

Funding for Educational Facilities

**What Ohio, Wyoming, Arizona and New Jersey Are
Doing to Fund their Public Educational Facilities**

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American Civil Liberties Union of Maryland

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Introduction

In Maryland public school education faces many challenges. Those challenges include demands for higher standards and greater accountability, new technology, stronger relationships between teachers and students, improved school security and student safety, and greater parental and community involvement in schools. As educators and policymakers face these challenges, they also must ensure that all public school students receive the “thorough and efficient” education guaranteed by Maryland’s Constitution.¹

Maryland is on the way to meeting those challenges through the Bridge to Excellence in Public Education Act. Based on recommendations by the Commission on Education Finance, Equity and Excellence, otherwise known as the “Thornton” Commission, the Bridge to Excellence Act requires the state to invest an additional \$1.3 billion into Maryland’s public education system over the next 5 years.

The Bridge to Excellence Act does not, however, address the facilities needs of Maryland’s public education system. Rather, the Act created the Task Force to Study Public School Facilities, and directed the Task Force to evaluate the adequacy and the equity of Maryland’s school construction program. As it does its work, the Task Force will confront the need to renovate aging facilities in urban areas and the need to build new schools in growing areas. It will need to ensure that Maryland’s facilities are appropriately designed and equipped to promote learning, consistent with research indicating that the quality of school facilities is linked to educational performance. And, it must ensure that facilities are adequate to ensure that Maryland students meet state standards and receive the “thorough and efficient” public school education required by Maryland’s Constitution.

In this paper the ACLU describes the experiences of 4 other states – Arizona, Wyoming, New Jersey, and Ohio – that have faced similar challenges, in the hope that the information will help the Task Force and Maryland’s school systems, educators, and legislators as they assess and implement the Task Force’s recommendations. Each of those states has a constitutional provision that is similar or identical to Maryland’s “thorough and efficient” clause. Each of them faced litigation under their state Constitutions that addressed the condition of public school facilities. In each of them, the courts linked the education clause in the state’s Constitution with a requirement of equitable and/or adequate funding for public school facilities. Each state devised standards for adequate facilities and enacted legislation to ensure appropriate funding. Each recognized a state responsibility to address inadequate facilities, and set up assessment structures to assess and correct facility conditions. Each of the states has spent or budgeted considerable sums of money – often obtained through bonding – and they have come up with a variety of creative programmatic options to address facilities needs. And, often the state programs have recognized that it is appropriate to address the most pressing facilities needs, in the poorest jurisdictions, first.

¹ Md. Const. Art. VIII, § 1.

First, on a state-by-state basis, the paper will describe the litigations, their results, and the state responses. It will describe the standards for adequate facilities adopted by the states, and will address statewide assessments of facilities, how they were conducted, and how much they cost. It will describe specific educational facilities funding programs and explore how the states are funding meaningful public school construction. And ultimately this paper will look at the amount of funding that was provided for educational facility renovations, additions and new construction, how many square feet of school space it covers, and whether the money was targeted in any special way. Finally, this paper will compare those jurisdictions' wealth with Maryland's, and will draw some conclusions and connections between those states' experiences to the challenges that Maryland faces.

Chapter 1, Ohio's Educational Facilities

The Ohio Court Case that Led to Improved Educational Facility Spending

Ohio's Constitution contains a provision identical to Article VIII of Maryland's constitution – the state has a constitutional duty to provide a “thorough and efficient” public school education to students in the state. In a series of cases starting in the late 1990's, Ohio's courts recognized that providing adequate school facilities is linked to the state's duty to provide a “thorough and efficient” educational system for students.

Ohio first recognized the link between adequate facilities and a “thorough and efficient” education in 1923, in *Miller v. Korns*.² There, the Ohio Supreme Court held that “a thorough system could not mean one in which part or any number of the school districts of the state were starved for funds. ***An efficient system could not mean one in which part or any number of the school districts in the state lacked teachers, buildings, or equipment.***”³

In a 1997 case, *DeRolph v. State*, the Ohio State Supreme Court declared Ohio's entire K-12 educational system unconstitutional, because students in the state were not receiving the constitutionally-mandated “thorough and efficient” education.⁴ The physical state of the schools was a major factor in the Court's decision that Ohio's school-funding scheme violated the Ohio Constitution. The plaintiffs in the litigation were able to provide powerful examples of deficient public school facilities, including children having to bring umbrellas to school to use inside the building and libraries located inside old coal bins.⁵ In addition to egregious health and safety violations, including poor heating and cooling systems, the Ohio Supreme Court observed that many of the poorer districts lacked “sufficient computers, computer labs, hands-on computer training, software and related supplies to properly serve the students' needs.”⁶

Responding to this evidence, the Court held that that the state's funding system was unconstitutional in part because of its reliance on local property taxes and on “the lack of sufficient funding in the General Assembly's biannual budget for the construction and maintenance of public school buildings.”⁷ The Court explained that a “thorough and efficient system of common schools includes facilities in good repair and the supplies, materials, and funds necessary to maintain these facilities in a safe manner, in compliance with all local, state, and federal mandates.”⁸

² 140 N.E. 773 (Ohio 1923).

³ *Id.* at 776 (emphasis added).

⁴ 78 Ohio St. 3d 193, 212, 677 N.E.2d 733 (1997). Information also derived from conversation with Jim Payton, Office of Policy, Research and Analysis Ohio Department of Education, November 20, 2002.

⁵ Conversation with Jim Payton, Office of Policy, Research and Analysis Ohio Department of Education, November 20, 2002.

⁶ *DeRolph*, 78 Ohio St. 3d at 209.

⁷ *Id.* at 212.

⁸ *Id.* at 213.

After this ruling, the General Assembly created the Ohio School Facilities Commission (“OSFC”) in May 1997 to address facilities needs and establish standards for facilities.⁹ The OSFC’s mission is to provide funding, management oversight, and technical assistance to local school districts for construction and renovation of school facilities in order to provide an appropriate learning environment for Ohio’s school children.¹⁰

In May 2000 and again in September 2001, the Ohio Supreme Court revisited *DeRolph* to assess the state’s progress in meeting its constitutional obligations. In both opinions, the Court again specifically linked the requirement of a “thorough and efficient” education to adequate physical facilities and equipment:

A thorough system means that each and every school district has enough funds to operate. *An efficient system means one in which each and every school district in the state has an ample number of teachers, sound buildings that are in compliance with state building and fire codes, and equipment sufficient for all students to be afforded an educational opportunity.*¹¹

To “pass constitutional muster,” the Court held, “the state must have in place legislation that will be likely to bring school facilities into compliance within a reasonable time.”¹²

Later in 2001, the Ohio Supreme Court requested that a mediator work with the two parties of the lawsuit to attempt to find a solution that both parties could agree with.¹³ The mediation was not successful. At this time, the matter has returned to the Supreme Court, and the system is still adjudged unconstitutional.

