
Public Hearing

before

SENATE EDUCATION COMMITTEE

SENATE BILL No. 15

(The Educational Facilities Construction and Financing Act)

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: November 29, 1999
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Robert J. Martin, Chairman
Senator Joseph A. Palaia, Vice-Chairman
Senator William L. Gormley
Senator Shirley K. Turner



ALSO PRESENT:

Darby Cannon III
Kathleen Fazzari
*Office of Legislative Services
Committee Aides*

Beverlyn Grissom
*Senate Majority
Committee Aide*

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SENATOR ROBERT J. MARTIN (Chairman): Could everyone please have a seat?

We're going to begin the Senate Education Committee hearing on school construction.

I'm Senator Martin, Chair.

Let me note for the record that we will not be voting on a bill today. This is a hearing designed to take testimony on the piece of legislation sponsored by Senator Gormley and Senator Codey. It is expected that having testimony received today, we would consider amendments and vote on the bill on September 6 (*sic*). At least that's the proposed scheduled, it's always subject to change.

My understanding is that Senator Baer will not be available today. The other members of the Committee: Senator Gormley; Senator Turner, Vice-Chair, Senator Palaia are here with me.

We want to begin the Committee hearing with testimony from the Commissioner of Education, David Hespe, and the State Treasurer, Roland Machold. If they would come forward and have a seat.

Before they do, however, I would ask Senator Gormley, if he chooses to -- if he has any opening remarks regarding this legislation that he is the sponsor of.

Senator Gormley?

SENATOR GORMLEY: Well, I would like to thank everybody who's been involved in this process, that's going to be an ongoing one. There are obviously certain differences of opinion, but I think everybody, both political parties, the professionals involved who work with education on a day-

to-day basis, parents, -- everyone has a sincere interest in this issue. And I think that we can come to a resolution that provides better schools for all New Jersey children, provides property tax relief for the residents of New Jersey, and provides stable funding, which has been something that we have sought for so many years, especially in terms of debt service.

So with that in mind, it's a day for us to listen, to get input, and to work as hard as we can collectively over the next week or so to see if we can come up with a package that provides for the quality of life of New Jersey's children.

SENATOR MARTIN: Thank you, Senator Gormley.

I would try and synopsise the bill, but I can't. It would take the entire hearing to try and explain the bill. It is complicated, and we understand that. Hopefully, as the testimony develops, those who are concerned with certain aspects of it, will -- when issues are raised, we may be able to provide some clarification. And I have asked representatives of the Department of Education, as well as the Treasury Department, to be on hand if and when we need that clarification, as well as Kathy Fazzari, who is one of the people most responsible in OLS for working on the bill, as well as several of her colleagues are also here to clarify language if need be.

So we will begin with Commissioner Hesse and State Treasurer Machold.

Welcome, gentlemen.

COMMISSIONER DAVID HESPE: Thank you, Senator. I appreciate that.

It's always a pleasure to come before the Senate Education Committee, as I've done many times in the past, but never on an issue of this great import for the school children of New Jersey.

New Jersey has one of the oldest physical plants in the nation in terms of its school buildings, particularly in our cities in the state. But it's not just in our cities where we find the need to upgrade school facilities, but almost every school district in the state has some needs. And these are real needs. I visit our schools one day a week, and I know firsthand that there are significant building needs which exist in all areas of the state, be it in our urban areas, be it in our suburban areas, be it in our rural areas. I've seen some exceptional facilities in the schools, some that the state should take great pride in. I've also seen some school buildings and classrooms that should shame us all.

We send a very clear message to our children when we send them to school in school buildings and in classrooms which are substandard. We send a message regarding our expectations for them. We send a message regarding what we think of their well-being and what we think of them. And I think this bill sets the framework for developing classrooms, developing schools which we are going to be proud of, not just this year or next year or 10 years from now, but 30 years from now, and hopefully longer than that, because that's what this bill is all about. It's about school children. It's about sending them to school in a safe environment, an environment conducive to learning, a healthy environment.

And we can't lose sight that many of us will have some changes that we might propose today, but the state is embarking on something we've never done before -- on a proposal which tries to remedy years and years of

neglect in some places, years and years of bad decision making in some places, but remedying them altogether and in every school to allow every school district to participate in this program. And it's a very important mission, it's a huge mission, it's a mammoth mission that we're moving forward on today. And I'm certainly very pleased that the Legislature has begun hearings on this important initiative.

I'll keep my remarks very brief, because I do know that we have a lot of people we want to hear from today, and there are many questions that you have of myself and the Treasurer.

But I would like to just touch on a couple issues. And first is the time line. As you know, this initiative builds off of the decision of the Supreme Court in *Abbott v. Burke*, which required ground breaking in the springtime of next year. Now, we're committed to moving ahead with projects on that time frame. It's very important that we continue moving ahead with this legislation on that time frame, or we will not be able to meet the Court's mandate.

Pending the passage of this legislation, the Department recognizes that there are certain health and safety issues that needed to be taken care of right away, independent of the five-year plan approval process, which is embodied in this legislation. We've given our approval to 375 health and safety related improvements in 23 of our 30 *Abbott* districts, with an estimated dollar amount of these projects around \$347 million. These approvals will allow us to provide a learning environment for these children that is safe and healthy. These approvals will move those projects in the design phase. And hopefully, once this legislation is passed, we can begin actual construction.

And those would be the projects that we would certainly see moving ahead in the springtime.

There are things like fire alarms and electrical systems and security systems, sprinkler and standpipe systems, windows and roofing and boilers and whatnot. And that's what we've done in the interim, pending the passage of this legislation, is to move ahead on those health and safety projects immediately. And as soon as this legislation is passed, we will be able to move ahead with the entire five-year plans as well as to immediately -- to construction on these priority projects.

Another issue I just want to briefly touch upon is the standards, which are set forth in this bill. Many of us remember the debate in CEIFA regarding whether or not we should be aiding whatever district wants to build or aiding what is educationally adequate. And the decision was made in CEIFA, four years ago that we would move away from aiding whatever district wanted to build and start aiding based upon certain standards.

This legislation encompasses those educational adequacy standards that we move towards in CEIFA. And we believe those standards are tied to a reasonable, if not exceptional, teacher-pupil ratio. With a technology rich environment, they'll certainly ensure that students have access to specialized educational spaces, media centers, gymnasiums, computer labs, science labs, and other spaces. They also provide adequate space for administration, student support activities such as guidance counseling, health services, nutrition programs. Adequate space is also provided for all required services necessary to support whole-school reform in *Abbott* districts and other supplemental programs.

It is important to note that the standards in this bill go well beyond the standards that we originally presented to the Court -- I originally presented to the Court two years ago -- and subsequently was approved by the Court subject to a demonstration of need by the *Abbott* districts. And, certainly, with regard to those instructional spaces, we understand, at the Department, the need to defer to district needs and requirements.

We've compared these standards to other states, and I think they compare quite favorably with other states' standards in school facilities legislation. We certainly have some data we can share with the Committee on that issue as we move forward on that.

Those are the two issues I wanted to briefly touch upon. And let me just end and turn it over to the Treasurer that it is imperative that given the size of this initiative, given the goals of this initiative, that we continue working together to come to this common end that I think everyone in this room wants to achieve, and that's healthy and safe schools for all our children.

I think we need to recognize, as we move forward, that we are going to have to balance certain needs: the need to be efficient, the need to ensure educational adequacy, the need to ensure a vibrant economy. All of these things must be tied together and balanced in this legislation.

I think it's a fair bill. I think it tries to accomplish those goals in a fair way.

And with that said, I will turn it over to the Treasurer.

TREASURER ROLAND M. MACHOLD: Thank you, Dave.

Good morning, Chairman Martin and fellow Committee members.

It's been some time since the initial presentation of the School Facilities Proposal. Since then, however, after many meetings between the administration, the Department of Education, the Legislature, and the construction community, the bill, as introduced, had been modified to reflect many of the concerns of the interested parties.

I believe that we now have legislation, which still requires discussion on some elements but will ultimately allow us to provide a safe, comfortable, and effective learning environment for all of New Jersey's children.

We have to rectify a serious problem that has teachers trying to teach and children trying to learn in schools that have improper lighting, inadequate heat, or crumbling walls. The school construction bill is the answer to this problem, not only for the *Abbott* districts but for every district in the state. Old and inadequate school facilities, while rampant in our urban districts, are by no means limited to those districts, as you know.

This bill offers assistance to each and every school district in the state. In fact, before I go into the components of the bill, I would like to thank Senator Gormley, Senator Lynch, and you, Chairman Martin, for working tirelessly to introduce a bill that, as it stands today, will eliminate unacceptable public school facilities in the state.

Let me give you an overview of the major elements of the bill. First, five-year plans will be required of every school district. These plans anticipate changing student populations and reflect how the district will accommodate them.

Second, per pupil area allowances will be established for elementary, middle, and high school facility design. By the way, as a direct result of input from the Education community, these numbers have been scaled upward from the constitutional minimums described in the *Abbott* opinion. As a result, New Jersey is now in the upper tier of area allowances around the country.

SENATOR MARTIN: When you -- excuse me. When you say tier, is that all percentage quartiles or anything?

TREASURER MACHOLD: Yes.

Dave, do you want to speak to that?

COMMISSIONER HESPE: Sure, we have, actually, some numbers that we could share with the Committee.

SENATOR MARTIN: We want to know what our bragging rights are.

COMMISSIONER HESPE: We compared our state's with West Virginia, Massachusetts, Maryland, and Kentucky. In terms of elementary, Kentucky had 123 square feet per pupil. Maryland had 100 square feet. Massachusetts had 115 square feet. New Jersey had 125 square feet. West Virginia had 90 square feet. So we led the pack on those standards.

And there are certainly some issues regarding middle schools, which we could discuss later. I'm certain it will be raised. On the middle level, Kentucky was 127 square feet. Maryland was 115 square feet. Massachusetts was 135 square feet. New Jersey was 131 square feet. West Virginia was 130 square feet. So again, we're in that upper group of the states we compared it to.

SENATOR TURNER: Mr. Chairman.

SENATOR MARTIN: Senator Turner.

SENATOR TURNER: Commissioner, could you please explain to me why are we comparing ourselves with those states that are outside of our region? How are we doing with states within our region?

SENATOR MARTIN: Senator Turner, I'm going to take-- I shouldn't have-- I should have waited, and I will ask your indulgence. Let's let the State Treasurer finish, and then we'll go back to your question. I think it is important to look at the costs relative to other states and, certainly, internally. This is an important issue.

But in fairness to the State Treasurer, let's let him complete his testimony. And I apologize for diverting everyone else.

TREASURER MACHOLD: There will be plenty of time for questions, and we will be here.

At any rate, I will just continue on the various features of the bill. We do have a per square foot cost allowance of \$131 that will be set in the bill, which we believe adequately addresses the hard costs of construction. This number will be adjusted on an biannual basis to remain tied to market conditions. Also, any district that demonstrates to the Commissioner of Education -- Dave, right here -- that this number is simply inadequate due to actual local experience, can obtain relief.

He is nodding, so you -- he's assenting.

Next, I would mention that capital construction aid will be provided to every school district in the state. Aid levels will still be tied to the CEIFA formula, but entitlement will improve dramatically for most districts.

Abbott districts will now be entitled to aid for 100 percent of their eligible construction costs. CEIFA I and J districts, which are comprised of approximately 240 districts that never before qualified for capital aid, will now be entitled to aid for 10 percent of their eligible construction costs.

Now, you might ask what eligible construction costs are, and those are those which the Commissioner of Education has determined conformed with per pupil area allowances and are necessary for the instruction of the core curricula that Dave has already mentioned.

In addition, capital aid will remain a fixed amount for the life of the debt. This is a major advance over the current practice, where municipalities finance their own construction debt and receive varying amounts of debt service aid from the state each year. Under this program, debt service aid amounts will be locked in at the outset of the project and will remain the same for the life of the debt, which will be very useful in designing the financing programs.

A revolving loan fund has been proposed, which will serve as an alternative to aid those districts which receive less than 50 percent of their construction costs in aid. The loans would be available at an initial rate of 2 percent, and the rate would be reviewed each year to keep it below a standard municipal loan rate index. As loans get repaid to the fund, the repayment amounts would go right back out in new loans to the districts.

An appeal process will be created for districts with failed referenda. This will allow any school facility project that has received the approval of the Commissioner of Education, but has failed two consecutive voter referenda, to be appealed to the Commissioner. This device will eliminate the need for the

lease purchase of school construction. It ensures that the voter will always have a say in school construction projects but not an absolute veto of projects, which the Commissioner finds to be necessary for a thorough and efficient education.

One of the most important components of this bill is the cost savings. We project that by utilizing the state for the construction of a local school facility, a district could achieve savings of up to 25 percent over traditional methods of school financing.

A district could achieve savings in design and construction as well. The state would bring the advantages of bundling of multiple projects and the efficiencies of economy and scale.

We believe that the State Building Authority, which has already overseen over \$1 billion worth of construction projects statewide and manages \$350 million to \$400 million in construction projects a year, can serve as the manager of this program.

I have been asked how the State could manage such an enormous program and remain sensitive to the needs of all those local school districts.

I anticipate you would have asked me if I hadn't asked myself so--
SENATOR MARTIN: You got our attention.

TREASURER MACHOLD: One answer is outside construction management. We will manage this huge program by retaining private construction managers to do it. In fact, most of the professional positions filled in this program from architects, engineers, contractors, construction managers, to program managers will be retained as consultants to the Authority. They will not be hired as employees. This workforce will expand

and contract as necessary to meet the demands of the program but will not grow to a permanent bureaucracy to do this.

The other answer, staying sensitive to the districts' needs, will be accomplished by partnering closely with each school district from the outset of its project. District representatives will have significant roles in the process, from designing the facilities to completion of construction.

We have no intention of building cookie-cutter schools. We do not intend to standardize -- we do intend to standardize components and systems of construction, but not restrict the overall design efforts. Each district will be free to participate in the design of a facility that will best serve local needs in keeping with the Commissioner's facility efficiency standards and educational adequacy standards. The standardization comes in the form of some common components like windows and doors, roofing and flooring systems, and alike, not the overall design of the facility.

This is a significant time in New Jersey's history. It is our responsibility to ensure that the people who have placed faith in our abilities to right the system of public education are served and that despite the costs, we are investing in our most important resource, our children.

Thank you very much.

SENATOR MARTIN: Thank you, Commissioner. Going back--

COMMISSIONER HESPE: Do you want me to go back?

(affirmative response)

Okay. I can do the longer answer. I was trying to do a hurried-- let me do a longer answer.

What we did was we took those states that had similar initiatives to what we're proposing now. We took four of those: Kentucky, West Virginia, Maryland, and Massachusetts. Of course, Maryland and Massachusetts are definitely in our area. And we compared the standards that we're proposing in the bill to the standards that they have in their legislation. So this is comparing standards in facilities aid legislation. And we can actually give this to the Committee after the meeting. But I was up to, I think, high school.

Do you want me to-- I'm trying to figure out if you just want me to give this information to you afterwards, or do you want me to finish reading how we compare with the high schools? Whatever you want.

SENATOR MARTIN: I would leave that to Senator Turner.

COMMISSIONER HESPE: I'm just trying to answer the question the best way possible.

SENATOR TURNER: I was just looking at the school planning and management where they indicate that the national median is -- for middle schools and high schools -- is 142 square feet and 178 square feet. And then, of course, the regional allowance in New Jersey, Pennsylvania, and New York is 138 square feet and 187 square feet respectively. I was just concerned that we have 131 square feet and 151 square feet. And it seems, you know, somewhat lower than what the median and also the regional norms are. And I know what you said about these other states, but here in New Jersey, our students will be graduating from high school and going into the workforce, mainly competing with students in the region rather than those places that you mentioned, where we are above.

I'm just concerned about-- I heard most of you say that this plan will certainly ensure the health and safety of our children, but at the same time, I want to be assured that we're going to be providing facilities that will enhance instructional as well as technological needs as we go into the new millennium. Our needs are not going to be less, they're going to be greater than what they are right now. So I would like to see more futuristic plans.

Can you explain to me how you plan to do that?

COMMISSIONER HESPE: Yes. What we're trying to do is to make sure that the buildings we build are functional. That means that we can get that quality education we're looking for through the buildings and through these square footages. What you're citing from is what school districts are building throughout the country. And certainly, it differs on a regional basis. But we also have to keep in mind that there is a difference between necessary spaces and discretionary spaces. And what I was trying to focus on is what other states, who have developed these standards -- that line between necessary spaces -- what are functional, and what is discretionary and trying to focus on that issue.

And other states have done what we've done here in New Jersey, and that's to come up with educational adequacy standards. And that's what I was citing from here. Trying to find that line is sometimes difficult. Certainly, the Supreme Court cited, in *Abbott*, that the standards for elementary schools were similar to those actually being built. And certainly, we've raised those standards. We've raised those square footages in the current draft you see before you -- actually quite significantly in some areas. We increased those square footages.

But what we're trying to find is what is educationally necessary versus those discretionary spaces that we will see in school buildings, because what we want to do is try to provide as much assistance to local school districts and as many local school districts, and we can in a very efficient manner, as we make every dollar go as far as we can. And that's what we're citing from here, is those standards, not necessarily what's being built nationally, but the standards for what is educationally necessary. And actually these standards, I think, also-- You'll see many buildings in state that are within these standards as well, so they reflect not only what is educationally necessary, but also often times what's actually being built.

The Treasurer wanted to add something on that?

TREASURER MACHOLD: No, that's all right.

SENATOR TURNER: Well, are you saying that in Pennsylvania and New York, they are building facilities with unnecessary space? I mean they're being, more or less, too general or too liberal in their buildings.

COMMISSIONER HESPE: No, what I'm saying is that these states that I cited are those that have similar initiatives to what New Jersey is pursuing. New Jersey--

The initiative we're proposing here today is unprecedented in terms of the State of New Jersey, and certainly it puts us among that first group of forward-thinking states in terms of a building initiative like this. So what we're trying to do is compare us to other states that have similar initiatives.

Do you want to follow up on that, Mike? (negative response)

I know the Treasurer wanted to follow up on that as well.

TREASURER MACHOLD: No.

