



## **Education Law Center**

*Standing Up for Public School Children*

### **TESTIMONY OF EDUCATION LAW CENTER ON ASSEMBLY CONCURRENT RESOLUTION NO. 168 JUNE 5, 2008**

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

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

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

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

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

In the meantime, while State support for school construction in poor districts would be placed in serious jeopardy under ACR 168, the State funding of projects in wealthier districts just rolls on. For FY09, the State will provide \$58 million in building aid, an increase of 75% in just two years. So if you're wealthy enough to pass a bond, regardless the need for the project, the State will fund it. But if you're a student in a decrepit building in a poor district, that's just too bad.

Support for ACR 168 as written is a vote for inequality, something abhorrent in our constitution.

Let's chart a different course and make every effort to avoid a clash between provisions within the Constitution, and between the Legislature and the Court. I am providing today amendatory language which will make certain that ACR 168 does not impair the State's ability to fund needed, and constitutionally-required, school facilities improvements.

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