Ohio’s Educational Facility Adequacy Standards

Ohio’s OSFC, which was created in response to the *DeRolph* litigation, developed school facility guidelines in the Ohio Design Manual. The guidelines were developed by expert educational planners. The Manual guides the construction and renovation of all school buildings in Ohio. The Manual covers a wide range of school facility issues. It sets standards for class size, as well as standards regarding what equipment is necessary for a fully functional art room.¹⁴

⁹ Review of Public School Facility Standards in Other States presented to the Task Force to Study Public School Facilities, September 18, 2002.

¹⁰ The Ohio School Facilities Commission web site, <http://www.osfc.state.oh.us/>.

¹¹ *DeRolph v. State*, 754 N.E. 2d 1154, 1191 (Ohio 2002) (emphasis added); *DeRolph v. State*, 89 Ohio St. 3d 1, 4 (Ohio 2000).

¹² 754 N.E.2d at 1195.

¹³ *DeRolph v. State*, 93 Ohio St. 3d 628 (Ohio 2001).

¹⁴ Conversation with Ohio School Facilities Commission Communications Assistant, Sarah Lynaugh, October 29, 2002.

The Manual determines a “square footage per child” standard. It places a priority on instructional space, with less of an emphasis on extracurricular programs, such as athletics. The classrooms are anticipated to be flexible, expandable, and adaptable to curricula of the future. The actual square footage allocated depends on a number of factors, including the grade level and the number of students in a building.¹⁵

Ohio’s State-wide Assessment of its Educational Facilities

Ohio’s General Assembly first directed a statewide public school facilities assessments in 1989 and 1990.¹⁶ The General Assembly appropriated \$4 million dollars for the two-year assessment.¹⁷ This equaled \$.02 cents a square foot.

Nine area architectural firms were chosen as independent evaluators to conduct the school facilities assessment. The Ohio Dept. of Education convened a work group of educational planners and architects to define the guidelines under which the work would be conducted. The consultants evaluated the physical condition of the school building with emphasis on the structure; roof; exterior walls (including windows and doors); interior floors, walls, and ceilings; electrical, plumbing heating, ventilation, and air conditioning, and fire protection systems. They also looked for applicable federal, state, and local building and handicap code violations. Previous to the site visits a pre-visitation questionnaire was provided to all of the districts regarding facilities. The answers were then provided to the architects to assist them with their evaluations. A total of 3,824 school buildings were evaluated, with a total of 234,075,487 sq. feet.¹⁸

In addition to examining “normal” building issues, the examiners used a subjective analytic tool that was obtained from The Council of Educational Facility Planners International (CEFPI). This tool was used to look at issues such as natural lighting and appropriate learning space. Although most of the issues that were identified through the CEPFI tool were not priced out, the information was included in the final report.¹⁹

The report, the 1990 Ohio Public School Facility Survey, was designed to provide an inventory of all public school facilities, a summary of facility needs according to assessment criteria, and an accounting of needed funds to bring buildings in compliance with state provisions for a minimum level of cleanliness and safety. The assessment process determined that over \$5 billion dollars were needed to repair existing buildings and an additional \$5 billion dollars were required to rebuild and to provide additions.²⁰

¹⁵ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

¹⁶ 1990 Ohio Public School Facility Survey.

¹⁷ 1990 Ohio Public School Facility Survey.

¹⁸ 1990 Ohio Public School Facility Survey.

¹⁹ Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

²⁰ 1990 Ohio Public School Facility Survey.

In 1997, the General Assembly established the Ohio School Facilities Commission (“OSFC”) in response to the *DeRolph* cases (see discussion above).²¹ The OSFC is required by law to conduct facilities assessments by district beginning with the neediest district first. To date, 127 of Ohio’s 612 school districts have been assessed and given state funding assistance in correcting all identified facilities needs.²²

Ohio’s School Construction and Renovation Programs

Ohio has established a number of programs to address facilities deficiencies and to target school construction dollars to the most needy districts:

Classroom Facilities Assistance Program (CFAP)

The Classroom Facilities Assistance Program (“CFAP”) program is the largest program that OSFC operates. Under CFAP, OSFC evaluates the facility needs of an entire school district and then provides funding for necessary construction and renovation. All districts in the state are eligible for CFAP, but the allocation of funding is based on an equity (property wealth) list developed yearly by the Ohio Department of Education. The law required the Commission to begin with the lowest-ranked (least wealthy) districts first.²³ OSFC pays for 5% - 99% of the funds required for the school facilities projects.²⁴ At this point, 128 of the 612 districts have been assessed and are through the planning and budget process.²⁵

Exceptional Needs Program

The Exceptional Needs Program is designed to address the health and safety needs of districts that are of below average wealth. Unlike CFAP, where eligibility is based on placement on the Equity List, districts receiving Exceptional Needs funding have submitted an application for a specific building. To be eligible for the program, the building must need replacement. The applications are rank-ordered based on the severity of the problem.²⁶

²¹ The Ohio School Facilities Commission web site, <http://www.osfc.state.oh.us/>.

²² Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

²³ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report. The wealth is determined by determining the total tax base and dividing it by the total number of public school students in the district. Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

²⁴ Conversation with Ohio School Facilities Commission Communications Assistant, Sarah Lynaugh, October 29, 2002.

²⁵ Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

²⁶ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

Expedited Local Partnership Program (ELPP)

The Expedited Local Partnership Program allows the wealthier school districts to fund a portion of their Facility Master Plan with local funds before State funding becomes available through the Classroom Facilities Assistance Program. When the wealthier district becomes eligible for CFAP, it receives credit against its required contribution for the work still remaining to be done.²⁷

The Building Assessment Program

The Building Assessment Program provides assessments of a district's current facilities and projected enrollments for a 10-year period.²⁸

The "Big 8" Program /Accelerated Urban Initiative

The Ohio General Assembly established the Big 8 Program and the Accelerated Urban Initiative Program at the same time it established the OSFC, in order to initiate educational facilities assessment and upgrades for the 8 largest school districts in Ohio.²⁹ These districts serve 25% of the students in Ohio's public education system.