I think the only thing I was going to add--

Dave Mortimer is beside me here, and he was referring to the fact that some of the other states that you mentioned, for instance, Pennsylvania, they have a different structure to their school system with much larger schools -- are mandated so that they have -- the combination of footage and delivery is different than it is in our state. So the numbers aren't comparable -- not exactly. His numbers compare those districts where they have this common standard. So we are just distinguishing between those two factors.

COMMISSIONER HESPE: We spent a lot of time on this issue, determining where is that appropriate place to put that line. And certainly, coming out of the Supreme Court, where we submitted lower standards in terms of square footage -- lower square footages, these are significantly higher that are encompassed in this bill, based upon a subsequent review of the very issue that you raised, Senator, and that is are we certain that the buildings we build are going to serve their purpose, and that is to make sure that our children get the education they deserve. And we've spent a lot of time. We think that this line is set appropriately.

SENATOR TURNER: And we will not be outgrowing these facilities in the future, because we know that buildings are being constructed not just for today. We're looking into the future, as far as enrollment.

COMMISSIONER HESPE: Yes. We have-- Each district has to do a five-year demographic study of the unhoused students that they believe they will have to serve in that five-year period. So yes, we're looking down the road that five years to see what the demographics are.

SENATOR MARTIN: I want to go back to that issue about -- that you had been talking about just prior to that question.

You framed the needs, primarily, on the basis of minimum amount of square footage and the cost per square feet, which are economic issues, which I understand are necessary. There is a definition in the bill that is critical to the amount that all school districts will receive, which, I believe, is on Page 6. It's in quotes -- "preliminary eligible costs" which if you don't have -- if your costs are not eligible costs, you don't get funding for. So that is a critical definition because for *Abbott* districts, and those over 50 -- who will get state aid over 50 percent -- as I understand it. They will not have the discretion to go beyond and build eligible costs because the Building Authority itself will make the determination as to whether they-- In other words, they have the final say over their buildings plans.

Is that right?

COMMISSIONER HESPE: No, certainly-- What we're saying here is what the state will be funding, but certainly every district has the ability to add discretionary spaces funded locally.

SENATOR MARTIN: Well, the *Abbott* districts are getting funded 100 percent. Are you saying they can go beyond?

COMMISSIONER HESPE: Absolutely.

SENATOR MARTIN: All right.

COMMISSIONER HESPE: As a local decision.

SENATOR MARTIN: Okay.

So I stand corrected in the sense-- And every district can go beyond this, but they're certainly on their own--

COMMISSIONER HESPE: Exactly.

SENATOR MARTIN: --because they're not going to get any assistance, including the *Abbott* districts, if they want to go beyond. As a practical matter, many districts will not be able to probably go beyond the preliminary eligible cost.

COMMISSIONER HESPE: We have to, Senator-- I'm sorry, I didn't mean to cut you off, Senator.

SENATOR MARTIN: Well, I wanted to-- My general issue regarding the definition is that when you read it, it refers to a formula set forth in Section 7 of this act, which is a formula that speaks to only economics, as I see it. At least that's primarily where it's directed toward.

And what I'm concerned about is an issue that has been raised, and I know-- I think you know where I'm going with this. But some districts have said that there are certain components of what a school should be, and regardless of the square footage, we -- in their middle school, they need certain types of programmatic space such as definitely a music-- I'm not saying this, but I'm just characterizing what a district might say. "We think our middle school, in order to meet the core curriculum standards, must have a music room, which is separate from an art room, which is separate from a library, which is separate from a gymnasium. And they can't be multipurpose, and they can't be sort of, you know, combined or in some other way reduced or discounted or omitted."

How does that factor into this formula, if at all?

COMMISSIONER HESPE: The bill specifically provides that districts may ask for additional square foot -- you're focusing on square footage issue.

SENATOR MARTIN: Well, I'm focusing on the fact that if they say, "Are we going to be able to have a music room in our middle school?" And I think what you're going to tell me is "maybe".

COMMISSIONER HESPE: No, what I'm saying is if they demonstrate to me that they need that space to provide a thorough and efficient education, I can grant that space to them, under Page 12, G-1.

SENATOR MARTIN: So the answer is maybe.

COMMISSIONER HESPE: Well, the answer-- Well, there is a process to accomplish that, so in any individual district circumstances, yes, the answer is maybe because I don't know what they're asking for and why. But is there a process to accomplish that? The answer is, yes.

SENATOR MARTIN: I guess-- What I'm raising is this, is there some educationally sound reason, pro or con-- I'm not trying to be critical. I'm trying to get some input on this critical point as to whether a school, be it a grammar school, middle school, high school, are there certain classroom space -- we've heard this argument -- that in order to meet core curriculum standards, they need to have these special kinds of rooms set aside for special programs?

And your-- I think your approach is to provide maximum flexibility, which I'm not sure those two jibe. I don't know if they can, but--

COMMISSIONER HESPE: Yes, but we've actually set forth square footages, which we think are appropriate to accomplish all of what is

necessary to be accomplished to achieve those core curriculum standards, and we're allowing districts to ask for a waiver as well.

SENATOR MARTIN: I guess the dilemma is that if they anticipate, like Senator Turner said, that their unhoused students, to use the term in this bill, needs are such that down the road they may need more classroom space, they will be reluctant to set aside rooms for these special programs, even if they feel that they are vitally necessary to achieve core curriculum standards.

How would you respond to that?

COMMISSIONER HESPE: Well, in terms of looking at the demographic trends in the district, those would get built into the five-year plans, which means that they're built into the facilities projects. So I don't think we're discussing now whether or not a district is going to have to sacrifice a science lab in order to meet unhoused capacity in the year 2003 or 2004. That's built into their five-year facilities plans. So that, I don't think, is an issue.

SENATOR MARTIN: Maybe I said it the wrong way. I think there may be some districts that feel that they're going to have a choice between classroom space that's absolutely necessary now or in the very short future, which is why they're building a new school to reduce their classroom size, versus having some kind of either single-purpose or multipurpose special room in order to have these other kinds of programs. And I don't know that they have absolute assurance in this bill that they will be able to get -- to have both.

Is that right?

COMMISSIONER HESPE: I'm not following that, Senator, to tell you the truth.

SENATOR MARTIN: What I'm suggesting is this. I think there's been an ongoing debate about whether in just determining school construction needs, that if it is just done on an economic formula, you're missing something because you're also not writing into the bill a hard and fast sort of overview of what classrooms are vitally necessary to be a part of that school.

COMMISSIONER HESPE: I'm following you now, Senator.

In September, the Department, pursuant to regulations we released -- our square footages -- which basically build to the numbers you see in this bill. So those numbers were published in the Register in September. So those have been compiled. They are out there, and they've been formally published, those square footages, based upon educational necessities. So they're out there, they're present. They're not in this bill because they're fairly lengthy, but they are actually out there. And I think that's what you're looking at. Where's the educational justification for these numbers? And that is out there. That was published in the Register in September based upon instructional space.

SENATOR MARTIN: I'll leave it alone. I'm not sure we're quite on the same wave length.

Senator Palaia had a question.

SENATOR PALAIA: Thank you, Mr. Chairman.

You know what? I understood what you were looking for. I did.

COMMISSIONER HESPE: Maybe you could help out then, Senator.

SENATOR PALAIA: Commissioner, I tell you, I did understand. He's looking future-wise.

COMMISSIONER HESPE: Maybe you can lead me down that path then.

SENATOR PALAIA: Let me take a different tact, Commissioner, here.

Did you ever stop and ask yourself, "How do we get to this point?"

COMMISSIONER HESPE: Every day.

SENATOR PALAIA: "How do we get to this point?"

I'll tell you how we got to this point. If you look back over the years, and you look back at the local school budgets, the first thing to be cut in any school budget is maintenance, every single time.

We must find a way, either in this bill or through an edict from you, that there must be a percentage set aside so that we can make sure that 30 years, 40 years, 50 years from now we aren't sitting in this room, with obviously, all new faces and going over the same topic again -- "We need new buildings, we need new buildings."

I'll give you a quick example of how this can be overcome. The school where I was at for 33 years, built in 1930, was starting to get run down. The local school board provided moneys that-- To this day, in 1999, that school is very functional today and will be for at least the next 30 or 40 years.

You've got to get into the minds of the local people and say, "Where is the money being set aside for maintenance? You've got a beautiful building, but I'll guarantee you in 30 years, they won't be beautiful buildings again until we make sure there is money set aside."

COMMISSIONER HESPE: You're absolutely right, Senator. These school buildings didn't get in the shape they were in overnight, and they never had to. I've been in buildings that are 50, 60, 70, 80 years old, and if well maintained, are still very functional.

But indeed, in this legislation, there is a maintenance factor in it, and I'll just ask Mike to go briefly through that.

SENATOR PALAIA: Please. I'd be interested in that. I didn't see that.

MIKE AZZARA: In the bill, there is actually a requirement that over a 10-year period, a district invest at least 2 percent of the replacement cost in maintenance in the building, or it would actually have its State aid reduced if it failed to do that.

For the Authority projects -- and maybe Dave will want to speak to this a little more -- there is even a stronger provision for maintenance.

SENATOR PALAIA: I don't think you could have a more important component of this bill.

COMMISSIONER HESPE: We agree.

SENATOR PALAIA: They can talk all these numbers, they can talk all the things they want to talk about, but that 2 percent and whatever else has to be placed in there is probably the most important ingredient that we can have or we're just spinning our wheels here today and for the future.

COMMISSIONER HESPE: We agree.

DAVID MORTIMER: As Mike said, for those districts that use the Building Authority before the actual construction begins, this bill would require the district to enter into a contract where they would pledge, by

contract terms, to a maintenance agreement, which would establish the 2 percent funding level that Mike mentioned as a voluntary basis, if you will, for the nonparticipating districts.

SENATOR PALAIA: How can we make sure, Commissioner, that, you know, that the follow-up to this-- I can't tell you. They can say they're going to do it. And we all know, unless somebody is sitting over them and saying, "Look, you didn't do it this year. Why didn't you do it this year? And make sure you double up next year, or your budget isn't going to be approved by the state."

COMMISSIONER HESPE: That's exactly the process we'd use. It would be during the budget review process. We'd assure that that was being done.

SENATOR PALAIA: Okay.

Thank you, Mr. Chairman.

SENATOR MARTIN: Senator Turner.

SENATOR TURNER: I'd like to have some discussion as far as the role of the Building Authority and the process that will be used in coordinating with the districts.

COMMISSIONER HESPE: Sure. Do you want us to just summarize?

TREASURER MACHOLD: The Building Authority-- The way we envision it-- Keep in mind, the Building Authority has done a great number of projects over the years. Most recently, the Southern State Prison was done by them, and they did that with a good deal of community input. In this particular case, we've formalized the community input. Right now,

we're going out on these health and safety issues, and we have a five-person committee -- four-person committee on those, which includes community input as well, not only directly but also through the County Superintendent who was appointed, right now, by the Department of Education.

What we envision, going forward, is the same sort of a committee structure at several levels. And again you would have appointees directly from the school boards to the committees. And you would have as well the State and Department of Education appointments, as well. So we look forward to the management of the program through a committee structure. And that committee itself would have input from a broader community group, which could bring other issues forward. In effect, we've formalized the informal structure that took place in the case of some of our recent prison construction. So we are looking for community input throughout the process.

SENATOR TURNER: More specifically, how would you determine the private contractor?

TREASURER MACHOLD: That would be done through -- by-- This group that I mentioned would be the one who would actually, not only oversee but would, in effect, authorize -- oversee the bids and so forth for the contracts.

Now, some of the contracts would be bundled, as we mentioned before, where we would find a school district, for example, where we have four or five different projects within the school district that would have similar features to them. I mentioned in my remarks the doors and the heating and air conditioning and ventilation systems and fire suppression systems. We would look for common elements there in order to achieve economies of scale.

SENATOR TURNER: So it would be the State that would determine all of these contractors. The local districts would not have any input in that.

TREASURER MACHOLD: Well, they have two out of the five members on this committee. And this has worked very well. We want to be assured that the process is properly -- is appropriate, and that, in effect, the right bidding procedures are followed and so forth. And moreover, we're also very concerned that there are not a redundancy of elements between different schools and so forth, so that we can achieve those savings. But we would expect, particularly where you have those bundled sorts of contracts, that you'd have a lot of local people who would normally be subcontractors, would have an opportunity to be prime contractors according to that particular contract where you have common elements across the schools.

SENATOR TURNER: There would be some mechanism to ensure that the small contractors would have an opportunity to provide some of the work that is being done in the local districts?

TREASURER MACHOLD: We have a very broad prequalification process, which has permitted contractors of all sizes. And we expect, when we're dealing with so many projects -- individual projects, that it is really hard to imagine that, frankly, virtually all of the various contract groups in the state will have some crack at a contract.

SENATOR TURNER: So they will be New Jersey contractors, you said, in the state?

TREASURER MACHOLD: Well we can't, by law, preclude the out-of-state contractors, but we don't imagine for most of the school work that

we would be -- that we would-- I mean, the local people are there, and they have, obviously, sort of first leg up, by just their knowledge.

SENATOR TURNER: So it would be New Jersey first.

TREASURER MACHOLD: Excuse me?

SENATOR TURNER: Jersey first.

TREASURER MACHOLD: Unofficially, but by law we can't exclude out-of-state contractors.

SENATOR TURNER: Thank you.

SENATOR MARTIN: Thank you.

Senator Gormley, did you have any questions?

SENATOR GORMLEY: No questions.

SENATOR MARTIN: Commissioners, I would-- As I said before, I would appreciate it if either yourselves or one of your top spokespersons, like Mike and Dave, would be available so that if there were some clarification on an issue which your Departments could lend clarification or repudiation, you would be available to do so.

COMMISSIONER HESPE: Absolutely.

SENATOR MARTIN: Thank you.

TREASURER MACHOLD: I have a luncheon appointment, but you've already seen and heard from Dave Mortimer. And Mark Lohbauer is here as well.

SENATOR MARTIN: We have a Schools Facilities Coalition made up of the usual suspects. (laughter) Debra Bradley, Ginger Gold, Judy Peoples, John Donahue, Joe Hancock, Tom Jannarone, Lynn Strickland.

MR. CANNON (Committee Aide): We're not going to be able to record on that back table. Unless they move forward, I don't know how that's going to work.

SENATOR MARTIN: Mr. Cannon advises me that those of you in the second row of desks -- the recording doesn't pick up there, so if and when you weigh into this, I would suggest, unless you want to be anonymous, that you would come up.

UNIDENTIFIED SPEAKER FROM AUDIENCE: This is fine.

SENATOR MARTIN: Well, we would appreciate it, if you care to have your testimony characterized in some formal way, to come up to the first row. So we may have to do a little back and forth.

Ms. Bradley, are you the lead-off batter?

DEBRA BRADLEY: I'm the lead off batter this morning.

Good morning, Mr. Chairman and members of the Senate Education Committee. Thank you for the opportunity to present the views of a broad coalition of educational organizations on Senate Bill 15.

Our coalition appreciates the many hours of hard work and deliberation that have already been invested in the development of this critical and long awaited legislation. We thank the bill sponsors and your colleagues in the Senate, Assembly, and administration for working so hard to ensure that all New Jersey students will attend school in facilities that are safe, technologically current, and conducive to achieving the core curriculum content standards.

Today, our coalition is here representing the New Jersey Principals and Supervisors Association, the New Jersey Education Association, the New

Jersey Association of School Business Officials, the Garden State Coalition of Schools, the New Jersey School Boards Association, the New Jersey Association of School Administrators, the Urban Superintendents Association, and the New Jersey Parent Teacher Association. Collectively, we represent a broad spectrum of the school community, including parents, teachers, administrators, and school boards. We share the goals of this Committee and the Legislature to address the vast need for school facilities repairs and construction in New Jersey.

By all estimates, New Jersey's public schools are faced with enormous school facilities needs. A recent study by the New Jersey Department of Education provided a preliminary estimate of \$7.2 billion for school facilities in 28 of the *Abbott* districts. This estimate did not include the needs of Plainfield and Neptune, two districts recently reinstated as *Abbott* districts, nor did it include a comprehensive assessment of preschool facility needs.

A 1996 report to Congress by the U.S. General Accounting Office provides some sobering statistics on the overall facilities needs in New Jersey. Among the study's findings: one in four New Jersey public schools is in need of roof repairs; one in five schools has inadequate plumbing; 46 percent of the public schools have at least one unsatisfactory environmental condition such as inadequate lighting, heating, ventilation, or indoor air quality; and one in six public schools is in need of more than \$1.7 million in facilities repairs.

It is likely that this study understates New Jersey's facilities needs, since it was conducted prior to New Jersey's adoption of the core curriculum

content standards, which will, for the first time, require students to meet rigorous state standards in areas such as science, art, and music.

New Jersey's public schools also face tremendous pressures from increasing enrollment. Since 1989, statewide enrollment has increased by more than 120,000 students. The National Center for Education Statistics has projected an additional 30,000 students by the 2002-2003 school year. A 1996 estimate by the State Department of Education also projected this trend will continue, with statewide enrollment increasing by more than 80,000 students between the 1996-1997 school year and 2004-2005.

This enrollment explosion has created significant obstacles to the effective delivery of instruction. In many districts, classes have become overcrowded, resulting in less individualized attention. Adequate space for small group instruction has been limited. Programs such as art and music have been forced out of classrooms and onto a cart. All of these consequences work against our efforts to ensure that all students are able to achieve at the level set by New Jersey's high standards.

With these needs in mind, we thank you for the many positive changes that have been made to the legislation before you today. We appreciate the fact that many of our recommendations have been favorably considered and incorporated into S-15.

Among the provisions we'd like to thank you for is the inclusion of Plainfield and Neptune in the bill. We also appreciate the increase in the area cost allowances to \$131 per square foot to reflect current construction costs faced by school districts. We appreciate the inclusion of soft costs such as site acquisition and development costs, fees for the services of design

professionals, legal fees, and other project costs. We thank you for the establishment of a time line for the Commissioner review and an appeals process in the consideration and determination of the preliminary eligible costs. We also appreciate the recognition of the unique facilities needs of disabled students through the inclusion of bill language permitting school districts to seek, and the Commissioner to approve, additional aid for nonconforming spaces necessary to meet their needs. We also thank you for the establishment of clear and appropriate guidance in the priority ranking of facilities projects recognizing the critical importance of health and safety needs, educational adequacy needs, technology needs, and local objectives. We also appreciate the important new provisions of the bill fostering collaboration between school districts and municipalities in the development of community development school projects within the broader context of urban renewal efforts. And last but certainly not least, we appreciate the increase in the revolving loan fund to \$1 billion to address the statewide need for school facilities assistance in districts currently receiving little or no debt service aid from the state.

