans. How are the copyrights going to be assigned and ultimately given authority to other architects to utilize the plans and specifications.

I thank you for your time.

ASSEMBLYMAN WOLFE: Thank you very much.

Any questions? (no response)

Okay. Thank you.

Kevin Monaco of the Utility and Transportation Contractors Association.

K E V I N M O N A C O: Thank you, Mr. Chairman, members of the Committee. I'll be very brief.

The Utility and Transportation Contractors Association of New Jersey currently numbers approximately 1200 firms throughout the state active in heavy highway, utility construction. Our members also do quite a bit of site work and utility work associated with school construction. I just wanted to emphasize our support for language included in the Assembly bill which

continues the long-standing State policy of awarding contracts to the lowest responsible bidder. We believe this allows all qualified New Jersey contractors to bid on works financed with their tax dollars on an even playing field. We do not believe the school construction legislation is the proper vehicle to make wholesale changes to the State bidding and procurement laws.

In addition, an earlier speaker raised some concerns relative to the Prevailing Wage Act. I would just like to point out that we do support the Prevailing Wage Act, and the Governor has recently signed a contract or registration act which all contractors in the state will have to pay a \$300 fee to the Department of Labor, the proceeds of which go to enforcement of that Act. So that is being addressed in other avenues as well.

ASSEMBLYMAN WOLFE: Questions? (no response)

Kevin, thank you very much.

MR. MONACO: Thank you.

ASSEMBLYMAN WOLFE: John Tomicki. (no response)

I want to thank all the members of the Committee who are still standing or sitting, as the case may be, or those who have been here. I want to thank all of you who have sat through these hearings.

I especially want to thank Dunston McNickel (phonetic spelling) back there, the only alleged real reporter that sat through the entire hearing. And Dunston, thank you very much. (laughter) I know they are going to ask you what really went on, so you were here. Thanks again.

But again, this will conclude the hearing, and this conceptual design certainly is working its way forward. Hopefully, we'll have some legislation in

the near future that we can bring for a formal vote. So thanks very much for your participation. All of you, thank you.

Merry Christmas.

(HEARING CONCLUDED)