The bill directed the new Commission to provide \$100 million of matching funds to the 8 largest urban school districts for major renovations and repairs. An additional \$20 million was appropriated for this program during fiscal year 2000. As of the FY 2001 OSFC report, 74% of the available funding had been spent.³⁰ The match required by the state from the local district depends on the wealth of that district.³¹

The "Accelerated Urban Initiative" was established with the passage of Senate Bill 272 in May 2000.³² The program allows the 6 largest districts to move up the CFAP list due to the large number of facilities they have. The logic was that it would take a long time for all the necessary work to be done and it made sense that the work began as soon as possible. The bill mandates that OSFC do the assessments for the 6 remaining districts and enter into facility plans by fiscal year 2002.³³ In fiscal year 2003 the participating districts will begin receiving their portion of state funds for the school facility projects.³⁴

²⁷ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

²⁸ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

²⁹ Cleveland, Cincinnati, Columbus, Akron, Canton, Youngstown, Toledo, and Dayton.

³⁰ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

³¹ The Ohio School Facilities web-site, www.osfc.state.oh.us/Programs/ex.%20environ.htm.

³² Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

³³ The Ohio School Facilities web-site, www.osfc.state.oh.us/Programs/ex.%20environ.htm.

³⁴ The Ohio School Facilities web-site, www.osfc.state.oh.us/Programs/ex.%20environ.htm.

Extreme Environmental Contamination Program

This program was established as part of House Bill 282, the biennial budget bill for fiscal year 2000 and fiscal year 2001. The program is designed to replace buildings with extreme environmental contamination.³⁵ For a district to participate in the program it must prove that the building needs to be replaced rather than renovated.³⁶

Short Term Loan Program

This program provides short-term loans to districts for the “emergency repair and replacement of school facilities damaged as result of faulty design or construction.” Participation in the program is limited by available appropriations.³⁷

Emergency Assistance Program

The Emergency Assistance Program is a limited program intended to provide assistance to districts that experience facilities problems due to “acts of God.” Districts may apply for money to make up the difference provided by insurance companies. The money cannot be used for problems resulting from the age of the building. All districts are eligible for the program.³⁸

Energy Conservation Program

This program established in House Bill 264 allows school districts with older facilities to borrow funds, without a vote of the public, to make improvements. The cost of the improvements cannot exceed the savings in energy, operating and maintenance costs over a fifteen-year period.³⁹

Ohio’s School Construction Funding

When it established the Ohio School Facilities Commission after rulings in the 1997 *DeRolph* case, the Ohio General Assembly mandated that school facilities funding be appropriated based on an Equity List that was to be developed by the Ohio Department of Education. Ohio’s 612 school districts are rated from poorest to wealthiest, and are funded at a level from 5% to 99%, depending on wealth.⁴⁰

The Equity List rank is based on a complex formula which considers district wealth compared to state wealth, and number of pupils. Each school district receives a position on the Equity List. Each year the 10 districts after the last district that received CFAP

³⁵ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

³⁶ The Ohio School Facilities web-site, www.osfc.state.oh.us/Programs/ex.%20environ.htm.

³⁷ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

³⁸ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

³⁹ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

⁴⁰ Conversation with Ohio School Facilities Commission Communications Assistant, Sarah Lynaugh, October 29, 2002.

funding are locked into their place on the Equity List and remain in that order to begin the CFAP program. Those districts stay locked into their place even if their district valuation increases and could arguably be moved down on the list.⁴¹

In May of 2000, Governor Bob Taft introduced and Ohio’s General Assembly passed a 12-year program to address the facility concerns of all Ohio school districts. The plan calls for the commitment of over \$10 billion in state funding and \$13 billion in local funding. From 1998 - 2002, Ohio has authorized \$2.7 billion dollars in state funding for school construction or nearly \$536 million a year.⁴² The current total of square feet of school buildings in Ohio in 2002 is slightly greater than the total in 1990, 238,756,996 square feet.⁴³ (Maryland has approximately 121,046,176 square feet of school space)

Table 1: OSFC Program Appropriations by Fiscal Year⁴⁴

	FY98	FY99	FY00	FY01	FY02	Total
CFAP	350,000,000	\$340,000,000	564,463,489	394,127,143	394,127,143	2,042,717,775
Exceptional needs	\$0	\$0	95,140,000	131,375,714	131,375,714	357,891,429
Emgc. Repair	100,000,000	\$30,000,000	\$0	\$0	\$0	130,000,000
Big 8	100,000,000	\$0	20,000,000	\$0	\$0	120,000,000
Disability Access	5,000,000	\$5,000,000	5,000,000	\$0	\$0	15,000,000
Emgc. Assist.	\$0	\$0	\$0	\$7,500,000	\$7,500,000	15,000,000
All programs	555,000,000	\$375,000,000	684,603,489	533,002,857	533,002,857	2,680,609,203

OSFC receives its funding from three sources. Each year the legislature is required to propose at least \$300 million toward school facilities. The actual amount appropriated is based on the expected revenue and is negotiated between the governor and legislature. Additionally, OSFC can issue bonds and they expect that a larger portion of their budget in later years will be from bonds or bond sources. OSFC is also guaranteed a set amount from the tobacco settlement.⁴⁵

Local districts are also responsible for part of the funds for the needed projects. The OSFC’s CFAP program is a joint partnership between the State of Ohio and the local school district. The school districts participating with CFAP must pass a local tax levy to make up their share. OSFC helps the local districts with advice on how to pass their tax

⁴¹ Conversation with Ohio School Facilities Commission Communications Assistant, Sarah Lynaugh, November 20, 2002.

⁴² Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

⁴³ Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

⁴⁴ Building Our Future, The Ohio School Facilities Commission Fiscal Year 2001 Annual Report.

⁴⁵ Conversation with Steve Letts, Chief of Planning for Ohio School Facilities Commission, October 31, 2002.

levy to meet their share of funding.⁴⁶ The share required is based on the wealth of the district and is different for each district.⁴⁷ The percent of cost required from a local district ranges from 5% - 95% of the eligible costs of the project.

⁴⁶ Passing Your Local Levy, a flyer put out by the Ohio School Facilities Commission.

⁴⁷ Conversation with Ohio School Facilities Commission Communications Assistant, Sarah Lynaugh, October 29, 2002.