These changes to prior drafts of the legislation are truly significant changes that will go far in assisting local school districts in providing the school buildings our students deserve. We thank you for these changes.

We do have some recommendations to share with you today. Due to the complexity and scope of the legislation before you, our coalition is still in the process of reviewing the bill's provisions and their impact on districts across the state. As a result, we offer our comments today as our preliminary

response to the bill. We look forward to sharing additional comments as we continue to review it.

Our first recommendation is to include a definition of functional capacity in the bill. To properly understand and implement this legislation, the bill must clearly define the term functional capacity. It is clear that the Department of Education has made assumptions and internally defined this term as it developed its school facilities recommendations. We believe the Department definition should be included in the bill language in order to provide guidance to local districts. For example, Section 8 of the bill defines the term unhoused students in the context of functional capacity. And both of these are critical terms.

A further concern is that preliminary eligible costs will only be approved for reasons of unhoused students. The bill does not require that educational adequacy or program concerns be considered as well.

SENATOR MARTIN: You said it better than I did, or at least, whoever drew this up. That's basically the question I was trying to get earlier to the Department.

MS. BRADLEY: We were cheering you from the front row.

We have just received some language from the Department on this, and we will be trying to work with them to make it more specific.

Our second recommendation is to clarify the bill language in Section 25 to ensure that it is the Legislature's intent to require that the development and adoption of Facilities Efficiency Standards be subject to the provisions of the Administrative Procedures Act.

The Facilities Efficiency Standards will have a major impact on school construction in New Jersey for years to come. Accordingly, public input is necessary and appropriate in the development and review of these standards. To date, no public hearing has taken place to receive this input, nor has the Department shared its research or evidentiary base or the process utilized to develop these standards. As you recall, the Department similarly failed to share its research base and the methodology used to develop the CEIFA models with the Legislature or the public. We ask you to require the Department to share this critical information with you, the education community, and the public.

Further, Section 25 of the bill is ambiguous as to the Legislature's intent concerning the Facilities Efficiency Standards. The provision requires the Commissioner to adopt rules and regulations pursuant to the APA procedures concerning the implementation of Sections 1 through 12, but this does not specifically refer to the Facilities Efficiency Standards. Although these standards are discussed in Section 4, it is not clear that the Legislature intends these standards to be adopted in accordance with the APA. This point needs to be clarified, particularly in light of the bill language establishing a March 2000 deadline for the Commissioner to develop Facilities Efficiency Standards in their report on providing a thorough and efficient education.

Another procedural point in Section 25 that requires clarification is the route for appeals under the regulations adopted by the State Board once the Commissioner exercised his authority to adopt temporary regulations. It is unclear whether the Legislature intends to take the State Board out of the

appeals process for all determinations or merely for those made under the regulations adopted by the Commissioner for the six-month period.

Our third recommendation also deals with square footage. We ask that you revise the Facilities Efficiency Standards to increase the minimum area allowances per student in the middle school from 131 square feet to 149 square feet.

SENATOR MARTIN: You mean \$131 or 131--

MS. BRADLEY: No, I'm talking square footage in the model.

The Coalition recognizes and applauds the positive modifications that have been made to the Facilities Efficiency Standards over the past year. In addition to increases in the overall square footage at various school levels and the inclusion of some specialized instructional spaces needed to meet the core standards, the bill now contains language permitting local flexibility in the application of these standards to local school projects. And we appreciate those changes.

One area where the Facilities Efficiency Standards are still inadequate is the middle school model. Educational research, and the experience of New Jersey educators, clearly demonstrate that middle schools must be a different type of school environment to meet the specialized needs of young adolescents. Exemplary middle level programs address the distinctiveness of early adolescence with specialized instructional and organizational features in a school building.

A good middle school experience includes exposure to team teaching, small group advisory programs, multi-age grouping for certain

programs, hands-on student learning experiences and activities, exposure to a variety of career options, and a broad range of student activities.

In addition, our core curriculum content standards have raised the bar by expanding the scope and nature of instructional practices. For example, by requiring hands-on learning experiences in science and the arts, the standards clearly impact the size and type of instructional spaces we need.

While we have seen some improvement in the standards at the middle level, the standards still fail to adequately provide for hands-on science programs, spaces for small group instruction, a separate auditorium, grade level instructional team rooms, and appropriately sized classrooms to accommodate computers and small group learning. For these reasons, we've made our recommendation to increase that square footage to 149 square feet per student.

Our fourth recommendation--

SENATOR MARTIN: Can I just stop you there?

MS. BRADLEY: I'd appreciate it.

SENATOR MARTIN: Would it be better to increase the overall square footage from 131 square feet to 149 square feet as opposed to mandating that the schools have the kinds of rooms that you just said, a separate auditorium, grade-level instruction? I mean, they both get at the same problem and maybe this creates more flexibility.

MS. BRADLEY: But if we still had to live within the overall square footage amounts, we probably couldn't achieve all of that.

SENATOR MARTIN: I understand, but I mean in terms of trying to correct it, is it better to designate that each school have school science labs --

the things that you put on your laundry list, or is it better to just increase the overall square footage? It may be that you have a neater way of reaching that same--

MS. BRADLEY: I think we're open to discussing either. We just think that the middle school model is just too inadequate for really what-- It's more of an expanded elementary school model, with some extra square footage, as opposed to what the middle school learning experience is supposed to be like. We think it's more akin to the high school than the elementary model.

The fourth recommendation is to modify the definition of full-time equivalence to count full-time kindergarten students as 1.0 regardless of district.

Current law provides that only districts receiving Early Childhood Program Aid can count full-time kindergarten students as 1.0 for state aid purposes. Approximately 145 school districts, including the *Abbott* districts, receive such early childhood dollars. The remaining school districts that offer full-time kindergarten are only aided at 0.5 for these pupils under CEIFA.

However, the bill before you today is a construction bill concerning occupied space in a school facility. As a result, full-time kindergarten students who occupy space in a school building all day should be counted as 1.0, not 0.5, regardless of school district or state aid status of that district.

Our fifth recommendation is to amend Section 5 to provide that cost overruns that are related to design, site preparation, environmental problems, or an underestimate of labor or materials are the responsibility of the Building Authority, not local school districts. We also ask you to add an

appeal process for boards to appeal Building Authority decisions on cost overruns.

The Building Authority has control over the school facilities project early on in the process, following receipt of the preliminary project report. As a result, the Authority should be accountable for its decisions and cost estimates concerning the project in the areas detailed above. These factors are outside local control.

Further, the Building Authority should not be the final arbiter of responsibility and liability for its own cost overruns as set forth in Section 5. Districts who potentially face the bill for these cost overruns and the ire of local taxpayers must have the ability to appeal the Building Authority's determination of these cost overruns to a neutral decision maker.

SENATOR MARTIN: Who?

MS. BRADLEY: Who?

Well, we've talked about-- Internally, we've talked about groups like the American Arbitration Association, but we don't have a specific recommendation for you today.

SENATOR MARTIN: Okay.

MS. BRADLEY: Our next recommendation is that the bill needs to include realistic and expeditious time lines from application to completion of the construction process.

In order to keep construction costs down, it is important that the bill contain workable time lines to expedite the planning, application, review, and construction process. In many areas, the bill contains no clear time lines.

For example, there is no prescribed time period for the Commissioner to make his decisions on the long-range facilities plans.

Similarly, since urban districts will now be required to merge their planning and review processes with municipal entities such as local planning boards, we need to ensure that undue delays are not the result. We ask you to consider modifying the timing of the submission of facilities plans to planning boards to after the approval, by the Commissioner, of the plan. Otherwise, unnecessary delays could occur in the early stages of the process, since the Commissioner may modify or disapprove certain aspects of the submitted plans. This modification to the bill would avoid the unnecessary submission and consideration of multiple versions of a school's facilities plans by local planning boards.

We are actually going through the time lines in the bill and hope to have some more specific recommendations for you.

Our last recommendation is to amend the provisions of Section 15(c) concerning the Revolving Loan Fund to read, "The amount of loans that may be made in the first fiscal year shall not exceed \$400 million with the remainder distributed over the following four years subject to legislative review."

There is a backlog of school facilities projects in many districts throughout the state. Many districts have acute facilities needs, particularly in the areas of health and safety concerns and overcrowded classrooms. The loan fund's caps of \$200 million per year will not adequately address the backlog of current needs, especially in the first year of the fund. As a result, we recommend increasing the first year payout of the Loan Fund to \$400

million, which is consistent with the recommendations that have been made by the State Treasurer's Office.

One area of mutual concern of our Coalition is maintaining low interest rates for the loan program over time. The Coalition supports the idea of a ratio of loan interest to the municipal bond index rate as set forth in our prior Coalition submissions on this issue. We are currently working on language to accomplish this goal.

In addition to these initial recommendations, the Coalition has an overall concern about the long-term financing of the construction program. Currently, the State budget allocates approximately \$120 million to finance school construction projects this year. Without this financial commitment, the promise of the Educational Facilities Construction and Finance Act will not become a reality for New Jersey students.

We thank you for the opportunity to present our views, and we are available for your questions.

SENATOR MARTIN: This was well done. You get an A.

MS. BRADLEY: Thank you.

SENATOR MARTIN: And I know that at least with several of these -- example 4 and 7, that sponsor Gormley has indicated, and we've talked about it. There are -- besides there are more of these that we have already identified as areas to look at. We appreciate the succinctness of this testimony.

Any questions of the Committee members regarding-- (no response)

Thank you.

MS. BRADLEY: Thank you.

SENATOR MARTIN: Senator Robertson, Passaic County and Essex County.

SENATOR NORMAN M. ROBERTSON: I have a handout if that's all right, Mr. Chairman.

SENATOR MARTIN: Absolutely. We want to learn everything we can about Clifton, New Jersey.

How's the flooding up there?

SENATOR ROBERTSON: The flooding isn't as bad in Clifton as in some other towns.

SENATOR MARTIN: This is one time that Clifton wishes it were the city of Passaic or Paterson, right?

SENATOR ROBERTSON: In many ways, it is.

Good morning, Mr. Chairman and members of the Committee. I guess in a world of usual suspects, I'll be the unusual suspect this morning.

First, I'd like to comment that on behalf of the people in my district, I want to thank Senator Gormley and Senator Lynch for the job that they've undertaken here. There's an awful lot of good elements of this bill that I support. This is a very, very difficult task, to be sure. It is one for which we are grateful -- and for your leadership as well, Mr. Chairman, in all the years that you've been undertaking -- a review of what is a very, very difficult load of work.

But I'm here today, primarily, as a representative of several districts. I have six towns in my district. Three of those districts are very much in the middle of the socioeconomic spectrum.

I think by using the city of Clifton as a case in point, we will see that without a refocusing or perhaps extensive revisions, State policy has the potential of being crushingly unfair to working class -- middle-class school districts. We very easily have a tendency to classify districts as being in the *Abbott* category or the Level 2 monitoring and more than 50 percent category or in the now 10 percent category for the more affluent districts, and then there is the rest. And my district represents the rest.

Let me tell you the story of Clifton as a case in point. Many of you know the city. It's a city of more than 71,000 residents. Nearly 21 percent of those residents are senior citizens, many of whom are on PAAD. Approximately 9400 students now are enrolled in the Clifton schools. Clifton enrollment is increasing considerably. Several schools are now bursting at the seams, and new construction is needed to relieve the pressure.

Many of the students are now being bused outside their neighborhoods because of overcrowding. We have a great tradition in New Jersey of neighborhood schools. But it's not a neighborhood school if you have to put your child on a bus and send them to another neighborhood.

Clifton is bordered by three *Abbott* school districts, Paterson, Passaic, and Garfield. And there are significant regional urbanization pressures on what is a traditionally suburban school district. Certainly, the factors that affect so many of these districts also have an impact on towns like Clifton and on towns like Wayne, and that's one of the things that I had noted when I was serving on the Governor's Task Force on Urban Economic Development.

The success of our urban areas affects the success of the areas and towns around them. And as we take a look at the statistics for *Abbott* districts,

we see a crying need for attention. There is no question about that. When we take a look at 30 *Abbott* districts, for instance, and we see, in 10 of those districts, the drop-out rate exceeds or is at 50 percent, we know that much work needs to be done. And part of that work is the work that you're doing now. And that's work that I agree, as well, needs to be done. But there are folks who should not be left behind in the process.

Clifton recently exceeded the 20 percent threshold for students who are eligible for the school lunch program. That's an important fact, because when that happens, it triggers a mandate, a mandate that we have full-day kindergarten and part-time preschool programs. This, of course, will in turn require extensive construction of new classrooms to meet that mandate.

SENATOR MARTIN: Don't fall below it, though.

SENATOR ROBERTSON: Pardon?

SENATOR MARTIN: Don't fall below it, or you can run into another problem. But that's for another day.

SENATOR ROBERTSON: On the operational side, that's correct.

As a matter of fact, Clifton is now trying to weigh, because they have such great construction needs -- trying to weigh whether or not they want to be above or below that point.

Clifton is also, because of the structure of State laws, been required to spend nearly \$800,000 in its budgets for the establishment of a new charter school, which they may or may not have wanted to do had they been left on their own to make that decision. But that, of course, is a State mandate passed a week before the State mandate/State pay statutes.

In its current form, what we are concerned with is that S-15 will provide no additional support to Clifton schools to meet its construction needs. In fact, because of the operation of it and because of facilities standards that are being discussed right now, chances are that districts like Clifton will receive less aid or be eligible for less aid than they might have received under the current system. And I'll explain that in just a moment.

I had indicated here the protest against S-15 had already begun in Clifton. That's not quite accurate, because Clifton has reached a point of critical mass with the direction of State policy, not necessarily as a response to this piece of legislation, but generally the notion that they are being left behind. This bill happened to have, coincidentally, been dropped on a Monday and was available on Thursday, and by Saturday morning, there were 500 people in the school gymnasium to protest being left behind by State policy. And it's that protest that I bring to you today.

In my opinion, there are several portions of the proposed legislation that should be revisited. And again, as with the previous speaker, these comments are preliminary in nature, and I'll be certainly happy to work with this Committee or the Joint Committee on the Public Schools to develop possible alternatives.

First of all, I think that the funding formula, as it works out, winds up being fundamentally unfair to working class districts. And we all knew that that was the case. Even prior to this, there were anomalous situations throughout the state. But with the full funding in 30 of our districts and substantially more funding in another 89, and with minimum spending in other districts, folks in the middle do feel like they're being left behind. And

I'll draw your attention to two charts that I had brought in here just to illustrate the point.

The first one is just a single page, and it compares Clifton, and this is an anomalous situation -- and the mainstream of *Abbott* districts are in much worse shape than the one I've chosen to illustrate here -- but you can see, when Clifton is compared, for instance, to Hoboken-- Now, Clifton has twice the population that Hoboken does, but Hoboken still has a substantial and urban population. Hoboken's early warning test scores--

And by the way, I should mention that all of these facts were taken from the 1998 New Jersey Legislative District Data Book that Rutgers puts out. That was the easiest way to draw information from which we can draw conclusions. Obviously, there is more up-to-date information available, but unfortunately, with the amount of time available, this is the -- this is what we were able to put together.

But when you compared Hoboken to Clifton, in 1997, their early warning test scores were higher than Clifton's. In 1996, their high school proficiency tests were a little lower. Their high school completion rate is a little lower. Clifton has 83.2 percent of its students complete high school, Hoboken is 77 percent.

I mentioned before about the population of senior citizens is almost 21 percent in Clifton and just over 11 percent in Hoboken. But the per capita income, from the last gauge that we have, which, unfortunately, is somewhat dated, I think, at this point, Hoboken has a higher per capita income than the city of Clifton and slightly higher than Clifton in terms of average home value.

Now, they have the same equalized school tax rate, \$1.27. Despite the fact that they have the same school tax rate and despite the fact that they have a higher per capita income and a higher home value, Clifton students see about \$8000 per student spent while Hoboken has more than \$12,000 per student spent. And those figures, I'm sure, have risen on both parts. This is the 1997-1998 budget year.

State aid, under the State aid formula, was listed at 28 percent for Hoboken and 16 percent for Clifton. But when we get to construction aid in these two towns, local taxpayers in Hoboken will pay nothing and local taxpayers in the city of Clifton will pay in the neighborhood of 84 percent-plus. And that just isn't fair, period.

And we can look throughout the state and see similar anomalous situations. Harrison and Kearny was one that jumped out to me, and my apologies to Senator Sacco, because I see Kearny is spelled with an extra e. Harrison and Kearny, in so many areas, are very similar to one another. And yet, when all is said and done, even though there are some differences in per capita income-- Per capita income is a little higher in Kearny than it is in Harrison. The average home value is a little higher in Harrison than it is in Kearny. But Kearny, for its \$1.67, gets \$7769 in school spending, and Harrison, for its \$1.44, gets nearly \$10,000.

But again, in terms of school construction aid, under the State policy that we're considering now, two-thirds of the cost will be borne in Kearny by local taxpayers.

SENATOR MARTIN: I think we get the point, Senator Robertson.

Do you have a recommendation, because you know we are under a State Supreme Court mandate -- you know this as well as anybody in this room--

SENATOR ROBERTSON: Absolutely.

SENATOR MARTIN: --that says that we will have to provide, essentially, that kind of funding for the *Abbott* districts, such as the Hobokens and Harrisons of the world. Maybe they had the foresight to be included in the original plaintiffs, but that's--

Regardless of that, the alternative you seem to be suggesting is that if we provide -- should we provide the same amount of funding for all school districts, school districts within your legislative district, or some kind of formula as to what districts should be included, knowing that those who fall just out are going to make the same argument with their district versus Clifton -- in short order thereafter--

SENATOR ROBERTSON: Yes, and--

SENATOR MARTIN: Where do we go? Do we want it--

SENATOR ROBERTSON: As a matter of fact, and to answer part of your question, it's not simply, obviously, the towns in my district -- Pompton Lakes is an example in your district -- has a similar problem. We can look at Ewing Township in the 15th District, next to Trenton, has a similar problem. Ocean Township in the 11th District is surrounded by three *Abbott* districts. And it's difficult.