Chapter 2, *Wyoming's Educational Facilities*

The Wyoming Court Case that Led to Improved Educational Facility Spending

Wyoming's Constitution, similar to Maryland's, imposes on the state a duty to provide a "thorough and efficient" system of public schools "adequate to the proper instruction" of youth, and requires as well that the education be "complete and uniform."⁴⁸ Wyoming "views its state constitution as mandating legislative action to provide a thorough and uniform education of a quality that is both visionary and unsurpassed."⁴⁹

Wyoming first recognized the state's constitutional duty to ensure adequate and equitable funding for public school facilities in 1980, in *Washakie County School District Number One v. Herschler*.⁵⁰ The *Washakie* Court declared Wyoming's entire school finance system unconstitutional. Education, the Court found, was a fundamental right under the Wyoming Constitution. Wealth-based classifications in school funding were subject to strict scrutiny, and the state was required to demonstrate a compelling reason for such classifications.⁵¹

Although *Washakie* was focused on operational financing, the Court made clear that its holding was equally applicable to capital construction:

We see no reason to give particular attention to the question of finances for the physical facilities with which to carry on the process of education. It is a part of the total educational package and tarred with the same brush of disparate tax resources. . . . ***The point is that statewide availability from total state resources for building construction or contribution to school buildings on parity for all school districts is required just as for other elements of the educational process.***⁵²

Twelve years later, failing to achieve a legislative solution to the continued inequities in funding, the school districts again came to the Wyoming Supreme Court. In *State v. Campbell County School District*,⁵³ the Court found the state's funding system, including capital funding, unconstitutional. "***Safe and efficient physical facilities,***" the Court held, "***are a necessary element of the total educational process. State funds must be readily available for those needs.***"⁵⁴ All educational purposes, the Court concluded, "must be

⁴⁸ Wyo. Const. Art. 7, §§ 1, 9.

⁴⁹ *State v. Campbell County Sch. Dist.*, 19 P.3d 518, 538 (Wy. 2001).

⁵⁰ 606 P.2d 310 (Wy. 1980).

⁵¹ *Id.* at 336.

⁵² *Id.* (emphasis added).

⁵³ 907 P.2d 1238 (Wy. 1995).

⁵⁴ *Id.* at 1275.

appropriately and responsibly funded to comply with the constitutional mandates of a complete and uniform system of public instruction and a thorough and efficient system of public schools.”⁵⁵

In 2001, in *Campbell II*,⁵⁶ the Supreme Court revisited the legislature’s efforts to correct the unconstitutionality it had found in *Campbell I*. In *Campbell II*, the Court reaffirmed that the state’s grant and bond program was unconstitutional. It stated:

We repeat our long held conviction that any system that places the primary financial burden of providing constitutionally adequate facilities on the school districts through local mill levy taxation and local bonds is wealth-based and inherently inequitable. ***We again affirm that the state bears the burden of funding and providing constitutionally adequate facilities to school districts that provide an equal opportunity for a quality education.***⁵⁷

Having seen the results of statewide studies identifying inadequacies in physical facilities, the state was required to enact a plan “to rebuild [the] schools over some reasonable period of time.”⁵⁸ The Court ordered all facilities to “be made safe and efficient,” meaning that they scored 90% or above on the scale described by the Court, and directed that buildings in the worst condition be addressed first.⁵⁹ It gave the legislature 6 years to address the deficiencies.

In a later opinion, *Campbell III*,⁶⁰ the Court clarified that the legislature’s goal should be to bring physical facilities to a level that required only routine maintenance.⁶¹ It explained:

Without adequate funding for costly repairs, renovations, and building construction, school districts faced with non-routine major expenditure items must choose from the lesser of two evils: either ignoring the problem or, if that is no longer an option, diverting operational funding intended for teachers’ and staff salaries and essential school programs. If the schools’ operational funding budgets have no surplus money to divert, a deficiency results and educational staff and programs are eliminated to reduce expenditures. At the same time, it is rare that these

⁵⁵ *Id.*

⁵⁶ 19 P.3d 518 (Wy. 2001).

⁵⁷ *Id.* at 559.

⁵⁸ *Id.*

⁵⁹ *Id.* at 565.

⁶⁰ *State v Campbell County Sch. Dist.*, 32 P.3d 325.

⁶¹ *Id.* at *10-11.

extraordinary efforts are sufficient to properly maintain buildings.⁶²

And, it concluded that a “fundamental precept” was that “*the State is responsible for funding capital construction of facilities to the level deemed adequate by state standards.*”⁶³

Wyoming’s Educational Facility Adequacy Standards

The Wyoming state legislature passed new state statutes regarding facility adequacy in response to the *Campbell* cases. The statutes established a new statewide Commission on facilities, and required the new Commission to “establish and maintain uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools.”⁶⁴ In addition, among other things, the General Assembly directed the Commission to:⁶⁵

- Adopt policies, guidelines and standards for the comprehensive assessment of school buildings and facilities required under W.S. 21-15-115;
- Develop policies and criteria for use in determining renovation, replacement or discontinuation of inadequate buildings and facilities based upon statewide adequacy standards and other requirements necessary to ensure adequate, efficient and cost effective school buildings and facilities.
- Adopt policies, guidelines and standards for school district facility plans required of each district under W.S. 21-15-116 and review and certify each district's plan;
- Develop cost per square foot guidelines to be used in estimating the cost of constructing, renovating and otherwise remediating buildings and facilities to comply with statewide adequacy standards, which shall account for demonstrated differences among regions and communities within the state.⁶⁶

The uniform standards for adequate physical facilities must, at a minimum, contain:⁶⁷

- Requirements for educating students in a safe environment including all applicable building, health, safety and environmental codes and standards required by law for all public buildings;
- Building site requirements;
- Building performance standards and guidelines including energy efficiency criteria;
- Assurances for the special needs of identified student populations including children with disabilities;
- Guidelines for adequacy and functionality of educational space for required educational programs;

⁶² *Id.* at *6.

⁶³ *Id.* at *47 (emphasis added).

⁶⁴ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

⁶⁵ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

⁶⁶ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

⁶⁷ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

- Building capacity criteria aligned to the prescribed state educational program, with consideration given to utilization differences between school sizes;
- Technological capacity criteria sufficient to meet required educational program needs and the requirements imposed under the state education technology plan;
- Building and facility accessibility.⁶⁸

In addition to the statute, the Wyoming Department of Education created a Facilities Guideline planning document. The document established guidelines that include but are not limited to choosing school sites, classroom sizes for elementary, middle and high schools. The guidelines provide recommendations for science, music, art education, theater arts, media centers, physical education, common areas, cafeterias, technology and lighting considerations.⁶⁹ The guidelines are designed to assure that students can attain the state's Common Core of Knowledge and Common Core of Skills.⁷⁰

Wyoming's State-wide Assessment of its Educational Facilities

The 1997 MGT America Assessment

In 1997, after *Campbell I*, the Wyoming Department of Education contracted with MGT of America to conduct a statewide facility assessment. A team of representatives of Wyoming Dept. of Education and MGT of America personnel visited every district and school in Wyoming, often accompanied by the district representative.