When I spoke before Clifton, one of the things I said was that we're willing to stand shoulder to shoulder with our brothers and sisters in the

urban area and fight for more funding, but we don't want to be left behind. Even before--

SENATOR MARTIN: Well, the solution, though, is-- I mean, since we can't reduce the costs, I don't believe, in the *Abbott* districts, is to raise it to the figure that provides equality.

SENATOR ROBERTSON: I have some basic recommendations that I will make to you now.

First of all, we have to take a look at the operation of some of the facilities standards. One of the things that I understand that this bill does is it sets a statewide construction rate or standard. Towns in the northern--

SENATOR MARTIN: Subject to individual review. If the district feels that they're unsatisfactory for its purpose.

SENATOR ROBERTSON: Correct.

And my point really is that sometimes formulas have a tendency to take on a presumption.

And as a lawyer, you understand what that winds up meaning.

SENATOR MARTIN: Well, that's what this bill is intended to do, to create a presumption.

SENATOR ROBERTSON: Exactly.

And one of the bad effects of having one statewide formula, in terms of cost -- construction costs, is that those areas that are in the northern part of the state or are in areas of the state where it costs more money, generally, for design and construction will wind up having less available to them in aid, because less amount can be recognized by the State. And one of the things that we should have, at the very least, is some sort of regionalization

of construction costs. That would help a little bit, because it would make more money available as recognized expenses.

I think there is one provision in the bill, for instance, that says that land acquisition costs will not be treated as eligible costs unless a local school district utilizes the Building Authority in order to do its project.

SENATOR MARTIN: We did manage to change that.

SENATOR ROBERTSON: Oh, you did. Oh, good, good. The Department of Education indicated to me that that was the case as recently as the other day.

SENATOR MARTIN: At one time it was.

SENATOR GORMLEY: We took that out.

SENATOR ROBERTSON: Oh, good.

SENATOR GORMLEY: That changes the formula for Atlantic City.

SENATOR ROBERTSON: Excellent. Oh, good. We'll eliminate that one. That's a good one.

I would be hesitant -- or I wouldn't be as quick to utilize the Building Authority or mandate the use of the Building Authority in districts other than the *Abbott* districts. And this is my own personal opinion because I have a tendency to think that the concentration of that much authority in Trenton will have a tendency to stifle local initiatives.

So unless a school district, other than the *Abbott* districts, has indicated a history or planning or implementation or where there is a substantial concern in that regard, I would be more hesitant with respect to the utilization of the Trenton establishment.

SENATOR MARTIN: I can tell you, Senator Robertson, that Senator Gormley and I have discussed that issue, and we want to see a certainty of discretion built into this bill that would allow--

I don't know whether it's going to take the form of delegation or alternative, but I think, for now, it would probably be delegation. But we recognize that there are certain types of authorities, especially some county building authorities and maybe some school districts--

SENATOR ROBERTSON: That was excellent.

SENATOR MARTIN: --that have a history of being able to do it well, to do it faster, and maybe remove some of the red tape.

That is being looked at to try to ensure that that is incorporated, both on a financing end, as well as the building end, to allow for that type of delegation to these alternative agencies.

SENATOR ROBERTSON: And, in fact, that's already in the bill. And I think it's an excellent portion of the bill.

SENATOR GORMLEY: But what we've done is we've indicated to the Treasurer and to Commissioner Hespe, that not only for the local districts, but as an option for them. And they have talked, already, about how they're going to subcontract a number of the responsibilities, which makes sense. This agency couldn't handle it all in-house, but simultaneously with that, I think it is both good government and very practical for them to look at those very viable local agencies that have handled construction management, handled construction financing in the past. And they know that we'll be expanding that ability to delegate. And I think it's something that they should take advantage of. It's to the State's advantage, given the enormous task that

confronts the State. And we indicated to them that there will be a delegation provision in the bill.

SENATOR ROBERTSON: I agree with that.

Specifically, I also believe that the formula, as it relates to educational facilities construction, should be revised to take into account the following kinds of factors.

First of all, the pressures of urbanization is demonstrated by proximity to *Abbott* districts or other demographic factors rather than, simply, the core curriculum aid. We wind up in that anomalous situation where many towns are paying zero and many towns are paying 80 percent of the cost.

Secondly, the growth of enrollment and its effect on facilities needs is that when you have a situation where you are in a pattern of great growth to the point where you actually have to build buildings -- we have to build another -- and an additional grammar school and, probably, a middle school. We have two middle schools in Clifton, one with 1000 students, one with 1200 students. That's too many.

Third, regional differences in the costs of construction and design, as I mentioned before.

Fourth, I believe that the State should take on the responsibility for full funding for full-day kindergarten and half-day preschool program mandates, should a town find itself in the situation where it has recently exceeded the 20 percent school lunch threshold. The reason for that, obviously, is the fact that those urbanization pressures are moving in, the demographics are changing in a town, and we should take that into account.

And finally--

SENATOR MARTIN: I think the sponsor agrees. I know, as I said before, we talked about it. It was number four on the Coalition's list as well -- to look at the full time--

SENATOR ROBERTSON: And finally, I think we ought to put one thing that isn't in this that we really ought to put in. We ought to provide some incentive for success. The criticism that comes to me, so very often, is that too often we are punishing success in this state with our funding formulas.

If a district has managed to avoid a 50 percent drop-out rate, if a district has managed to succeed despite limited resources, if a district finds itself as Clifton does, where it's spending -- you know, in the towns next to it -- as much as 50 more than they're spending, and yet they're sending 80 percent-plus through their doors in terms of high school graduation, there should be some incentive to do that. We shouldn't have successful districts wishing -- as you joked about before -- wishing that they were *Abbott* districts, because we don't want to aspire to be an *Abbott* district. We want to aspire to succeed. And one of the things that should be put into this bill, at whatever level we can afford to do it, is some sort of an incentive that rewards success instead of punishing it.

And with that, Mr. Chairman, I hope that you'll take this under consideration. I will certainly work with the Committee in suggesting more detailed amendments.

Please, I encourage you to take a look at the table which lists all of the *Abbott* districts as well as a few other districts throughout the state, some of which are in your districts, so that you can see, when you look at all the zeros in the last column as to capital costs by local taxpayers and you compare

them to two-thirds or three-quarters or four-fifths of the amount of money that has to be paid by local taxpayers-- It's very stunning.

One last note. One other thing that should also be taken into consideration is the number of senior citizens in a town, especially those who are on PAAD. The reason I say that is because their taxes are going to be frozen.

Now, in the city of Clifton -- and we don't have the PAAD figures yet -- but in the city of Clifton, more and more of the additional costs for these districts -- or for this building is going to be concentrated on those who are left to pay the bill, including -- or excluding those who are already -- won't have to face that by virtue of PAAD. And this bill should recognize that as well.

Just don't rely upon the old core curriculum standards as the only gauge to provide assistance to towns, or else you really will have told the middle-class districts that they've been left behind.

Thank you very much, Mr. Chairman.

SENATOR MARTIN: Thank you, Senator Robertson.

There are representatives of the State AFL-CIO -- Charles Wowkanech and company.

CHARLES WOWKANECH: Good morning, Mr. Chairman and members of the Committee.

First off, I would like to thank the sponsors, Senator Gormley and Senator Lynch as well as our co-sponsors, Senators Martin and Codey. We've had lengthy discussions with the senators over the summer. We've put some hours into this bill.

Let me just say, we have many concerns. One and foremost, not only from a construction point of view, but as we find ourselves with these new buzzwords of the global economy, we know that our children our going to have to compete in a much higher competitive world than there parents before them.

I live in a town, right now, where our high school students are attending classes in portable trailers. And I know that the money issue is something that we all have to deal with, and we put a lot of time into. But I think this is one of the most important pieces of legislation that I've seen since I've been here in Trenton, and that's for our children and our education. Without good schools, we can't have good communities.

There are so many, so many different avenues of this bill. I think this morning, what I've listened -- heard some good suggestions, from a labor point of view-- As you know, our particular expertise is in the construction of these facilities, and with this kind of money being available, we do have some concerns and reservations about contractors coming in from out of state and not paying prevailing wages and, basically, cheating the state of tax dollars and so on and so forth.

But I think-- So the innovative components in this bill that work discussed -- and we've discussed with the sponsors -- on the urban renewal and the other avenues were different entities or agencies that have a proven track record and have built large projects, such as right here in Mercer County -- the new arena, the baseball stadium. Down in Atlantic County, there are many projects built. We look around the state, New Brunswick, I mean there is an example of a whole town being transformed.

So we really think that this is a very good bill. I think that, as you hear the rest of the testimony, there will be many other suggestions that come forth. We do have, and we will provide them to you, some comments from some of our contractor groups with some differences over self-contracting and also issues that I would rather let some of our teaching affiliates discuss. And we've heard some discussion here this morning as to class sizes and so on and so forth.

I think I'll leave that discussion go to those people that are in the field. But all in all, this is a monumental task -- a very comprehensive, complex bill. And we look forward to working with each and every one of you.

Thank you.

SENATOR MARTIN: Questions? (no response)

Thank you.

Barbara Bohi, New Jersey School Boards Association. (no response)

Susan Mack, Chairwoman of the Jersey City Board of Education Facility Committee.

S U Z A N N E M A C K: Good morning.

I was sitting in the back. Where do you sit?

SENATOR MARTIN: Pardon?

MS. MACK: I was sitting in the back. I didn't see where people were sitting.

SENATOR MARTIN: If you can just bring them up here, we'll distribute them. (referring to witness's testimony)

MS. MACK: Should I start? (affirmative response)

Good morning. It's a pleasure to be here. I'm very happy to be able to come.

Last Monday, I had an opportunity to meet with the Hudson delegation of the Senate and the Assembly, and they suggested that, in discussion of the bill, that I take the time to come here today to discuss with you some of my concerns or my comments on the bill. It was a very interesting conversation. I met with Senator O'Connor and Senator Kenny, Assembly Minority Leader Doria, and the rest of the delegation.

I am a member of my--

As you indicated, my name is Suzanne Mack. I chair the Facilities Committee of the Jersey City Board of Education. I also have a role on the Special Education Committee of the Board. I have been on the Board for four years. It has been an exciting time for us, primarily because of the efforts that you have been doing here in Trenton in forming the school building authority legislation. We have been planning, in response to and awaiting, anxiously, the passage and creation of this bill.

That is why I came today to really question the timing of the bill. This is the only public hearing on the bill, and since it was only introduced -- the Senate version was only introduced on November 15, many of the local planning boards and school boards will not be meeting again. I read in the papers that you intend to try to get it passed before the end of the year.

I was happy listening to the speakers before me. It seems as if you will be taking testimony, and you will be including things in the bill that will have local priorities.

SENATOR MARTIN: Let me just say something about timing.

The idea of this bill has been around for about two years. There have been numerous, numerous discussions. We had a hearing in the spring that talked about some of the earlier issues.

Most people want us to have enacted this bill yesterday. If we don't enact it by January, and we start a new legislative session, I can't tell you when it's going to be passed. Sometimes, the Legislature acts in bursts of energy. And this has been sort of the allotted time to try and get this bill accomplished.

I understand your concern. Everybody would like to, you know, in some ways review it ad infinitum, and in some ways get it passed immediately. We will try to provide enough time to be able to consider what needs to be considered. The Assembly is acting on its own time schedule. They will have some opportunity for hearings as well.

You can characterize it as you will, whether we're trying to rush it through or not, but the basic components of this bill have been out there for at least a year. And this bill being introduced now has been revised from many earlier drafts -- at least much of the educational community has seen and commented on. They may not like everything that's been done, but most of them will agree that they've had some opportunity to, at least, interact in the stages of the bill.

So I'm not criticizing you.

MS. MACK: I understand.

SENATOR MARTIN: I understand. I just want to also-- I think that's fair to say for everybody in the audience.

I would disagree, to some extent, with a criticism that this is something where they haven't had an opportunity. They may not get as much opportunity on each version of the bill as it moves through, but the alternative is, basically, to go back to square zero, and I don't think that that's in anybody's best interest, especially since the Court has ordered us to do something this year and get it in place.

But continue.

MS. MACK: Thank you for the clarification. I also did not mean to be critical of you. I was just commenting, from a local level, of the timing on it -- seemed short.

I agree, even coming here, there is an awful lot of thought that's been behind it, and it's encouraging to me, as a licensed planner and a member of the Board of Education, to come here, and see all the thought that is-- You read the bill, but when you come here you really see it in action more than you would just reading the bill on the Internet, which is where I read it over during the week.

A couple of thoughts I did have on it, from the local perspective, that perhaps, maybe, will help you.

As you said, Senator, the bill had -- the need for the bill has been there for two years, at least. But during that point of time, the Jersey City Board of Education, like the rest of the local *Abbott* districts, went through a lengthy process of preparing facilities master plans. This is ours. It's very lengthy. And it was a very good process set up by DOE, where we had to set up an advisory committee to the facilities master plan activities, that we had everybody in the city on that. We had city representatives, state

representatives, board of ed. representatives, the ministerial alliance, the chambers of commerce. And we actually came out with a product. We hired the Hillier Group from Princeton to act as our professional consultant. And we went through a very lengthy process of responding to the *Abbott* DOE model in prioritizing, what we felt, was necessary for the children of Jersey City.

We submitted the plan. It was approved by the Jersey City Board of Education last March. And the Department of Education has not approved the plans for the *Abbott* districts as to this date.

Now, I understand one of the reasons they haven't done that it is because they've been waiting for the legislation. So, you know, your point is underscored, that nobody wanted to finish approving the plans prior to the legislation.

However, the gap that it has left us in, the way I see it, I may be totally wrong-- The plans are so big and so massive that the DOE has decided to bifurcate them and work on the piecemeal until your legislation is passed.

SENATOR MARTIN: My understanding is that they're working on them now, and they're giving approvals based upon starting with health and safety as a priority.

Is that right, Mr. Azzara? (no response)

MS. MACK: And that's a separate--

SENATOR MARTIN: And we also should clarify that Jersey City is not only an *Abbott* district but it's a State takeover district in which the State has, sort of,-- I mean, I know that's a sore spot also--

MS. MACK: Not to everyone.

SENATOR MARTIN: It has a governance connection with the State, which is unique but for two other districts in the state.

MS. MACK: And I will want to address that point, also.

The way that the DOE has broken them out is, is that they've decided to prioritize and go with the Tier 1, which is exactly what you said, Senator, the life and safety issues. And the Jersey City School Board itself -- the elected board feels that the preschool, in response -- the development of the preschool classrooms, in response to *Abbott*, is even more important to us outside of the code violations and the Tier 1 projects. So we're saying that, you know, for localized control, in response to *Abbott*-- We have a need, now, to be able to move on the preschool projects and sans, without the bill, we're not able to get the money for acquisition -- for sites for the preschool programs. So I'm hoping that in the final version of the bill -- although the preschools are mentioned, they're just mentioned by reference -- I hope that they have a more pronounced space in the final bill that the priority of *Abbott* is to put in preschools. And we need to develop 150 classrooms in Jersey City. So that's going to be a very large undertaking. And we hope that that is -- jumps out a little bit more in the State-operated district.

The other issue that really is even of more concern to me, and it's really the only reason I did come today -- because I think other people have put on the record a lot of the other issues-- It's the community development aspects of the bill which are new, which have just surfaced in this section of the bill.

In Jersey City, in particular, since we are a State-operated takeover district, we now go to the Jersey City Planning Board, as part of our DOE

submittals -- and we've had an excellent cooperative relationship with the Jersey City Planning Board. But as a planner, that exemption on the 21 -- NJSA 21-3, which allows us to voluntarily go to the planning board, I feel should be continued in this plan. And the practical reality of why I'm saying that is that this master plan is overdue for us. We have projects in the first year of -- the replacement of No. 3 and a Heights middle school, which need to be worked on now and need to be done now.

Under this plan, if I read it correctly, we take this, which has been sitting in, you know, our shelves and your shelves since last March, and we now have to submit it to the Jersey City Planning Board. The Jersey City Planning Board doesn't have a master plan. They're in the process of developing their own master plan in Jersey City. So therefore, I believe we will have to wait until they get their plan adopted in order to review our plan. And the problem with that is that that will delay us even further.

The second thing, and I think you just touched upon it-- Jersey City has been under State-takeover for 10 years. There are a lot of people that believe that State-takeover should end and local control should come back. But I say to you that it was taken over over 10 years ago because of undue political influence. And we are now faced in a situation where you have a billion dollar facilities master plan that we're, basically, in the same time as we may go back under local control, which will then go to the planning boards and the redevelopment agencies in town who have a larger priority than just taking care of the children in the district.

We've been in a situation, and it's on record, that we're working for -- getting that School No. 3, which is a building replacement for a school

that was built in 1909 and has been visited by Congressman Menendez and Senator Torricelli as the highest priority to get that school replaced. We were looking -- the Jersey City School Board was looking for sites with the redevelopment agency where they told us that the sites we wanted were -- that the land was too valuable for schools. So we see a potential conflict in subjecting ourselves and putting ourselves under the redevelopment agency and the planning boards.

I believe all of this can be worked out. I don't think that this is something to be overcome. But the one recommendation that I would like you to consider, even suggest that maybe your staff could look into, is moving forward with, either leaving Jersey City until it fails to be a State-operated district, excluded from the need to go to the planning board or, in absence of that, if that is just too specific to our case, I would encourage that you move ahead. Have the Department of Education approve the plans that are on the table, and require that in the first year of the annual review of the plan, which would be the second year of the plan, which would be sometime this calendar year, that we would be able to have the planning board, which will be finished with the master plan, come back to us with their comments on community centers and community school development facilities. And at that time we would be required to begin the process, which is laid out in the bill.

I think that that is a very good compromise since the two schools that are already in the first year of Jersey City's Facilities Master Plan -- the replacements for PS No. 3 and the Heights Middle School have already been to the Jersey City Planning Board voluntarily.