MGT of America uses a method that assigns each facility a number of points. The evaluator visually observes the building, speaks to the escort, and compiles the information. The evaluator relies on the escort to provide additional information, such as active leaks in the roof. The evaluator then inputs that data into the software program that scores each system. Each system is weighted based on its contribution to the total cost of the building. By compiling all the system scores a building score is reached. The building score is a measure of the percent of the building that is in good condition. For example if a building scores 80, then MGT would say that 80 percent of that building is in good condition and you could invest up to 20 percent of the value of that building in it to bring it up to a score of 100.⁷¹ Facilities that are assigned 49 or fewer points are designated as inadequate and eligible for state funding first.⁷²

In addition to examining the physical condition of the school, MGT also examined the suitability of the structure for teaching, its accessibility for disabled persons, and its technology readiness. In a score for each school separate from the condition score, each school received a score based on all of the facilities issues examined by MGT.

⁶⁸ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

⁶⁹ Wyoming Public Schools Facilities Guidelines, October 2001.

⁷⁰ Wyoming Public Schools Facilities Guidelines, October 2001.

⁷¹ Wyoming Select Committee on School Facilities Proceedings, August 15, 2002.

⁷² ⁷² Conversation with Don Bryngleson, Director of the School Facilities Committee, November 18, 2002.

The various concerns were weighted to give an overall score for the school building. The weights assigned are as follows: 20% suitability, 60% condition, 10% technology, 10% ADA.

MGT brought up to the new Commission that with this type of scoring system a health and safety anomaly could exist and not show up significantly in the score because of the low cost to fix it (*e.g.*, a fire alarm system that is non-existent). In those cases MGT suggested that a professional judgment piece should be applied in determining immediate needs.⁷³

In Wyoming, there are 20 million square feet of school space. The cost of the initial statewide facility assessment conducted by MGT of America was \$ 400,000, or 2 cents per square foot.

Once the full statewide facility assessment was complete, the Wyoming Department of Education determined that a quarter of the school facilities would be reassessed each year thereafter (5 million square feet).

The responsibility of overseeing the facility assessments has shifted to the new Commission on School Facilities. The Commission has at this time chosen to continue to contract with MGT of America for its assessments. The cost of the yearly assessments has gone up to 3 cents a square foot or \$ 140,000 for 5 million square feet.⁷⁴

In an interview, Bruce Hayes of the Wyoming Department of Education noted that the MGT survey focused on whether a building complied with current codes. The survey could have done more, he indicated, to answer the question: “What do we need to help kids learn?” For instance, the assessment might have focused more directly on air quality, brightness/available natural light, and other types of building condition needs that have been proven to aid and or support a child’s ability to learn.⁷⁵

The 2002 Assessment

In addition to establishing the Commission and requiring it to promulgate statewide standards, the General Assembly further adopted new state statutes regarding school facilities assessment. The statutes require:⁷⁶

- Annual evaluation of school buildings to compare needs with the statewide adequacy standards and the facility plans established by each district;
- A schedule, based on the annual evaluation, for building and facility remediation;
- Bringing all buildings to conditions so that over time, only routine maintenance is required to maintain building adequacy.

⁷³ Wyoming Select Committee on School Facilities Proceedings, August 15, 2002.

⁷⁴ Conversation with Bruce Hayes, Wyoming Department of Education, October 30, 2002.

⁷⁵ Conversation with Bruce Hayes, Wyoming Department of Education, October 30, 2002.

⁷⁶ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

The schedule for remediation is required to identify and prioritize building and facility remedies on a statewide basis.⁷⁷

Each year when the assessments are conducted, before site visits begin, the district representative receives a report on all of the district's schools from the previous assessment. The district representative is asked to go through the building scores and determine if anything has dramatically changed for the buildings. If the district representative determines that the current score still accurately reflects the condition of the buildings then the assessment is considered complete. If however the district representative determines that there are differences between the condition of their schools now than during the previous assessment, then a team visits and assesses all schools that the representative recommends a new evaluation for, thereby saving the state money when conducting its yearly assessments.⁷⁸

Wyoming's Educational Facilities Priority Spending

Fifty of Wyoming's 498 educational buildings received building scores less than 50 points in the 1997 MGT of America statewide assessment. Those 50 schools receive priority funding and have been put on a capital improvement lists for immediate renovation. The work on the first 50 schools is expected to be complete by 2004. Once work on the most needy schools is complete, the Wyoming School Facilities Committee will oversee work on all of the buildings on the list moving up the list from the most needy to the least needy.⁷⁹

In addition to responding to work recommended by MGT of America, the Wyoming School Facilities Committee is creating a 5-year master plan for all of its schools to ensure that the school facilities receive regular maintenance once they are renovated.⁸⁰

Funding for School Construction in Wyoming

For the FY03 – FY04 budget the legislature has budgeted \$78 million for school capital construction projects (Wyoming's budget is determined on a biennial basis). The state can use bonds to raise additional dollars for school construction.⁸¹ Wyoming has 20 million square feet of school buildings. (Maryland has approximately 121,046,176 square feet of school space)

⁷⁷ Wyoming General Assembly web site, <http://legisweb.state.wy.us/statutes/titles/title21/chapter15.htm>.

⁷⁸ Conversation with Bruce Hayes, Wyoming Department of Education, October 30, 2002.

⁷⁹ Conversation with Don Bryngleson, Director of the School Facilities Committee, November 18, 2002.

⁸⁰ Conversation with Don Bryngleson, Director of the School Facilities Committee, November 18, 2002.

⁸¹ Conversation with Bruce Hayes, Wyoming Department of Education, October 30, 2002.

Chapter 3, Arizona’s Educational Facilities

The Arizona Court Cases that Led to Improved Educational Facilities Spending

Arizona’s Constitution requires the state to establish and maintain a “general and uniform public school system.”⁸²

In 1994, in *Roosevelt Elementary School District No. 66 v. Bishop*,⁸³ the Arizona Supreme Court ruled that Arizona’s system of school capital finance was unconstitutional because it failed to conform to the state Constitution’s “general and uniform” clause. The Court cited the system’s heavy reliance on local property taxation, combined with arbitrary school district boundaries and lack of meaningful equalization, and concluded that the system directly caused substantial capital disparities among school districts.

In 1997, the Arizona Supreme Court rejected the legislature’s renewed effort to enact constitutional capital funding legislation, in *Hull v. Albrecht*.⁸⁴ The legislation failed to provide minimum adequacy standards for capital facilities, improperly delegated to the school districts the state’s responsibility to maintain adequate facilities, and continued to cause substantial capital facility disparities between districts. In *Hull*, the Arizona Supreme Court established a rule that, to comply with the “general and uniform” requirement of Arizona’s Constitution, the state must do three things: **(1) establish standards for adequate school facilities; (2) provide funding sufficient to ensure that districts do not fall below the standard for adequacy; and (3) ensure that there are not substantial disparities in funding.**⁸⁵

On July 9, 1998, Arizona enacted new legislation addressing capital construction, Students FIRST (Fair and Immediate Resources for Students Today).⁸⁶ In Students FIRST, the legislature and governor moved responsibility for funding school construction and other capital items away from local districts to the state and phased out the local property taxes previously used to support capital expenditures. The new law created a School Facilities Board to administer the system and directed the Board to include technology, transportation, and the facilities and equipment necessary and appropriate to achieve the state’s academic standards in its facilities guidelines.⁸⁷

⁸² Ariz. Const. Art. XI, § 1.

⁸³ 179 Ariz. 233 (Ariz. 1994).

⁸⁴ 190 Ariz. 520 (1997).

⁸⁵ *Hull v. Albrecht*, 930 P.3d 634, 637 (Ariz. 1998).

⁸⁶ State of Arizona School Facilities Board web-site.

⁸⁷ This information comes from the Advocacy Center for Children’s Educational Success with Standards web site, available at <http://www.accessednetwork.org>.

Arizona's Educational Facilities Adequacy Standards

Under Students FIRST, the Arizona School Facility Board established minimum guidelines that each school facility in Arizona had to meet. Those guidelines went well beyond regular building deficiencies and square footage and included requirements for art and music space, parent space, library/media centers, and lists of equipment that support academic achievements. An abbreviated list of requirements is as follows: academic class room space, classroom fixtures and equipment, classroom lighting, classroom temperature, classroom acoustics, classroom air quality, libraries and media centers/research area, equipment for libraries and media centers/research area, cafeterias, food service, equipment for food service, auditoriums, multipurpose rooms, or other multi-use space, technology (computer ratio 1:8 students), transportation, science facilities, equipment list for science facilities, art facilities, vocational education facilities, physical education, and comprehensive health program facilities, equipment list for special education, parent workspace (1 sq. foot per student required), two-way internal communication system, fire alarm, administrative space,

Also covered in the Arizona Facilities Guidelines are standard building codes, energy saving measures building systems, building structural soundness, exterior envelope, interior surfaces and interior finishes, minimum gross square footage, and guidelines on how to calculate square footage.

The state of Arizona has purchased over 35,000 computers to bring the student computer ratio 8:1. There is a list of 30 things that have to be in each school, which includes microscopes, desks, chairs, white boards, books, and dictionaries.⁸⁸

According to the interim director of the School Facilities Board: "Deficiencies can be defined in many ways. In Arizona the School Facilities Board determined deficient should include not only the general condition of the building but also whether the building had necessary components to support an effective learning environment."⁸⁹

Arizona's State-wide Assessment of its Educational Facilities

Under the Students FIRST law, the School Facilities Board was required to conduct a physical examination of all schools through consultants. The inspector was to visit all schools, examine all reported and observed problems, note all deviations from the State adopted minimum adequacy guidelines, provide estimates for correction of all problems, and prepare an electronic database of all information noted.⁹⁰

The Arizona School Facility Board hired a temporary staffing agency to conduct a physical examination of all schools through consultants. Flex-Tech Professional Services of Phoenix and Sandusky, Ohio was the lowest bidder at \$2.6 million dollars. Arizona

⁸⁸ State of Arizona School Facilities Board News Release, July 17, 2000.

⁸⁹ Conversation with Ed Boot, Interim Executive Director of the Arizona School Facilities board, November 4, 2002.

⁹⁰ State of Arizona School Facilities Board News Release, July 17, 2000.

has 96,000,000 square feet of school so at the bid level the cost was \$.03 cents a square foot.⁹¹ (Maryland has approximately 121,046,176 square feet of school space) Flex-tech began their work in December of 1999. Due to some problems with the work conducted by Flex-tech, the work and the temporary staff was taken over by the Arizona School Facility board in August of 2000.⁹² Much of the work had to be re-examined and was finished in May of 2001.

Arizona's School Construction Programs

There were some substantial issues with Arizona's school facilities. According to the Executive Director of the Arizona Facilities Board: "Many of the 417 rural and remote schools have literally been hanging on by their fingertips. These school districts need major renovation and serious consideration so their children can have a safe and healthy environment to attend school."⁹³

The Deficiency Corrections Fund

This fund is a one-time fund that is meant to bring every existing school in Arizona up to the adequacy standards established by the legislature (described above). The state has issued \$800 million in bonds to fund this one-time program.⁹⁴ In addition to the \$ 800 million in bonds the state of Arizona appropriated \$85 million to fund the program. Arizona's public schools are expected to meet Arizona's adequacy standards by fiscal year 2004, which will then end this program.

New Schools Fund

The New Schools Fund is an on-going program that is funded annually in the amount of \$250 - \$300 million dollars. A district can apply for new school funds if it is a growing community with a demonstrated need. The community can also request a new school if its community school is designated to be torn down. The Arizona School Facilities Board makes the final decision as to whether the need exists.⁹⁵

Building Renewal Fund

The Building Renewal Fund is an on-going program that is funded annually in the amount of approximately \$110 million. The money can only be used for major renovation projects, not general maintenance needs. Each year the annual budget for the Building Renewal Fund goes up according to inflation.⁹⁶

⁹¹ State of Arizona School Facilities Board news Release, July 17, 2000

⁹² School Facilities Board called wasteful, unfair. by Jennifer Ryan: Tribune

⁹³ Quote from Executive Director of the Arizona School Facilities Board, Dr. Philip E. Geiger.

⁹⁴ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, November 4, 2002.

⁹⁵ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, November 4, 2002.

⁹⁶ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, November 4, 2002.

Soft Capital Allocation (not a program)

Each school receives from the State Facility Board an annual budget for maintenance of their building. This money is given to each school as part of their general operating funds.⁹⁷

Funding for School Construction in Arizona

Based on a assessment of a stratified sample of the schools the Executive Director of the Arizona School Facilities Board, Dr. Philip E. Geiger issued a \$1.17 billion estimate to bring all of Arizona's 1210 schools to state approved minimum adequacy guidelines (see above) by 2003.⁹⁸

Table 2: Arizona School Facilities Board Appropriations by Fiscal Year⁹⁹

Programs	99 allocation	00 allocation	01 allocation	Total
Deficiency	\$35,000,000	\$50,000,000	\$500,000,000	\$585,000,000
New Construction	\$200,000,000	\$200,000,000	\$200,000,000	\$600,000,000
Building Renewal	\$75,000,000	\$87,000,000	\$120,000,000	\$282,000,000
Total	\$310,000,000	\$337,000,000	\$820,000,000	\$1,467,000,000

During fiscal year 2001 the State of Arizona issued \$500 million in bonds to raise the funds necessary to finance the Deficiencies Program. This program is a one-time program intended to bring all of Arizona's educational facilities to the minimum guidelines established by the Arizona School Facility Board. The additional \$300 million in bonds was issued August of 2002.¹⁰⁰

The debt service on the bonds is paid for through a dedicated revenue source. The dedicated revenue source is a tax increase to Arizona's sales tax. Nearly 60% of the voters voted for the increase in 2000 to fund education. The sales tax was raised 6/10th of 1%.