SENATOR MARTIN: Okay, we get--

MS. MACK: I'm done.

SENATOR MARTIN: We got the point. I think it's well taken. There are some wrinkles, I think, especially in your district as a State-takeover district, as well as an *Abbott* where the -- this community rehabilitation, redevelopment--

MS. MACK: Right.

SENATOR MARTIN: --proposal needs, perhaps, to be -- to deal with a couple of the problem areas that Senator Gormley wants to mention -- talk about.

SENATOR GORMLEY: First of all, I could never leave Jersey City out. They'd have-- It just wouldn't be right not to leave them in the bill.

First of all, the health and safety requirement, to do that first, came from the Supreme Court. Also, in terms of the Planning Board, they're limited to a 90-day review. That's in the bill. So your principle concerns or what you thought might have been left out of the bill is included in the bill.

SENATOR MARTIN: But I want to make sure that, you know, somehow, that the community does, while they may have, sort of, good intentions, don't -- they can't take priority over it. This is supposed to create a coordinated effort to get a larger agenda passed that will serve both. It cannot be set up so it defeats, especially in an *Abbott* district, what is needed for the kids. So we will take a strong look at that.

And I thank you.

MS. MACK: I appreciate your reassurance.

SENATOR MARTIN: Thank you.

MS. MACK: Thank you.

SENATOR MARTIN: Mr. Sciarra and and Joan Ponessa, from the Educational Law Center.

SENATOR PALAIA: David, please proceed.

DAVID SCIARRA: Thank you, Senator.

With me today is Joan Ponessa, who, many of you know, is our research director and has spent the last year working very closely with the *Abbott* districts and their architects and planners in the formulation of their facilities management -- five-year facilities management plans under the *Abbott* decision.

Let me just start out by saying that, as counsel for the plaintiffs in the *Abbott* case, which are the over 300,000 children who currently attend public schools in our 30 *Abbott* districts, we have a special interest in this legislation before you today.

I want to-- I'm not going to comment on this, but I want to be clear at the outset that we support and recognize the need for State support for facilities construction in non-*Abbott* districts, as Senator Robertson was pointing out earlier. Older suburban, rural, and suburban districts need help as well. And we're fully supportive of the efforts in this bill to address their needs.

However, first and foremost, we have to make sure that this bill fully conforms to the Supreme Court's rulings in the *Abbott V* case. That ruling

contains some very explicit directives, which I just want to briefly mention to you.

The first is that the Court did accept the Commissioner's proposals made before Judge King for minimum instructional areas for the *Abbott* schools.

But the second principle is that those were accepted by the Court only as minimums. And the Court made it clear that *Abbott* districts were authorized to determine, initially, what additional specialized spaces are necessary to enable their own students to achieve the core curriculum content standards and to provide the additional supplemental programs that the Supreme Court has ordered, such as preschool education.

The third principle is that the Court directed the *Abbott* districts immediately, not awaiting legislative action, to prepare five-year facilities management plans which must include an assessment of existing facilities, the site-sensitive decisions as to which buildings should be renovated or replaced, and the district's determinations as to what spaces, additional specialized spaces, are educationally necessary for their own students, beyond any Department minimums.

The fourth principle is that the Court directed the DOE to promptly review those five-year facilities management plans but with deference -- that's a very important principle in the Court's opinion that does not appear in this bill -- with deference to the determinations of local educators because, in the Court's words, those educators are in the best position to know the particularized needs of their own students and with the right of districts to challenge Department decisions.

The fifth principle is that the Court directed the State to fully fund the five-year facilities management plans, including any additional specialized spaces. The districts can demonstrate the need and begin construction under

these FMPs -- under the five-year facilities management plans -- by the spring, 2000.

Lastly, the Court directed the State to follow through on its commitment that preschool construction projects would be prioritized.

So those are the, sort of, six benchmark principles in the *Abbott V* opinion.

And I'm not going to go through the process that we've already been through in the *Abbott* districts last year in developing the five-year facilities management plans. Those plans were submitted to the Department of Education in May. They total, approximately, \$7.2 billion for the 28 districts. There are two other districts which, as you know, became *Abbott* districts last year and are doing their plans now -- Neptune and Plainfield.

Unfortunately, the Department has not reviewed any of those plans to date. I say unfortunately because the Department is under Court order to review those plans, even in the absence of any legislation. And frankly, it would be useful to us now, in considering this legislation, if these reviews had been completed, because we would have much more precise information on the facilities needs of the *Abbott* districts and the level of State funds that are required to address those needs.

But be that as it may, there is still a lot of work that needs to be done in this bill to get it into constitutional shape, as I would call it. We do applaud -- I should say, and I want to thank the staff, particularly, for their work on coordinating -- attempting to coordinate facilities construction in the urban districts with larger redevelopment plans. That's an initiative which we fully supported and are -- would applaud. But there are several, sort of,

baseline constitutional issues that need to be addressed to make sure that this bill is fully consistent with the Court's order.

And frankly, Senator Martin, it really -- some of these issues address your prior questions to the Commissioner.

The first deals with educational adequacy. The bill, as presently written, by in large adopts those square footage -- square foot formulas that, Senator Martin, you alluded to, as the benchmark for defining educational adequacy, not just in the *Abbott* districts, but in all districts and for determining the level of funding that the State is going to provide for each project -- so called approved costs.

This provision, if it is not amended, is clearly unconstitutional for this reason. The Court made it very clear that the *Abbott* districts were authorized and empowered to make the determination, at least initially, of what spaces -- additional specialized spaces beyond any State minimum standards -- their own students need to achieve the core curriculum content standards and to provide supplemental programs. These are in the area of art, science, visual and performing arts, comprehensive health and physical education, world languages, special education, and alike.

The Court also recognized that the *Abbott* districts will be implementing supplemental programs that generate the need for additional spaces, most importantly, preschool education for all three- and four-year olds in their districts. But there are also other supplemental programs, such as alternate education, health and social services, the intensive reading program in the early grades, which is part of whole school reform.

So the Court, rather than accept the Commissioner's minimums as a maximum, in terms of what constitutes educational adequacy and what the State would fund, made it crystal clear that the districts had the obligation to assess needs, and if those needs go beyond any minimums, to present them to the Commissioner. The Commissioner reviews them with deference, and if they demonstrate the need, the State has to fund it.

This is another way of getting at the issue that you raised, Senator, which is whatever -- another approach to it. But this is the Court's approach, which has to be in this bill, at least for the *Abbott* districts. I would argue for any district for that matter -- which is that if whatever minimum standards you set, whether it's 125 square feet, 149 square feet, 179 square feet -- for high school -- whatever it is--

One thing I do want to mention, parenthetically, before I forget, there is no K-8 model standard. A lot of *Abbott* districts are moving toward -- back towards K-8 buildings, by the way. I just feel like I need to mention that. I don't want to lose sight of that.

But whatever minimums are in this bill -- whatever square footage is in this bill, that's a minimum. Districts have a right to come forward, demonstrate the need beyond those minimums based on the particular needs of their own students to achieve the content standards. If that need is demonstrated, the State must, not may, must fund it. So that is another way of getting at the problem you raised, which is what if a district has, in a particular school, an intensive program in the visual and performing arts as part of its district-wide core curriculum content standards.

What about specialized spaces for health -- comprehensive health and physical education? What about an intensive early science program in one of its schools? These kinds of issues get worked out locally under the Court's mandate, come forward if they exceed the minimum standards, the Commissioner reviews them with deference, and then if they can demonstrate the need, they get approved. That's got to be in this bill.

The second issue concerns unhoused students, which is another issue you raised. Section 7 limits new construction only to accommodate unhoused students. Well, that doesn't make any sense. The fact of the matter is, many *Abbott* districts may not be buildings -- buildings in the *Abbott* districts -- let me back up -- may not be overcrowded. In other words, there is not a problem with the regular classrooms, but they have tremendous problems with other spaces, such as libraries, gyms, science labs, art rooms, technology, so forth and so on. Science High, in Newark, comes to -- the new Science High that Newark is planning in its five-year facilities management plan.

Under this bill, as written, you could not make -- you could not add anything to an existing building or rebuild the building for that reason -- only for unhoused students. It makes absolutely no sense. That's got to be changed.

The third issue -- Ms. Mack alluded to it just prior to my speaking, which is the absence of any recognition in this bill that the districts have completed their five-year facilities management plans. This bill acts as though those five-year facilities management plans, which were done under Court order -- the districts spent enormous amounts of-- I can tell you, personally, as can Ms. Ponessa, that the *Abbott* districts spent an enormous amount of time

with their committees going around to each building -- enormous amounts of money-- All of them retained some of the best architectural planning firms in this state to do those plans. Those plans were submitted under Court deadline and are now sitting at the Department of Education. They've been sitting there for six months.

This bill has to be amended to recognize that the *Abbott* districts should not have to go about doing another plan now called a long-range plan, when they've already submitted a five-year facilities management plan for DOE review. This bill has to reflect that that process is done and needs to be reviewed by the Department of Education.

Also, I would add, not under any different standards-- These five-year facilities management plans were done under DOE guidance, DOE standards, with DOE software, so we shouldn't be in a position where we're asking *Abbott* districts to restart -- do another plan under completely different standards when they've already done their Court ordered plans.

Third is the--

Fourth is the issue of DOE review. This bill has to direct the DOE to promptly review those five-year facilities management plans and make decisions on those plans. There's simply no explanation I can think of why the Department of Education has been sitting on these plans for six months. Nothing's been done.

SENATOR MARTIN: Would you mind if--

MR. SCIARRA: And--

SENATOR MARTIN: --Mr. Azzara adds -- makes a comment here?

MR. SCIARRA: Let me just make one point. Not one *Abbott* district has received a decision on its plan saying it's up, down, this is our view on it. Now, I do understand that some *Abbott* districts have been brought in for some conferences. A couple of them have been given some preliminary feedback, but those plans have not -- the reviews have not been completed to my knowledge.

Maybe Mr. Azzara can enlighten us to that fact.

ASSISTANT COMMISSIONER AZZARA: We have made no final decisions, and we've said that quite clear. But we have been-- Every plan is under some stage of review. We have met with a number of districts to review that with them -- the spaces that are in excess of the facilities standards. And we've discussed why they need them and possible options. I've gone, personally, and sat down with a couple of superintendents to discuss their plans. James Nichols has.

So I'm not sure what Mr. Sciarra is referring to -- that they've been sitting in Trenton for six months. I'm not even sure what bill he's reading. It's just that everything he says is in this bill -- every requirement that is necessary. The bill does see those Facilities Efficiency Standards as a minimum entitlement. It does provide the Commissioner the ability for any district, not just an *Abbott* district, to exceed -- to approve spaces in excess of those if they need them.

SENATOR MARTIN: Well, I think there is language on Page 12 that says, "may" where he wanted to see it say shall, where if they meet a certain demonstration of needs that the Commissioner would then be obligated to recognize those.

ASSISTANT COMMISSIONER AZZARA: Reprioritize that.
If they made the demonstration--

MR. SCIARRA: It would be nice to know when final decisions on the 28 facilities management plans would be forthcoming from the Department.

ASSISTANT COMMISSIONER AZZARA: When the legislation is done. We've said that.

SENATOR MARTIN: All right, I don't want to get into--

MR. SCIARRA: Well, I don't -- frankly, I don't understand that--

SENATOR MARTIN: All right, well let's--

MR. SCIARRA: --because the Department did not have to await, frankly--

SENATOR MARTIN: All right.

MR. SCIARRA: --Senator.

SENATOR MARTIN: I understand your concerns, but we're-- I just don't want to change this into a criticism of the DOE. You know, they get their praise, they get their criticism. I understand what you're saying. I want to hear more about what you think is at fault with this legislation.

MR. SCIARRA: Well, I take serious issue with his statements, that this bill addresses the issue of demonstrated need beyond any minimums.

SENATOR MARTIN: All right, but I'm--

MR. SCIARRA: It makes it clear.

SENATOR MARTIN: I'm going to pretend I'm the Supreme Court right now, and I'm telling you I want you to deal with this bill at this time.

MR. SCIARRA: Well, I just take issue--

SENATOR MARTIN: I know you're used to the way they run their--

MR. SCIARRA: No, I just take issue with the statement that this--

SENATOR MARTIN: David, I don't care. I want you to deal with this piece of legislation.

MR. SCIARRA: No, I am, which is that-- The point I'm making is that this bill does not address the concerns about the review process and the issue of demonstrated need.

SENATOR MARTIN: And that point was made and noted.

MR. SCIARRA: Thank you.

The fifth point is about preschool facilities. Because of the-- The only way I can describe it is as a mess that has been made of the implementation of preschool education over the last year, which led us back to the Supreme Court this fall. The five-year facilities management plans, which are at the Department of Education from the *Abbott* districts do not -- do not address the issue of the need for facilities for preschool education, including -- because again of the absence of guidance from the Department of Education, what districts are supposed to do with the facilities owned or leased by Head Start and other community-based programs that are providing preschool education under *Abbott* -- not only their own preschool facility needs but also the needs of community-based programs including Head Start.

So one of the things this bill needs to do is to direct the *Abbott* districts to go back and do a supplement to their five-year facilities management plan, I would argue, within 60 or 90 days -- within a very short

time frame, with a short turnaround for DOE review to make sure that the five-year facilities plans fully encompass preschool education, because this bill also doesn't reflect, in its priorities for construction, the fact that the Commissioner himself committed to the Supreme Court under oath that preschool education would be the top priority for construction.

The other issue is State funding. It's a point that I just made. If a district demonstrates the need, the Commissioner must -- shall, you're absolutely correct, Senator -- not discretionary, not may, but has to fund those additional specialized spaces for which a district demonstrates a need. Language has to be included that reflects this basic obligation.

We've got to avoid the problems we faced under CEIFA. As you're well aware -- as we all know-- And the problems, frankly, we faced last year, under preschool education, which is the implementation of a court ordered program, by virtue of a predetermined set funding amount -- that then fixes the program-- The Court has said, over and over again, and on facilities has made it clear, that this cannot be a -- you can't fix the funding level by virtue of Facilities Efficiency Standards, if you will, and walk away from it. That's going to create another constitutional problem, land us right back into court, which is the last thing we want to do.

So we have to make it clear that funding has to be provided, not just for buildings consistent with DOE facilities standards, but for the additional specialized spaces beyond any standards, wherever they may turn out to be, that a district demonstrates the need.

Another point I just briefly want to make is around State capacity. We have serious concerns with-- This may be why the Department of

Education hasn't gotten those reviews done. And this is not a criticism of Mr. Azzara or the Department. Frankly, there are tremendous administrative costs. The Treasurer kind of glossed them over by saying, "We're going to contract all this out." That's still a cost to the State that cannot be borne by the districts.

The fact of the matter is the Department has to scale-up dramatically just to deal with the five-year facilities management plans. The Building Authority, the Urban Coordinating Council, all of these State agencies are going to be shouldering an enormous program, and just in the *Abbott* districts alone, let alone adding on all of the other districts.

I think this Committee should quickly, right now, authorize an independent agency to assess the capacity of both the Department of Education, the Building Authority, and the Urban Coordinating Council to undertake the tasks that this bill will put on them, so that you have a good -- we have good idea of what the increase and capacity is going to be to administer this program and the cost to the State, which is also going to have to be included in the budget.

There are a number of issues of constitutional dimension and otherwise that we need to work on. The issue of special education, the issue of removing any legal impediments, so that *Abbott* districts can rebuild community programs for *Abbott* preschool, that are run by Head Start or owned and leased by Head Start-- These are thorny legal problems that haven't been grappled with, frankly, that need to be grappled with. So there are a number of other issues beyond these larger constitutional issues I raised today.

We're prepared to sit down and develop language which would address the concerns that I've raised, and these other concerns right away, so again we can get this bill, as I said, into constitutional shape.

Thank you, Senator.

SENATOR MARTIN: Thank you.

I would appreciate if you did reduce some of those to the language of this bill.

MR. SCIARRA: We will do that right away.

Thank you.

SENATOR MARTIN: Dr. James Lytle, Trenton Schools Superintendent.

Is he here?

UNIDENTIFIED SPEAKER FROM AUDIENCE: He's on his way.

SENATOR MARTIN: All right. Well, he is on his way, so--

Dr. Jamie Savedoff, Superintendent of Montgomery Township. We've heard from him before. I know he's got huge, overcrowding, new construction needs.

Is he here? (no response)

Al Zaccone, President of the New Jersey Chapter of the American Institute of Architects. And he has some other folks.

NANCY H. BECKER: Good morning, Mr. Chairman. I'm Nancy Becker, and I represent the American Institute of Architects. And I'd like to introduce Eric Wagner, President-Elect of the American Institute of Architects

on my far left, and Michael Soriano, who is the Chair of the Legislative Committee.

ERIC WAGNER: Good afternoon, Chairman Martin and members of the Senate Education Committee. I am Eric Wagner, President-Elect of the New Jersey Chapter of the American Institute of Architects. With me is Michael Soriano, Chair of AIA-NJ's Legislative Committee.

I would like to begin today by thanking the sponsors of this legislation for their graciousness and willingness to listen to our concerns from the beginning of this process. We have seen some wonderful improvements since the original draft legislation. Specifically, we applaud the sponsors for including, in this school construction legislation, a substantial urban redevelopment effort. This redevelopment effort will vitalize our urban communities throughout the State, and it is only one of the many positive pieces of this legislation.

I would also like to thank the Chair and members of the Committee for giving us the opportunity to speak this afternoon. Although we will be limiting our testimony this morning to AIA-New Jersey's three major concerns, there are other issues that we will not be discussing this morning which we will include in our position paper and forward to the members of this Committee.

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 revolving loan fund to accomplish this lofty goal. We also support placing financial restraints on the use of those State funds to ensure that the taxpayers get the most bang for their buck. We do believe,

however, that there are a few sections that should be amended in S-15 to improve the process for all parties involved. I'll speak to the first of these concerns, and Michael will address the other two.

Firstly, the local district should be responsible for choosing the architect. Under this legislation, the school district must retain an architect initially to draft the documents that are required for the proposal. The architect that has done this initial work has become very familiar with the site, the project, and specific needs of the district.