In addition to the \$800 million dollars provided by the State to fund the Deficiencies program, the annual allocation for school construction is \$320 million. The annual

⁹⁷ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, November 4, 2002.

⁹⁸ State of Arizona School Facilities Board News Release, July 17, 2000.

⁹⁹ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, December 3, 2002.

¹⁰⁰ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, December 3, 2002

amount of \$320 million a year is expected to remain the same except for the cost of inflation increases.¹⁰¹

¹⁰¹ Conversation with John Arnold, Deputy Director of the Arizona School Facilities Board, November 4, 2002.

Chapter 4, New Jersey's Educational Facilities

The New Jersey Court Cases that Led to Improved Educational Facility Spending

New Jersey's Constitution contains a provision identical to Maryland's, requiring the state to establish a "thorough and efficient" system of public school education in the state.

The New Jersey Supreme Court has unequivocally concluded that adequate facilities are a component of an "thorough and efficient" education. In its May 1997 decision in *Abbott v. Burke*,¹⁰² the Court determined that "the condition of school facilities has always been of constitutional import." The Court noted that "***deteriorating physical facilities relate to the State's educational obligation, and [the court] continually ha[s] noted that adequate physical facilities are an essential component of that constitutional mandate.***"¹⁰³

For New Jersey's poorest districts, the Court noted that the legislative scheme then in effect did not address one of the most significant problems facing New Jersey's poorest districts, "dilapidated, unsafe, and overcrowded facilities."¹⁰⁴ The state "cannot expect disadvantaged children to learn when they are relegated to buildings that are unsafe and often incapable of housing the very programs needed to educate them."¹⁰⁵

As a result, the Court directed the state, as part of its obligation under the "thorough and efficient clause, to provide facilities for children in New Jersey's poorest districts that are sufficient to enable these students to achieve the substantive standards that define a thorough and efficient education.¹⁰⁶ In addition, the court ordered that the quality of the facilities could not depend on the district's willingness or ability to raise taxes or to incur debt.¹⁰⁷ The Court directed the Commissioner of Education to review the facilities needs of the Abbott districts, and provide recommendations concerning how the state should address those needs. The review was to include consideration of appropriate and alternative funding, as necessary.

In a later decision, the Court confirmed that the state's "***constitutional educational obligation includes the provision of adequate school facilities.***"¹⁰⁸

¹⁰² 693 A.2d 417, 437 (N.J. 1997).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 438 (emphasis added).

¹⁰⁶ *Id.*

¹⁰⁷ State of New Jersey's web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹⁰⁸ *Abbott v. Burke*, 710 A.2d 450, 470 (N.J. 1998) (emphasis added).

New Jersey's School Adequacy Standards

In compliance with the *Abbott* decisions, the New Jersey Department of Education (NJDOE) asked its experts on the Core Curriculum Content Standards to develop facilities' specifications that would be necessary to enable students to achieve the standards. The department team was assisted by three consultants -- Dr. Emily Feistritzer, president, National Center for Educational Information; Dr. Bruno Manno, senior fellow of the Hudson Institute; and Mr. Alton Hlavin, assistant superintendent for facilities in the Arlington School District.¹⁰⁹

The New Jersey Department of Education's Facility Efficiencies Standards is a comprehensive list of requirements for schools built to serve elementary, middle or high school students. There is an additional document to help planners when designing schools that serve a population of students with special needs.¹¹⁰

The standards include minimum requirements for classroom space, science labs, special education needs, cafeterias, auditoriums, music rooms, art rooms, CAD classrooms, Technical Labs, Gymnasiums, Media Centers, Small Group Instruction Rooms, and office space for all support staff, from the school nurse to the principal.¹¹¹

New Jersey's State-wide Assessment of its Educational Facilities

In compliance with the 1997 *Abbott* decision and in order to determine the magnitude of the facilities' needs in the poorest districts, the Department of Education retained the Vitetta Group to assess the condition of the 429 schools operated by the 30 "Abbott Districts," New Jersey's most needy districts. Concurrently, the Department directed each Abbott district to engage a licensed architect and/or engineer, or to identify appropriately qualified in-house staff, to prepare its own district assessment.¹¹²

The Vitetta Group developed a standard survey instrument, uniform criteria for evaluating the condition of individual building components and quality control measures to ensure that Abbott district experts prepared accurate and uniform assessments. Based on the assessments, Vitetta prepared a detailed accounting of deficiencies and estimated correction costs for each school building.¹¹³

The survey was expedited over a two-month period in order to meet the court-imposed deadline.¹¹⁴

¹⁰⁹ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹⁰ Conversation with Hany Salib, New Jersey Dept. of Education Office of School Facilities Manager of Policy, Research, and Data, November 7, 2002.

¹¹¹ New Jersey Department of Education Facility Efficiencies Standards.

¹¹² New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹³ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹⁴ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

In 1997-1998, based on the assessment described in the Vitetta report, enrollment in the Abbott districts was 261,738 students in pre-kindergarten through grade twelve. The Abbott districts contained 429 public school buildings with a total capacity of 222,076 students. The average age of an original school building was 56 years old (1941) and the average age of an addition was 33 years old (1964). Of the 429 school buildings, there were 11 preschool/kindergarten schools, 190 elementary schools, 104 elementary/middle schools, 50 middle schools, 5 middle/high schools, 52 high schools, 6 adult schools, 10 special education schools and one other. The 429 school buildings contained 35,594,667 square feet or 135 square feet per student.¹¹⁵ (Maryland has approximately 121,046,176 square feet of school space)

The information in the Vitetta Report provided the basis for instructions from the State Legislature and the Governor to the department to develop a formula for providing state aid for school facilities in accordance with the court mandate. The formula was to ensure that state resources were targeted only at efficient school construction and renovations necessary for student capacity, health and safety needs, educational adequacy and/or obsolescence. It was also to require that school facilities be regularly maintained for continuation of state aid.¹¹⁶

In every school year ending in a "0" or "5", every district must submit, on software made available by the Commissioner, to the Commissioner details about the district's school facilities, other facilities and temporary facilities and the district's plan for meeting school facilities needs over the ensuing five years.¹¹⁷

Funding for School Construction in New Jersey

In 2002 the New Jersey legislature passed a bill which allowed the state to issue \$8.6 billion in bonds over the next ten years beginning with October, 2000. Six billion dollars of the bonds were designated for the Abbott districts and \$2.6 billion were designated for the other districts.¹¹⁸ New Jersey pays for 100% of approved school construction and renovation costs in the Abbott districts and it pays for 40% of eligible costs in the other districts.¹¹⁹

In addition to the \$7.3 billion dollar approval of capital dollars to bring all of the schools in New Jersey's Abbott districts up to education adequacy, the 403 Abbott schools were approved for immediate health and safety facility updates totaling \$650 million.¹²⁰ Through the 1997 Vitetta group survey, a number of critical issues were identified. Those issues were addressed immediately. In the case of a school was going to be torn

¹¹⁵ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹⁶ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹⁷ New Jersey's Department of Education web-site, www.state.nj.us/njded/facilities/over/program.shtml.

¹¹⁸ Conversation with Hany Salib, New Jersey Dept. of Education Office of School Facilities Manager of Policy, Research, and Data, November 7, 2002.

¹¹⁹ Conversation with Hany Salib, New Jersey Dept. of Education Office of School Facilities Manager of Policy, Research, and Data, November 7, 2002.

¹²⁰ Conversation with Bernie Piaia, the Director of the Office of School Facilities for the New Jersey Dept. of Education on February 6, 2003.

down and replaced, they did the least amount of work necessary to meet the minimum health and safety requirements. The health and safety facility renovations ranged from minor capital projects, such as, replacing door hardware and exit signs to major capital projects like roof replacement.¹²¹

The 30 Abbott districts have been approved for \$7.3 billion, mostly from bonds and partly from state appropriations, to complete major capital improvements to its school facilities. Refer to the chart for information regarding what projects will be complete by 2010.¹²²

Table 3: New Jersey’s Abbott Districts Educational Facilities Projects

	New Construction / New Site	Total Building Replacement / Existing Site	Additions and/or Renovations	Totals
Elementary	39	38	120	197
Middle	21	3	25	49
High School	16	2	31	49
Pre-K – 8	29	13	15	57
Early Learning	49		7	56
Alternative			4	4
Special Ed.			3	3
Total	154	56	205	415

*Note there are also 7 other new schools and 35 renovations listed on the New Jersey web-site regarding approved projects that are not designated as a particular type of school.¹²³

¹²¹ New Jersey Department of Education web-site, www.nj.gov/njed/facilities/abbotts.

¹²² New Jersey Department of Education web-site, www.nj.gov/njed/facilities/abbotts.

¹²³ New Jersey Department of Education web-site, www.nj.gov/njed/facilities/abbotts.

Chapter 5, State Wealth

The Wealth of the States Being Examined Compared to Maryland's Wealth

The tables below compare the wealth of the states that have taken measures to ensure their educational facilities are adequate and equitable to Maryland's wealth. As the charts below demonstrate, Maryland's wealth compares favorably to these jurisdictions. Comparably, Maryland can afford to invest in its public school facilities.

Table 4: Median Income for a Household, 2001

State	Median Income for a household, 2001¹²⁴
Maryland	\$55,013
New Jersey	\$52,137
Ohio	\$42,631
Arizona	\$40,965
Wyoming	\$40,007

Table 5: Per Capita Income, 1999

State	Per Capita Income, 1999¹²⁵
Maryland	\$25,614
New Jersey	\$27,006
Ohio	\$21,003
Arizona	\$20,275
Wyoming	\$19,134

Note: Maryland's tax revenue as a percent of personal income when totaling all tax revenue is 38th in the country. Maryland is 39th in the country on revenue raised from corporate income tax. Maryland is 4th in the country for revenue raised from personal income tax.¹²⁶

¹²⁴ U.S. Census Bureau, 2001 Census Data.

¹²⁵ U.S. Census Bureau State and County Quick Facts.

¹²⁶ Revenue and Expenditure Comparisons for Maryland and Selected States Presentation to the Commission on Maryland's Fiscal Structure, August 8, 2002.

Chapter 6, Conclusion and Recommendations

In each of the four states studied, the Courts determined that adequate physical facilities were an important component of the state Constitution's requirements for education. Each of the states in question established minimum guidelines for what an adequate educational facility should have and then conducted statewide assessments to determine if their schools met the defined level of adequacy. Once the gap between the facilities and the definition of adequate facilities was established, each state put in place mechanisms to increase funding for education facility capital spending.

In Maryland the state is constitutionally mandated to provide a "thorough and efficient" educational system for public schools. All four of the states studied in this paper have constitutional education provisions either identical or similar to Maryland's "thorough and efficient" requirement. It seems likely that a Maryland court asked to address whether a "thorough and efficient" education includes adequate physical facilities would reach similar conclusions

Maryland has begun to take steps to meet its responsibility with the passage of the Bridge to Excellence Act. It is clear that Maryland will have to take additional steps to reconcile the inequitable manner in which its public educational facilities are funded. Currently students in Maryland do not all share the same quality educational opportunities nor do all the children attend schools that provide the appropriate atmosphere that will allow the students to meet the standards set by the state.

Historically, funding school facilities has been a shared responsibility between the state and the locals based on the amount the state had available for capital funding set by the Governor and how much a local jurisdiction could raise to meet its share of the costs. Poorer jurisdictions have been limited in the amount of funding they can request from the State, realizing that they will then be responsible for a portion of the costs.

Maryland with its constitutional mandate to provide for public education, will have to refine its formula for distributing funds to local jurisdictions so that poorer jurisdictions will not be penalized by their ability to raise funds. In addition to refining the process for educational facility funding in the future, Maryland will need to assess the long-term results of the inequitable facilities funding that has existed and provide for immediate relief to "catch up" many of the State's aging schools.

The states examined in this paper provide Maryland with many examples of approaches that could be used to bring all of Maryland's school facilities up to an equitable and adequate level. Actions taken by those states include:

- Establishing state standards for an adequate school facility.
- Conducting an evaluation of the schools in their current condition

- Pricing out the amount needed to fund the gap from current conditions to adequate conditions.
- Substantially increasing funding for school facilities.
- Focusing large amounts of funding on the neediest jurisdictions.
- Developing large scale programs to correct immediate facility deficiencies first.
- Providing funding to poor jurisdictions without requiring a match.
- Establishing the necessary amount of annual funding necessary for maintenance, renovation and the building of new schools and requiring through legislation that the annual amount available in the state budget meet the need.

Maryland has the opportunity to provide for all of Maryland public school students, facilities that are designed to meet the needs of the students and communities of the 21st Century. Adequate and equitable educational facilities funding in Maryland will require changes to meet that goal. The Task Force to Study Public School Facilities has a unique opportunity to meet that challenge.