Under this legislation, however, the Building Authority has the power to retain a completely different architect to finish the project. Switching architects after this initial work will only increase the time and cost of the project. In addition to increasing the time and cost of a project, bringing someone new into a project that he or she is not familiar with will increase the possibility of error. It simply does not make sense to start a job using one design professional and finish it with another. Instead, the local district should choose the architect to be used initially, and that architect should be retained through the entire project.

A good example of this would be right here in Trenton. The Trenton school district has assembled a team of planners, construction managers, and a number of architectural firms that are familiar with district needs, and they're using this team to move forward on projects. It would be a disservice, in my opinion, to make these team members step aside for other, nonfamiliar professionals.

SENATOR MARTIN: I know one thing the bill, at least, contemplates, is that they would have the ability to do that. Whether they

should be mandated to continue with the architect, I think, is something we will put up for further discussion.

MR. WAGNER: Well, we would clearly--

SENATOR MARTIN: They claim they can save money, obviously, in some cases by shifting the-- There could be, in certain cases, some differences of opinion as to whether an architect that a local school board hires would meet the same professional reputation beyond that school district. And so I think there is an issue there. But we will take a look at that issue.

MR. WAGNER: Well, we believe that school districts could be -- hire architects that have been prequalified by the State through the present standards with DBC prequalification process. That would ensure qualified professionals being involved in the project. But the local school district would have the ability to hire a professional that has some insights and understandings of the specific needs of the community.

We'll suggest some amendments -- some shade (indiscernible), that kind of thing for that, and submit it to you.

Michael.

MICHAEL SORIANO: Our second concern is that S-15 gives the New Jersey Building Authority the property rights to the school construction projects.

Construction documents prepared by a design professional, in hard or in electronic media, are the graphic depiction of the designer's creative effort, a concrete manifestation of the intellectual process of architecture. They are not a product, and the architect should therefore retain all property rights. The property rights language in this legislation gives the Authority the

ability to reuse the documents on other projects without further involvement of the architect. This could be very dangerous.

Unauthorized reuse is the major liability problem. Experience teaches that the original designer is exposed to potential claims in the future by persons or institutions which rely on the original creative effort as it is applied on unknown and unanticipated future projects and site conditions.

Furthermore, transferring ownership allows for the potential of unauthorized changes in the documents, exposing the architect to even further unanticipatable claims. More so, an expanding climate of liability has the potential for reopening 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, as opposed to the substantial and historic protections afforded design professionals under the conventional, negligent standard of care. Will any provider of professional liability insurance provide insurance to an architect or other design professional who is subject to this potential litigation or liability?

In addition to the liability problems created by the transfer of ownership, subsequent design professionals asked to use and apply the instruments owned by the authority, but created by another, exposes him or herself to potential violation of several New Jersey State Board of Architects regulations dealing with the supervision and responsibility for creation and subsequent use of the documents.

Finally, minor differences in property characteristics make -- when using plans from one project very difficult and, therefore, potentially very costly.

Our final concern today with S-15 relates to the use of design-build. There should be safeguards in place for any school construction project that is constructed by design-build. AIA-New Jersey supports the use of design-build as a viable construction method and supports including that option in school construction legislation. We believe, however, that safeguards should be in place to ensure the success and proper use of design-build. The New Jersey State Board of Architects is currently in the process of developing regulations dealing with this issue. We, therefore, encourage the New Jersey State Board of Architects to continue working in this area and to adopt regulations governing how all architects working in New Jersey should operate under design-build.

In conclusion this afternoon, AIA-New Jersey supports the goals of this construction initiative. The three concerns we have outlined this afternoon, however, are major roadblocks to a successful school construction program. It is important to remember that school buildings often become the center of life within a community and are critically important to the richness of that community. Local involvement should not be sacrificed, and a construction process should be the most efficient. We believe our suggested amendments will help achieve these efforts.

Thank you again for your time this afternoon.

SENATOR MARTIN: Maybe you can, Nancy, put those in some kind of language we can take a look at.

MS. BECKER: We've submitted them with our testimony.

SENATOR MARTIN: Does anybody -- had a problem with what-- I mean, I understand the first one is negotiable. But in terms of the protection of the intellectual property rights, is that--

MS. BECKER: We would hope there wouldn't be a problem, and there is someone from the insurance industry to speak to that issue as well, and he'll give his testimony on it.

SENATOR MARTIN: Thank you.

MS. BECKER: Thank you.

MR. SORIANO: Thank you all.

SENATOR MARTIN: Mr. Stoller, from Business and Industry Association.

JEFFREY N. STOLLER: Thank you very much.

SENATOR MARTIN: I was told you can't hear me in the back. The system is working. I just sometimes am sitting too far back from the mike. I'll pretend I'm Dean Martin, instead of Bob, and get right up close.

Go ahead.

MR. STOLLER: Thank you, Mr. Chairman. I'm Jeff Stoller, Vice President with the New Jersey Business and Industry Association. I'm joined this afternoon with our Senior Vice President, Phil Kirschner. We welcome this opportunity to comment on this legislation on behalf of our 16,000 employer members here in the State of New Jersey. I wanted to begin, as many other speakers have, by thanking Senator Gormley for his leadership and you and the Committee as well.

This is a tremendously important issue. The NJBIA, and, in fact, the entire business community, recognizes the importance of making this investment in renovating our schools, rehabilitating and building if need be, because the students need updated facilities not only to prepare themselves for their academic work, but later in life with their professional success. And that's again the reason we believe this legislation represents a very significant important investment in the economic future of New Jersey.

Having said that, it is because of the importance we place on this project, because of the great impact it is going to have on our economy and our state, that we have reviewed the legislation and would like to share with you some important corrections that we believe need to be made to correct some omissions and some ambiguously worded provisions that effectively eliminate the requirement that these schools be built and according with the State's bidding laws.

As it's written currently in this initial draft, we feel that some of these key provisions do not reflect the sponsors' intent, certainly, in terms of conducting this construction work under a competitive bidding system. Our belief is that without these corrections that ambiguousness, some of the lack of specificity in these five sections that we've flagged, could leave taxpayers vulnerable, down the road, to inflated costs.

SENATOR MARTIN: Although I have checked with the prime sponsor, who assures me that he is a fan of the low-bid provisions, the State Legislature and the Building Authority are obligated, under its rule, from what I understand from OLS, to follow low-bid contracts. I'm not so sure that if you polled your 16,000 members of the Business and Industry Association, they

would all be strong supporters of the low-bid provisions in State law. I guess you're speaking for them because, that they, in their heart of hearts, really do.

MR. STOLLER: Well, I think--

SENATOR MARTIN: Some of them have told me that they don't.

MR. STOLLER: Well, some of them are also, though, significant taxpayers in each of these districts. And I think, certainly, the broad consensus is from everyone that we've reached out to and spoken with, that they understand when you're undertaking what would be a 6 billion -- now people are saying as much as \$10 billion -- project of this kind over a decade, or whatever it might take, that sticking with those standards, observing those traditional State bidding rules, is the best way to go for everyone in terms of getting the jobs done and in terms of getting them done in the most cost-effective and efficient way.

And, in fact, one of the first points I was going to make on these five points that are here in the testimony, I call to the Committee's attention, is the fact, that while you're absolutely right, the Building Authority has always pursued their projects-- The Building Authority's projects have always been pursued with that lowest responsible bidder standard. That isn't how the bill currently reads. It fails to amend the very section that would, in fact, have the bidding requirement included in its absence. That's where you would run into a problem.

SENATOR MARTIN: Well, I know we've talked about it, but to sort of make this -- speed this up a little bit, I am going to direct OLS to -- and Senator Gormley asked for this, as well -- get a clarification as the extent to

which the lowest responsible bidder law in New Jersey, public contracts law, is either deviated from in this bill or not. There may be some differences of opinion, but I would appreciate that, because I know you've raised it. I don't-- Senator Gormley says it's not his intent to do that. So if it does, then I think we'll take steps to correct it.

MR. STOLLER: Okay. Excellent. And we think the way to correct it would be very simple, as you see on Page 2, simply adding more school facilities projects to the existing Building Authority statute. It takes care of it. It's a big problem, but very easily remedied, very quickly attained.

Just quickly, Mr. Chairman, on some of the other points, just to flag for the Committee. You'll see, in Page 3 of the testimony, we refer to Section 6e, on Page 20. Again, that is language that is very much different from that lowest responsible bidding language. We flag that for you again, because we don't want to move from what is a very clear, completely understood legal standard to vague language that may work for other kinds of projects -- most advantageous bidder, other factors, instead of just price. These don't have clear meaning. They are not standards that are going to be working in the interest of any party. And we believe that making it clear, as you see with the reinsertion of lowest responsible bidder language in that section, is very important to making sure that, especially in these community development projects, you retain that competitive bidding language.

Just three last quick clarifications that we believe, again, can be taken care of with some simple changes. You'll see that Section 5n states that, "The public school contracts laws shall not apply to projects constructed by the New Jersey Building Authority or a redevelopment authority." Rather than

just leave it hanging there, we feel it is again very important to make clear that the traditional State bidding laws still apply even where the public school contracts law does not. And again, not a major amendment, but the language required to clarify that is provided below. (indicating testimony)

Similarly, Section 5b(2), it was a similar problem saying that you would not -- the district would not be required to bid the project pursuant to the public school contracts law if it agrees to construct a school facility with a county, municipality, or other public entity. Again, we shouldn't just leave it hanging there because, again, that allows people to interpret it in a way that suggests there isn't a clear guideline. That isn't the intent. They wanted to make clear that the public school contracts law doesn't apply, but again we don't want to get away from that lowest responsible bidder standard that should apply.

We don't take the position, by the way, on the wisdom of having other public entities entering the partnership with the schools. You have many informed people who would be working with you and the Committee to come to grips with that issue. But if the decision is made to involve these outside entities, we believe that if they are involved, they should follow the public bidding laws like everyone else, again, to avoid the higher bids, the higher costs, to have a clear standard. And again, the language that would do that is included here on Page 5, simply saying if a project is bid pursuant to applicable public bidding statutes of the other entities, that would address the problem.

And a final comment, again just a clarification, it references in the bill the New Jersey Educational Facilities Authority. And again, the intent of the bill clearly is to work with the EFA in terms of the finance of the school

construction rehabilitation. But when you go and read through and you reach Section 44(k), which you'll find on Pages 55 and 56, the language there permits the EFA to "construct, reconstruct, maintain, repair, etc., in the cases of school facilities." So again, just to avoid any unnecessary confusion, we believe that that language should be deleted clearly, since they aren't expected or intended to be playing an actual role in construction. There is no bidding language included in that section. Again, we just feel that that's very important that that be clarified.

So, again, let me end where I began. Simply to say that this is, as I think you've heard prior speakers say, a project of tremendous impact, importance to our State that is going to reach well into the future. We feel that it can move ahead. It certainly can move ahead with its clear direction and guidance, but the rule that we're following is that this legislation follow existing State bidding laws and procedures. It really is the only way we're going to assure that fair bidding on school projects takes place in a way that is cost-effective, is not going to inflate costs unnecessarily, is bid and brought in on a timely way. I think that's going to benefit the districts, certainly going to benefit the business community, and everyone else involved.

Again, we just believe that--

SENATOR MARTIN: We got it.

MR. STOLLER: Okay. Very fine.

SENATOR MARTIN: Thank you.

MR. STOLLER: Well, thank you. We, again, appreciate the opportunity to share these thoughts with you.

SENATOR MARTIN: Thank you.

John Aberigon, and then we'll give Ms. Bohi another chance.

Is Peter Allen here? (affirmative response from audience) Yes, there he is. Hi. You'll be next, okay?

JOHN ABERIGON: Good afternoon, Senator and Committee. I have with me Frank Viggiano, the President of the New Jersey State Federation of Teachers. As you know, we're affiliated with the American Federation of Teachers, AFL-CIO, and we represent Long Branch, Perth Amboy, Garfield, and the state's largest *Abbott* district, Newark. Our comments will be brief inasmuch of what we have to say has been repeated with more specificity by other speakers this morning.

The New Jersey State Federation of Teachers is in complete solidarity with the Educational Law Center, as well as with our brothers and sisters in the AFL-CIO, and the building trades. We have deferred to their spokesmen for further elaboration on the specifics of S-15 and its relevance to the *Abbott* court order. However, we want to add concerns that may not be expressed by others pursuant to the record and these issues are issues of final product.

There's an outstanding body of research on the degree to which American schools are in poor physical shape. There is less research on what this means for student achievement. One of the most comprehensive reviews by Carroll McGuffey examines the results of 88 separate studies. McGuffey concluded that old and obsolete buildings have a negative effect on the learning process of students. Newer buildings, controlled thermal environments, and adequate lighting and acoustics were among the factors related to better student achievement. There is also another recent study,

mostly from the psychological field, that is relevant. Air quality affects student ability to concentrate. Poor acoustics is aligned to the classroom distraction.

The Massachusetts General Assembly is examining a bill to create a task force to study air quality problems in the state's public schools. The task force will report on the extent of the problems and recommend the solutions. Background noise causes errors on complex tasks and increases the likelihood that students will give up. This latter study also found that crowded school conditions increased aggressive behavior.

A recent study by George Waller of the University of Wisconsin, Milwaukee, examined changes in standardized test scores across states. By examining changes in scores, this research controlled for any preexisting advantages the students of one state might have over another. Waller examined the relationship between test scores and building structural quality: rooms, walls, floors, plumbing, power, etc.; environmental quality; air quality, ventilation, acoustics of space, flexibility, etc.; and technology, computers, fiber optics, phone lines, cable TV, etc. The research found that although structural quality did not affect achievement, environmental quality and technology were related to increased student achievement.

In 1997, the California Legislature passed a bill to require that new school construction includes the provision of telephones in every classroom. The legislative stated goals were to increase school safety and facilitate community and parental interaction. That bill was vetoed by then Governor Wilson.

In closing, allow me to quote the national president of the American Federation of Teachers, Sandra Feldman: "We cannot dismiss the

problem by saying it's just a question of the physical plan. Kids deserve schools that tell them, 'You and what you are doing here are important.' And we know from research that student achievement suffers in crowded and deteriorating schools. If we're serious about kids meeting new and higher academic standards, we have to make sure that they have decent places to learn."

Senator, we can't do that on the cheap, and we can't do that in a hurry. And just as a p.s., my own alma mater, Lafayette Street School, is perhaps the oldest operating school in the state. It's a strong school. It's a beautiful school, and it was built with love and respect by the community for the people in the neighborhood and what their students and their children were going to do in that building. Trailers and building something on the cheap that's going to last maybe five or six years sends a signal to that child that they don't care as much for what I'm going to be doing in this building because this building isn't ornate, that building is a trailer. If you build something with disdain and hate and because you're forced to build it, it's going to reflect. And that's one of the things that we're hoping does not happen, that we keep the *Abbott* decision and its order foremost in our decision-making process.

SENATOR MARTIN: Send me Waller's study. I'd like to review it. I'm not sure he was able to control for all those factors he has said, but I'd like to see it.

Thank you.

MR. ABERIGON: You got it. Thank you.

SENATOR MARTIN: Mr. Allen, Consulting Engineers Council.

PETER ALLEN: Good afternoon, ladies and gentlemen. Peter Allen, from the Consulting Engineers Council of New Jersey. Our members provide the engineering services to local towns and municipalities and school districts.

And Mr. Chairman, I was pleased to hear some of your comments earlier that, I think, have given some relief to some of the concerns we have, specifically, about eliminating potential red tape in hiring of contractors and possibly doing some delegating of the hiring and selection of contractors out to the local districts. That was really our concern. On Page 17, Section r, that section pretty much allows the--

MR. CANNON (OLS Committee Aide): Excuse me, push the button so the red light comes up (referring to PA microphone).

MR. ALLEN: How's that? Sorry. Page 17, Section r, pretty much allows the New Jersey Building Authority the option of either retaining the original design professional or replacing the design professional. As the process goes along, it just doesn't seem to make a lot of sense that if a local district hires an architect or an engineer or any kind of design professional, and that design professional devotes an enormous amount of time in coming up with the preliminary plans with the local district personnel, that somewhere down the line during the process, that design professional is simply replaced by somebody else selected by the Building Authority. The Building Authority has-

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Nothing's working (referring to PA microphone). We need an engineer here. (laughter)

SENATOR MARTIN: This only took 10 years and, I think, \$180 million. It was built on the cheap. We didn't provide, also, for the environmental air quality which apparently can be a factor as you go along.

MR. ALLEN: The Building Authority has the option of selecting the design professional. We would simply like to see the local district have a similar option. I have talked to a couple local superintendents, and they're a little bit concerned about that. They have relationships that they've built up over the years. They have design professionals they work with. They work very well. Their work is good. The price is right. They're easy to negotiate with. They have a local presence. They like that arrangement, and they would hate to see that just thrown out and replaced. So we'd like to see some kind of an option.

SENATOR MARTIN: I think Senator Gormley is in agreement. We need to look at that. I think some of the issues of the architects are similar.

MR. ALLEN: Very similar. Thank you.

SENATOR MARTIN: Thank you.

Mr. Hartman. Is he here, from Thomas Sharpe and Associates?

RICHARD HARTMAN: Hello. Good morning, Chairman Martin and distinguished members of the Senate Committee on Education. I thank you for the opportunity to allow me to speak this morning. My name is Richard Hartman. I am Executive Vice President of Thomas J. Sharpe and Associates, Inc. We are an organization of insurance professionals specializing in professional liability insurance and risk management services to design professionals. We represent nearly 1000 architecture and engineering firms

here in New Jersey, many of which provide professional services for public school projects in this fine state.

I'm here to discuss one area of potential liability associated with proposed legislation with S-15. You've heard from both the AIA-New Jersey, as well as the Consulting Engineers Council with respect to this issue. I would like to add to some of those points that they have addressed. My discussion of these liability concerns will not be limited to the liability of architects, engineers, and other design professionals, or even other members of the construction team, but will also address how these concerns can impact the project owner as well as the general public.

SENATOR MARTIN: You don't want to just make an exclusion like the zillion others exclusions--

MR. HARTMAN: You'd be surprised to learn now that insurance policies contain fewer exclusions than ever before. Fortunately, for insurance buyers, we're in a very competitive marketplace, and the coverages are significantly less expensive and significantly broader than ever before and certainly in light of the 20 years I've--

SENATOR MARTIN: But you think it makes sense that an architect's plans that apply to one building can't just be uniformly taken and placed in another location without raising some serious safety issues?

MR. HARTMAN: I wholeheartedly believe that is correct.

SENATOR MARTIN: I mean, that's really what is sort of the heart of the issue, isn't it?

MR. HARTMAN: Absolutely. Not only--

SENATOR MARTIN: We can deal with it with an exclusion on your part or a hold harmless, but you think the best approach is to limit those plans to the site specific place where they've done their renderences.

MR. HARTMAN: Absolutely. Not only the plans, but the architect itself. In other words, the architect that prepared those plans should be given the opportunity to see those plans implemented through the construction phase of the project. I think that not only is the best way of ensuring the least amount of liability to the architect and/or engineer themselves, but to the school district, to the State of New Jersey, the Building Authority which owns the project, as well as the general public, the students who enjoy the project, as well as the community in which the project is located.

Shall I continue or--

SENATOR MARTIN: If you can make it short.

MR. HARTMAN: I will do that. Insurance people rarely make things short, but--

In various sections, S-15 sets forth the definition of a school facilities project. It states that, included within this definition is the services of design professionals such as engineers and architects. By virtue of this definition, S-15 grants the New Jersey Building Authority the right to own all or any part of the services, 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, S-15 provides the Building Authority with the right to modify, from time to time, land, specifications, or cost estimates prepared for a school facilities project.

This proposed granting authority creates concerns of expanded liability not only to design professionals, but also to all 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 to the Building Authority, by statute, the right to own the plans and specifications prepared by architects 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 these paid for architecture and engineering services.

I submit that not only will these cost savings not be achieved, but the actual cost may increase due to an increase in architecture and engineering fees to repair the original design, contractor bids, change orders and extras, and most importantly the opportunity for lengthy and expensive litigation. There is a real danger in reusing plans. In my opinion, there is no such thing as a final set of construction documents until the project is constructed and is occupied, with the architect of record having the opportunity to complete its design by providing appropriate services through the construction phase of the project.

A design professional's judgment is applied at every stage of the project. This personal judgment can never be fully communicated through printed plans and specifications. More importantly, and as I stated just a moment ago, although I can't underscore and highlight the importance of this enough, it is difficult for a single set of drawings to incorporate the potentially numerous changes or interpretations design professionals and contractors typically make to correct errors and adapt to site conditions. The design

professional that prepared the original design is clearly in the best position to understand its underlying assumptions.

Changes made during the construction phase result in three to five times more professional liability claims against architects and engineers as the original design. Although the claim is made against the architect or engineer, ultimately all parties to the project, the owner, the contractors, the construction manager, as well as design professionals are involved in this litigation. This, as we all know, is often a lengthy and expensive process where there are no winners.

The 1981 collapse of the skywalk in the Kansas City Hyatt Regency Hotel is one of the most highly publicized construction claims and tragedies ever in the United States. It was discovered, through numerous inquiries to the matter, that the collapse of the skywalk was a result of a change in design made during construction. Now I'm not concluding that by granting this statutory right to own and reuse plans and specifications prepared for another project a tragedy like the Kansas City Hyatt will occur, but certainly exposure to occurrences such as this one is increased by the granting of broad authority.

I believe that the combination of severing the designer from the design, along with the inevitable imperfections in even well-prepared plans, will increase the financial risks of all parties involved. I believe that any architect who competes for a contract to provide services where its instruments of service are subject to reuse must consider the foreseeable increase in liability when developing its fee proposal. If a design professional is aware that his plans and specifications will be used again, a larger fee is, in my opinion,

justified, if for no other reason than an attempt to contemplate the increased exposure to liability or at least the increased threat of litigation it has as a result of the reuse mechanism.

In my opinion, contractors would also have to consider the added risks of bidding on projects that may require expensive corrections and delays as a result of the inability to effectively make corrections to design errors or simply interpretations as they surface and are required during construction. One might argue that a possible solution is to provide statutory protection to the original design professional by insulating it from liability when its plans are reused. I submit that this approach does not adequately address nor resolve the underlying concerns I have previously discussed. Furthermore, it also raises the question that if an architect's liability in any statutory reuse mechanism is at best uncertain, his recovery against that architect by the owner, contractor, or third party equally is uncertain? In my opinion, the answer is yes. Financial concern is increased for all parties when the original architect's control and input are eliminated.

Another issue with respect to liability in S-15 is the increased potential for a copyright infringement litigation. The Architectural Works Copyright Protection Act of 1990 is a Federal law protecting the--

SENATOR MARTIN: That's not your issue, right, as an insurer?

MR. HARTMAN: Pardon?

SENATOR MARTIN: That's not your issue, right, as an insurance agent?

MR. HARTMAN: Well, actually the copyright plans is a rather nebulous area of insurance. Today, there is no exclusion, believe it or not, in

professional liability policies for architects that prohibit where it excludes coverage for claims for copyright infringement. However, the trigger of coverage in professional liability policies are allocations of negligence. So in order for a copyright infringement claim to be covered under a policy and professional liability, the claim must allege negligent infringement of copyright. Now, personally, I've never seen such a claim, although I have seen numerous copyright infringement claims against architects.

SENATOR MARTIN: So you would likely deny coverage if an architect brings that in?

MR. HARTMAN: I never want to deny coverage. I am an insurance broker. I provide coverage, and I quite candidly-- The insurance company that represents probably 75 percent to 80 percent of the firms insured in this state, which you see at insurance companies, also does, in my opinion, a fabulous job in looking for coverage for their insureds.

SENATOR MARTIN: We understand this issue, and we're going to try to deal with it.

MR. HARTMAN: Thank you.

This law is--

SENATOR MARTIN: The time is up. We're trying to get you to sum up here--

MR. HARTMAN: I got you.

SENATOR MARTIN: --because we got the point. The architects made the point.

MR. HARTMAN: You made a good point. Thanks. Thank you very much. I appreciate the opportunity.

SENATOR MARTIN: Mayor Palmer, of Trenton.

Are we expecting rain, Mayor? I see you've got your raincoat there.

MAYOR DOUGLAS H. PALMER: I read the paper earlier, Senator, and I didn't know what to expect when I came here. (laughter)

SENATOR MARTIN: We're trying to make a good forecast, at least for schools.

MAYOR PALMER: I agree. I agree with you.

I also have our Superintendent of Schools, Dr. Lytle, with me as well.

SENATOR MARTIN: Dr. Lytle, how are you? I called you earlier. Mayor Palmer thought he would be here at 1:00. I didn't see that on yours, so we called you earlier.

JAMES H. LYTLE, Ed.D.: We came arm in arm.

SENATOR MARTIN: We're glad that you are able to testify at this point in time as a tandem.

MAYOR PALMER: Yes. Thank you.

It's good to see our Senator here, Senator Turner.

Thank you for this opportunity to speak before this Committee today on an issue that is critical to the future of our state, our cities, and most important, our children. First, I commend the Legislature for beginning to address the complex and crucial issues of school facilities, as required by the New Jersey Supreme Court, *Abbott v. Burke*. At this point, what is important is that we recognize the importance of working as a team to take on this

monumental task. I ask this Committee to remember that on a team, each player has a role and an expertise.

Today the Superintendent of the Trenton Public Schools and I are testifying together to emphasize the importance of mayors, superintendents, and their respective governing bodies working together to improve the quality of education for all of our children. In February, as Chair of the New Jersey Urban Mayors Association, I facilitated the first meeting ever of mayors, superintendents, and school board presidents in the *Abbott* districts to discuss issues of common concern. It is this kind of thoughtful teamwork that has helped shape the comments, recommendations, and requests that we make here today.

Our work together to plan for improved school districts also has helped us understand the critical need to include the input of local planning boards in the process of renovating and building our new schools. We are depending on this Legislature to recognize, as we do, the critical role that schools play in urban redevelopment. As Mayor of Trenton, nothing is more important to the progress of my city than good public schools that provide students with a good education.

For all of the *Abbott* districts, public schools are a critical part of the foundation of what we're planning and preparing our cities to become in the 21st Century. Good schools help us create strong cities. Likewise, adequate facilities help create a better learning environment. I am pleased that in Trenton the school district has put together a detailed facilities plan which the city strongly supports. We look forward to implementing the first comprehensive plan to build and refurbish our schools for the first time in our

city's history. My chief concern at this point is to ensure that our Legislature does not overlook an opportunity for one of the most crucial spin-off benefits of this project. For most of the *Abbott* district cities, the schools construction contract represents one of the biggest construction contracts to ever come to a city at one time.

In Trenton, we are expecting a \$250 million construction plan. While this is great for our schools, it would be even better if we were assured that our cities could be in position to receive spin-off economic benefits by tying these construction dollars to our local communities. If there is local control or input during this process, we can help ensure that hiring local architects, engineers, furniture suppliers, electricians, bricklayers, plumbers, carpenters, landscapers, heating and cooling suppliers, and building material suppliers is a priority. Local businesses and contractors generally do one of two things for our city: they pay property taxes to help us, or they hire our residents and provide much needed jobs.

We cannot afford to pass up this opportunity for this project to positively affect our cities as well as our schools. Furthermore, we are concerned about the role of the centralized Building Authority. It has a limited track record, and we are concerned that it may lack the experience and the capacity to do the job well. There will be hundreds if not thousands of projects in the *Abbott* districts alone. Most of these projects will be renovation, not new construction. We cannot expect the State Building Authority to know which school buildings in our respective cities are architecturally or historically important to us and to design the new buildings with these concerns in mind. These types of efficiencies can best be determined at the local level, not by a

State agency with dozens of projects to support and little knowledge of the particulars of any one project.

The task of rebuilding our schools is too important to be left to chance. Therefore, I call upon the Legislature to create an opportunity for local input that will help guide the massive project, as well as ensure a local economic impact for our cities. We also want the Legislature to ensure adequate funding is identified for this ambitious project. It is not acceptable for the State to build schools of lesser quality or with fewer amenities than in suburban districts, because all children deserve the best education that we can give them. There must not be a legacy of *Abbott* schools built on the cheap, without regard to specific district needs. We must remember that the schools that are built today will be used for decades. We must not let those who come after us, as was asked about high-rise public housing, how did they let that happen?

This Legislature need not let any of the concerns I have mentioned come true. This Legislature must push forward energetically, fund districts adequately, and permit them to renovate and build quality schools for the 21st century. Cities all across New Jersey are depending on this Legislature to show support for our efforts to revitalize urban areas without the need benefit of large increases in State aid. We are asking this Legislature to provide local control or local input to implement our respective school projects and select contractors that will impact our local economies.

As I mentioned earlier, urban mayors, superintendents, and school boards have shown the will to work together on this project. I implore you to

allow us to continue doing that for the future of our cities, schools, and our children.

Thank you.

SENATOR MARTIN: Let me just ask you a question. You're going to be able to-- Your Planning Board's going to be able to review these community development programs within 90 days, as the bill provides? You sit on the Planning Board, right?

MAYOR PALMER: Yes.

SENATOR MARTIN: You'll be able to--

MAYOR PALMER: Absolutely.

SENATOR MARTIN: --make sure they get the work done within that time?

MAYOR PALMER: Absolutely. This will be a top priority for us, because we look at this not only helping educationally, but also in community development as well. We'll move that quickly.

SENATOR MARTIN: We want that piece. There was an issue raised before that somehow the planning boards might act as sort of a slowdown, not intentionally, but just create some kind of blockage. It would make things more difficult in cities like Jersey City and Trenton. But you foresee that the Planning Board would be able to do its work cooperatively with the school board?

MAYOR PALMER: Yes, and we have. That's a good point. We could. If there are problems that come up, you have to allow for that. But basically, it's a priority for us, and we'll work together as a team with our planning boards and our communities to see that this moves forward.

SENATOR MARTIN: I would think so. If they can review regular applications under 120 days, they should be able to do this in 90, I would think.

MAYOR PALMER: Yes.

SENATOR MARTIN: Dr. Lytle.

DR. LYTLE: Senator Martin and members of the Committee, let me just add to the mayor's comments that we have been meeting with City Council and with the Mayor's Office almost since the beginning of our planning, and we have been trying to develop our school planning in conjunction with the city's long-range development plan. So we are very comfortable proceeding in the way that you have suggested and see any of our school construction or rehabilitation projects as fitting very directly with the city's plans.

SENATOR MARTIN: Provided they have their six-year master plan in place, which may be a problem with some other districts.

DR. LYTLE: If we need a six year--

SENATOR MARTIN: No. The master plan has to be reviewed every six years. It has to be there for you to be able to measure against. Jersey City, they claim they have-- Their master plan doesn't exist, which creates a problem.

DR. LYTLE: What I wanted to share with the Committee is that the *Abbott* facilities and the general facilities opportunity presented by S-15 has provided a very unique opportunity for us in Trenton. We've been working on our school plans for almost a year and a half. We've had tremendous community participation, led by our local architects and

construction management companies. A former member of our school board -- a former president of our school board -- has chaired the planning committee. We've met almost weekly for the past year and a half and involved parents, teachers, school principals -- everybody essentially -- in working on our plan. We've also had an opportunity to meet with each specific school to be attentive to what their needs are, both relative to instructional requirements under both *Abbott* and Core Curriculum Content Standard requirements, but also relative to special needs students, which is an important consideration for us.

I'd like to share briefly with the Committee a little of the history of the development of our plan, because it may help you in thinking about the final crafting of the bill. On March 5, 1999, our Facilities Advisory Board approved the submission of a five-year plan to the school board. And on March 15, the Board of Education unanimously approved the submission to the Commissioner of Education. On May 5, the five-year facilities management plan was submitted to the Department with two proposals: Plan A and Plan B.

Plan A was intended to directly address what we perceive to be the mandates of *Abbott* and provided for the construction of 10 new buildings and the 5 new primary centers, as well as the demolition of 7 of our buildings. The total cost was estimated at about \$333 million. Without providing a formal or written response to plan A, the Department of Education requested the development of an alternative, less-costly plan.

SENATOR MARTIN: But those plans haven't been sitting in Trenton in the DOE for six months unlooked at, right?

DR. LYTLE: No. No. I didn't mean to say that. There has been conversation with the Department.

SENATOR MARTIN: You didn't say that. I'm just making an inquiry.

DR. LYTLE: Okay. No. There has been a dialogue and, in fact, I think because of the quality of our plan, the Department used us as a test case in helping them think through how to proceed through this process. So there has been a good faith relationship and a good working relationship with the Department. I don't want to suggest otherwise.

We were encouraged to submit a Plan *B*, which downscaled Plan *A* and provides for five new buildings, the renovation of sixteen of our buildings, and the demolition of seven schools. It keeps more of our aging schools in service and requires more extensive renovations, obviously. The cost is about \$265 million, and pending the funding of S-15, we believe that we could do an adequate job with that amount. We feel it would allow us to address Trenton's needs for the long term.

The district has received no formal response since May 1999, but we have had a series of conversations with the Department and have been encouraged to move forward in implementing Plan *B*. Last August, the Board of Education authorized a project manager to proceed with the development of our facilities concept plans for the first-year projects. The complete concept plans are scheduled for approval by our board at its December meeting.

The proposed bill raises several concerns. Foremost, the detailed work done by the advisory board, with its extensive knowledge of the particular needs of the Trenton district and all of the work done by the district and

reliance on that board's careful planning, may now be undone by the Commissioner or the facilities authority or the Building Authority or perhaps the Treasurer's Office.

Second, to our knowledge the formulas in S-15 are not based on actual schools. The square-foot requirements should clearly be articulated as guidelines and not mandates, nor are there guidelines for *K* to 8 schools. Trenton currently has two such schools and is planning to convert several others to this organizational pattern, because it's such an effective approach. But we don't know, at this point, how calculations for funding *K* to 8 schools will be made.

The district has been asked by the Department to prioritize emergent needs and pull those out of our plan. But we wonder, how will emergent needs within each category be prioritized, and realistically, how can a process which involves the input of so many government entities move with any speed or timeliness? Our concern is that we want to get these projects under way, and we don't want them to affect adversely on our students or to increase costs unnecessarily.

A particular concern is that there are no deadlines or assurances that plans will be promptly acted upon. That is--

SENATOR MARTIN: We're working on putting--

DR. LYTLE: Good.

SENATOR MARTIN: --in some time frames. I think we're also going to take a look at a suggestion made earlier by Mr. Sciarra to look at some of those plans that all the *Abbott* districts had to submit to the Department to see whether they could be used as the planning vehicle for their criteria under

this new legislation, rather than a new planning process which would be duplicative.

DR. LYTLE: We want to make it clear that we applaud the Legislature for moving forward in this much needed area. We see this legislation as providing a once-in-a-lifetime opportunity to provide adequate facilities for the children of our community. We have been extremely conscientious in the preparation of our plans. We know the needs of our district. We are mindful of costs. In our view, whatever economies may result from giant State bureaucracies overseeing thousands of building projects will be more than offset by delays and by projects which do not meet the true needs of our students.

We want you to support this legislation, obviously. We don't wish to be discriminated against because we are an *Abbott* district and have what we consider as unnecessary and undue oversight in comparison to our suburban neighbors.

I thank you.

SENATOR MARTIN: I just point out giant bureaucracies are relative. Some people say that a school district as large as the city of Trenton is a giant bureaucracy, which is why we've gone in the direction of site-based management procedures.

DR. LYTLE: We're downsizing rapidly.

SENATOR MARTIN: Senator Gormley has a point.

SENATOR GORMLEY: I would like to think that the bill, the way it's structured -- and I appreciate your questions -- but the way that it is structured, I think it really highlights the type of partnership the mayor's

talking about. The Urban Coordinating Council, in conjunction with the Department of Education -- I would think that Trenton, given the fact that the mayor is looking not just for schools but for the community to be developed and it all be tied in together-- I truly-- That is really one of the themes we are stressing that that all would work out. I do think that whatever dialogue you can now have with the Department and the Urban Coordinating Council now, and I assume you're having it, I think the potential exists that Trenton would be one of the models for what we're talking about in the bill.

We're all saying the same thing, and I don't think we're doing it really for purposes of the hearing or because the press happens to be here today. I think there is a sincere desire to make sure that these dollars have maximum impact in the urban setting. And given what we're talking about with the planning board, with the Urban Coordinating Council, I think that there is a real potential that, through your efforts, you could actually be answering some of the questions that are out there for everyone else in terms of how this would function.

SENATOR MARTIN: Thank you.

DR. LYTTLE: Thank you.

SENATOR MARTIN: Kevin Monaco, Utility and Transportation Contractors Association. (no response) He's not here? I don't see him here.

Alan O'Shea, Mechanical Contractors Association of New Jersey.

Ms. Matsen will be next.

ALAN O'SHEA: The statement is being passed out to you -- just have it revised right off the bat.

Good afternoon, Senators. I'd also like to thank you for the opportunity for allowing me to address your Committee, and I'd also like to thank you for allowing me to follow Jeff Stoller, from the New Jersey Business and Industry, because that will cut out about three-quarters of what I was going to say in the statement by just pointing out that from the last two paragraphs on Page 1 and the first two paragraphs on Page 2 address the same concerns that New Jersey Business and Industry had, regarding whether or not the Building Authority's subcontracting methods or what would be covered were in that legislation. That was arrived at separately by our council, and I would like to point out that our Association--

By the way, I'm Alan O'Shea, excuse me, the Executive Director of the Mechanical Contractors Association of New Jersey. It's an organization representing the interest of almost 200 union-employing mechanical contracting firms and over 10,000 employees that they have in the State of New Jersey. We also are part of the New Jersey Coalition of Contractor Trade Associations, an organization of 11 subcontractor trade associations consisting of over 1400 member companies. Our own association will be celebrating its 100th birthday in two years. One of the major aspects of the association, over those 100 years, has been following the public bidding laws in the State of New Jersey.

SENATOR MARTIN: Did we have them 100 years ago?

MR. O'SHEA: Pardon?

SENATOR MARTIN: I don't think we did. I don't think we had public bidding laws 100 years--

MR. O'SHEA: Actually, we've had them since just after the turn of the century, about 1902. The last major change to them was 1968. And our association, along with the other major trade associations, helped rewrite the law which brought us to the current, single, multiple prime bidding system that we have.

SENATOR GORMLEY: They just didn't obey them till '68.
(laughter)

MR. O'SHEA: Our law firm was involved in those discussions in 1968 and--

SENATOR MARTIN: And made sure that lawyers were left out of the lowest responsible bidding laws.

MR. O'SHEA: I'll tell you, our lawyers have cost us a lot of money over the years on this issue, and they've spent a lot of time defending the bidding statutes. And I think if our association's name or one of our contractor's names or one of our staff member's names is not on a decision that had to go to the Appellate Division or beyond, there are very few of them that that can't be said about. So we're very familiar with it, and our attorney did review this.

I'm glad to hear the comments you said, Senator Gormley, had indicated earlier, and you had said it would go back to OLS to have a redefinition of it. That's great. But there is one thing that Jeff didn't point out that is in that second paragraph there (referring to Senate Bill No. 15) in Section 6(12)e of this legislation. Senate Bill No. 15 would overturn the current method of public construction bidding, which calls for the solicitation of both single and multiple prime bids for all school construction work. Now

that is only in the community development section. Senate Bill No. 15 would mandate single overall bids on all community development school projects, only single bids. That's in that section.

The redevelopment entity which is undertaking the construction of a "Community Development School Project," is required to advertise and receive bids in the form of a single contract for the design, planning, and construction of the Community Development School Project. That would be contrary to what the current public law says is accepting bids both ways and then matching up the lowest responsible bidder.

Also, as it says in the next paragraph, what also is disturbing about this section is that it is stated that, "although a bidder must name his subcontractors in that single prime contract," it is further stated that "the bidder that is awarded the contract shall not renegotiate its contracts with subcontractors associated with the Community Development School Project without notice to the redevelopment entity awarding the contract; and the redevelopment entity may take whatever action, if any, it deems appropriate." We say this is clearly a signal to the lump sum bidder that although he may name a subcontractor, he has the power to renegotiate and award to another subcontractor which he did not name. The entire bid scheme is offensive to the contractors which we represent. Now the intent here--

SENATOR GORMLEY: No. No. No. Please. We wrote it the other way. Please, you're really--

MR. O'SHEA: Senator Gormley?

SENATOR GORMLEY: Yes.

MR. O'SHEA: I'm just telling you-- I have a counsel that has pointed out to me that the current law -- current law, the current statute -- in every form of public bidding on construction already says that you must name your subcontractor. That means that's who you're married to. You don't get to renegotiate the bid. This, I think, was a very honest attempt to try to help subcontractors, but what it does by saying without notice, it almost ensures that general contractors will read it as, "Hey, all we have to do is give notice," and they have a door that's now been opened. That's why we have it. We object to that.

SENATOR GORMLEY: Well, we'll look at it. But you understand, it was done--

MR. O'SHEA: Oh, I understand it was not done to hurt us.

SENATOR GORMLEY: Thank you.

MR. O'SHEA: If people trying to help us that didn't-- I don't think saw it all the way through one of--

SENATOR GORMLEY: All right. We won't help.

MR. O'SHEA: Okay.

SENATOR GORMLEY: We promise. (laughter) No. We'll look at it. We'll look at it.

MR. O'SHEA: But I would like to talk to you more about that.

SENATOR MARTIN: You never know when a Department is just trying to sneak something in there, you know.

MR. O'SHEA: Oh, no. People are trying to help us.

SENATOR GORMLEY: No. No. We wanted that put in. We had a previous meeting about this, okay. We'll look at it now.

MR. O'SHEA: Okay.

That's pretty much the core of our objections. So we think that the idea of the *Abbott* districts and also the State Building Authority getting involved-- We do not have a problem with that, as long as the current statutes are followed. We look forward to providing, as someone said earlier, the healthy and safe schools for the children of New Jersey. And we certainly, as a construction organization, support any construction that's done in this state.

Thank you.

SENATOR MARTIN: Thank you, Mr. O'Shea.

Ms. Matsen. Is she here from the League of Women Voters of New Jersey?

S A N D R A M A T S E N: Good afternoon. I am Sandy Matsen, President of the League of Women Voters. In my oral testimony, I'm just going to highlight the four areas of concern. I'm not going to read the testimony which is before you.

First, one concern for us is that this bill does not identify how we will pay for school construction and renovation.

SENATOR MARTIN: It's coming out of the General Treasury, except for those areas in which we've identified a taxing source, such as the--

MS. MATSEN: The cigarette--

SENATOR MARTIN: --the Big Game and the cigarette tax and the-- What do you call it?

SENATOR GORMLEY: The Riparian Fund.

SENATOR MARTIN: Five million from the Riparian Fund. That's where it's coming from, so we have--

MS. MATSEN: Has this been introduced or--

SENATOR MARTIN: No. Those sources are in the legislation, but the rest of it will be paid for by the State Treasury. We don't know exactly what the cost is, largely because the *Abbott* amount is a State obligation now and will be eventually ascertained as these school districts put forward their proposals and the Department approves them or, as a final recourse, they would ask for more under the -- by the Supreme Court. That's the way it's being done.

MS. MATSEN: Okay. Well, it's a big hunk of money, and--

SENATOR MARTIN: You said it.

MS. MATSEN: I was aware of the 112 million that's being estimated from cigarette tax and Big Game lottery, but still leaves probably 400 million, at a minimum, that's going to have to be found.

SENATOR MARTIN: It depends on what year it is. Because initially as the projects are being built, it's a smaller amount, and then it goes up to -- it escalates as more money is--

MS. MATSEN: Yes.

SENATOR MARTIN: --out there, and we have to make payments of debt service, interest payments.

MS. MATSEN: Yes. Along with all the other issues that have been escalating, so that by the time we hit 2005, we're going to have an awful lot of debt coming due, but I'm glad to know that--

SENATOR MARTIN: Or we can pay taxes up front now, which I guess is where you would prefer. Do you have one in mind? Sales tax? Income tax?

MS. MATSEN: No, I'm not-- Well, yes. Certainly probably income tax.

SENATOR GORMLEY: Oh.

SENATOR MARTIN: Well, then we won't get the bill passed, and we'll be sitting here in January, but--

MS. MATSEN: Yes. But the bill will come due.

Our second concern is--

SENATOR GORMLEY: Excuse me. Can I ask one question?

MS. MATSEN: Yes.

SENATOR GORMLEY: So, consequently, you'd like to see a dedicated income stream? See, I'm a little confused by this. This begs for a dedicated income stream -- the question -- but the League has traditionally opposed dedicated income streams. So you would change that--

MS. MATSEN: We did--

SENATOR GORMLEY: --position if it were dedicated income?

MS. MATSEN: We did support the original income tax, with it being dedicated for education.

SENATOR GORMLEY: But I'm just saying, the way the question reads, you're saying, because it can't be both ways. You're saying provided dedicated income source then. That's the way--

MS. MATSEN: Yes.

SENATOR GORMLEY: I not trying to infer-- I want to ask you directly, but it would appear that would be the inference. You want the dedicated income stream?

MS. MATSEN: Yes. I would like you to identify--

SENATOR GORMLEY: Fine. Good.

MS. MATSEN: --a source.

SENATOR GORMLEY: Thank you.

SENATOR MARTIN: Go ahead. We'll let you.

MS. MATSEN: He'll let me off?

SENATOR MARTIN: No. We'll let you continue without interruptions.

MS. MATSEN: No. You can interrupt me.

SENATOR MARTIN: Promise.

MS. MATSEN: I'm last. You have to get your last dibs in?

SENATOR MARTIN: You're not last.

MS. MATSEN: I'm not last?

SENATOR MARTIN: There are five other people who wish to testify.

MS. MATSEN: Yes.

Our second concern, you've heard a number of people speak about, which is assuring that schools have facilities capable for the Core Curriculum Content Standards. I won't even mention as many points as I had planned. But the legislation still gives the Commissioner of Education the sole power to adopt the facility efficiency standards that represent space efficient for achievement of the Core Curriculum Content Standards. We believe public hearings should be required before those are finally drawn and adopted by the Commissioner.

There are a number of provisions, the square foot and the cost per square foot, as well as some of the issues in Section 7, which we believe will

make it necessary for a number of schools to fund excess costs to provide what they feel is necessary for their Core Curriculum Content Standards. And except for the *Abbott* districts, who are at 100 percent, and the districts who are now ineligible, who will get at least 10 percent, we believe these factors will shift a larger proportion of cost to the remaining school districts -- that some of the comments that were being made by the gentleman from Clifton concerned about the percentage that they would be paying.

Thirdly, for most school districts, the present system of planning construction and financing should be retained and we would hope that there would not be any financial disincentives in the legislation which would require school districts to use the new State control system. I realize they do not have to if they receive less than 50 percent of their aid. But if you do the math and there's a disincentive to not using this State system--

SENATOR GORMLEY: We took that out.

SENATOR MARTIN: We're not going to interrupt.

SENATOR GORMLEY: Excuse me. I apologize.

MS. MATSEN: Well, I also have comments in there (referring to statement) about the capacity -- Educational Finance Authority and the New Jersey Building Authority to be able to do this massive program.

And finally, that the new school facility system be phased in to assure that construction is not slowed or halted by inadequate capacity to carry out the responsibilities that time required. To negotiate a State control system, which mandates interaction with and approvals by three State agencies, is likely to be lengthier than at present.

Certainly, we believe that the important goal is rapid construction and renovation as is possible and to provide the specialized facilities needed to assure that every student has access to an academic experience, so that they can achieve the Core Curriculum Content Standards.

Thank you.

SENATOR GORMLEY: Thank you.

SENATOR MARTIN: Thank you.

Barbara DeMarco Richie, New Jersey Child Care Association. Is she here? Is Barbara DeMarco Richie here? Oh, I'm sorry. I thought I saw her earlier.

BARBARA DeMARCO RICHIE: Good afternoon. Thank you for this opportunity to testify. My comments today will address the sections of this bill which permit the building of preschool classrooms. By way of introduction, the New Jersey Child Care Association is a trade association representing licensed, and often accredited, early education and child care centers in New Jersey.

The NJCCA strongly encourages you to amend this bill and prohibit the use of State funds for the construction of three- and four-year-old classrooms as part of a public school system. Exceptions should not be made for a variety of reasons.

To begin, even though the Supreme Court ordered *Abbott* districts to provide three- and four-year-olds with half-day or full-day preschool, the programs remain optional. Parents have a choice whether to keep their child home or send them to a preschool program. Even in an *Abbott* district, parents still have this choice.

When parents do exercise their choice to send their toddler to a preschool program, they do it for a variety of reasons. Many parents are working and want their toddler cared for at a location close to their job. Other parents want their child exposed to educators who relate to their cultural, religious, or ethnic backgrounds. Whatever the reason, the parents know their toddler best and must be involved in the preschool education choice for their children. If preschool classrooms are built as part of a taxpayer-funded school system, this choice goes away, because community-based providers cannot compete with free taxpayer-funded programming. This is especially true in the poorest of districts.

Further, keeping preschool in the community enhances the economy, generates tax revenue, and employs New Jersey citizens. Institutionalized preschool in a public school only drains an economy, contributes no tax revenue, and employs individuals at a tremendously higher rate of pay. There is no logical reason why a senior citizen homeowner should pay increased property taxes to build and support three- and four-year-old classrooms. Rather, an *Abbott* school district should be required to RFP these services to the community. The RFP could contain all the requirements required by the Court. And if the scenario arises where there aren't enough preschool classrooms, then allocate dollars to build upon or enhance the current community structure.

Keep in mind, community-based preschools have flexibility. If enrollment in these optional programs falls below expected levels of attendance, community-based programs can adjust their staffing, salary, and facility size to meet actual enrollment. School districts do not have this

flexibility. Once a building is filled, it becomes part of the publicly funded infrastructure. It is supported at taxpayer expense whether or not it is being utilized by three- and four-year-olds. As a result, taxpayers can be paying for these programs, teachers, or buildings that are not being used for the purposes intended.

On behalf of the New Jersey Child Care Association, I urge you to look at other options prior to allocating State funds to build three- and four-year-old classrooms as part of the public school infrastructure.

Thank you.

SENATOR MARTIN: Thank you.

John Tomicki, League of American Families.

JOHN T. TOMICKI: Good afternoon, and thank you for allowing us to testify. My name is John Tomicki, Executive Director of the League of American Families. We represent about 75,000 households in the State of New Jersey.

Number one, I'd like to associate my remarks with those of Senator Robertson earlier today, about the concerns that we see in the current bill. I'm going to hold most of our comments until we see the revised version of the bill. You have a job of Solomon in front of you to satisfy unions, contractors, subcontractors, workers for -- as lowest common bidder. This is one of the things I think we get when we get a micromanaging of our legislative system by the Supreme Court of the State of New Jersey, which I think is the main problem we have to address.

SENATOR MARTIN: We don't have the choice that Solomon had which we could slice them all into little pieces.

MR. TOMICKI: No. We don't have that choice because that would be a bad choice anyway. But the Supreme's possibly could have their rights to constantly interpret the constitution abridged by some legislative action or go to the people, because that's-- It was being left out to a degree. You've got a problem in front of you. You've got a Court order that tells you things that you have to do, and it's a problem.

We're here today-- Everybody in this room is committed to getting better education for our children and for the future of our State and the future of the society. But what's being left out to a degree to me, I don't hear, "How are we really to pay for this? Where's the money going to come from?" I heard earlier, in the Treasurer's statement, that concerned me that while we don't want to have the voter to have the final say in the matter where they can veto something -- veto something the Commissioner of Education does. You've got a terrible job in front of you. I don't know what the final form of the bill is going to do. I don't know whether you're going to be able to do it in the time frame that we see you trying to go through it now before the end of this legislative session.

I think the Speaker has indicated he sees it as a continuing process. I believe you can't satisfy part of the requirements and the dictates of the Court as long as we're being threatened again today with -- I don't think it was a threat -- but it was like-- Something was out there, "Hey, this is unconstitutional. If you don't change it, there we go, back to Court again."

The emergency repairs that have to be done in some of the schools, which can be paid under current funds, would possibly satisfy the early steps, until we look at it more deeply. So that, number one, I want to reserve all of

our comments until we see the final form of the bill after all the changes that have been discussed today.

That would be all.

SENATOR MARTIN: I'm not sure when the final form will be. This Committee will probably consider a number of amendments for December 6. This bill, my understanding is, will be referred to the Appropriations Committee. I have made the decision we wouldn't have a joint committee meeting with Appropriations. I thought it was better to have more of a play on the educational issues versus the economic issues, although they're so obviously intertwined. But what I'm suggesting is, there will be another meeting from which we will vote to release this bill. There will also be a hearing by the Appropriations Committee so that the bill will be at least revised at that time. Plus, the Assembly is working on parallel legislation which is not absolutely in sync with this. So to talk about the final bill-- It is not clear any of us know when the final bill will be here, but we're not there yet.

MR. TOMICKI: Well, I recognize that. I'm actually more-- Let me just put it this way. I'm rereading your article in the law review and that's where I thought--

SENATOR MARTIN: That's the danger of gossip -- subjecting yourself to print.

MR. TOMICKI: Oh, yes. Not only that, but also saying that, "Gee, maybe my vote on the pension bond was not necessarily correct." But the use of independent authorities, we're running down into the problem of micromanaging this project that has to be undertaken. There are schools that do need emergency repairs. I've been a long advocate in the education area of

school tax credits, school vouchers. I agree with Senator Palaia, because we worked in our own local school districts. Maintenance, maintenance, maintenance -- we wouldn't be in some of these problems if that was being addressed. So that we're trying to do something that is necessary. A little more time involved, yes, but how do you work out all these bills?

You've got a job of Solomon in front of you, and then you're going to still have to face the ultimate, voter approval, which I think I'd like to get away from as many of those independent authorities as possible, as you even suggested.

SENATOR MARTIN: In that article, yes.

MR. TOMICKI: And that's their analysis.

SENATOR MARTIN: Thank you.

Joe Chesonis? Is he here? He represents the Urban Systems Group. I don't see him. (no response)

Is there anyone else who wishes to testify?

We had called Kevin, the Superintendent of Montgomery Township? He's not here. He wants some assistance for that \$100 million that they are contemplating in Montgomery, I believe.

Seeing no other persons, the hearing is concluded.

(HEARING CONCLUDED)