

Abbott v. Burke



CW-NJ-001-010

State of New Jersey

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February 27, 1998

M E M O R A N D U M

TO: HONORABLE DONALD T. DiFRANCESCO  
Senate President

HONORABLE JACK COLLINS  
Speaker of the General Assembly

FROM: JOHN J. FARMER *JJF*  
Chief Counsel

RE: ADMINISTRATION BILL:  
SCHOOL FACILITIES DEBT FUNDING FORMULA

Attached for your consideration is proposed legislation concerning school facilities funding and maintenance. The proposed legislation establishes a master funding formula, maintenance factors, a renovation formula and standards to determine the necessity and efficiency of construction.

If you find the attached legislation acceptable, we request that it be introduced as soon as possible.

We look forward to working with the Legislature on this important issue. Thank you in advance for your cooperation and courtesies.

Attachment

c: Michael P. Torpey, Chief of Staff

AN ACT providing for all school districts a school facilities funding formula that contains standards of efficiency and requirements for continuous life-long maintenance.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. (New section) As used in this Act, unless the context clearly requires a different meaning:

"Abbott District" means one of the 28 urban districts in district factor groups A and B specifically identified in the appendix to Raymond Abbott, et al. v. Fred G. Burke, et al. decided by the New Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394);

"Area cost allowance" shall be \$125 per square foot for fiscal year 1998-99, and shall be inflated by the CPI for the 1999-2000 and the 2000-2001 school years. For subsequent years, the area cost allowance shall be established in the biennial *Report on the Cost of Providing a Thorough and Efficient Education* and inflated by the CPI for the second year to which the Report applies. The area cost allowance used in determining approved costs of school facilities projects shall be that of the year of issuance of facilities bonds or certificates of participation;

"Commissioner" means the Commissioner of Education;

"CPI" means the average annual increase, expressed as a decimal, in the consumer price index for the New York City and Philadelphia areas during the fiscal year preceding the prebudget year as reported by the United States Department of Labor;

"County special services school district" means any entity established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes;

"County vocational school district" means any entity established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes;

"Debt service" means and includes payments of principal and interest upon school bonds and other obligations issued to finance the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities, including furnishings, equipment, architect fees and the costs of issuance of such obligations and shall include payments of principal and interest upon bonds heretofore issued to fund or refund such obligations, and upon municipal bonds and other obligations which the commissioner approves as having been issued for such purposes. Debt service pursuant to the provisions of P.L.1978, c.74 (C.18A:58-33.22 et seq.), P.L.1971, c.10 (C.18A:58-33.6 et seq.) and P.L.1968, c.177 (C.18A:58-33.2 et seq.) and for the acquisition of a site is excluded;

"Lease purchase payment" means and includes payments of principal and interest for lease purchase agreements in excess of five years approved pursuant to subsection f. of N.J.S.18A:20-4.2 to finance the purchase or construction of school facilities, additions to school facilities, or the reconstruction, remodeling, alteration, modernization, renovation or repair of

school facilities, including furnishings, equipment, architect fees and issuance costs. Approved lease purchase agreements in excess of five years shall be accorded the same accounting treatment as school bonds. Lease purchase agreement principal and interest for the acquisition of a site is excluded;

"Maintenance" means expenditures which are approved by the commissioner for repairs and replacements for the purpose of keeping a school facility open, comfortable and safe for use or in its original condition, including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition. Maintenance shall not include contracted custodial or janitorial services, expenditures for the cleaning of a school facility or its fixtures, the care and upkeep of grounds or parking lots, and the cleaning of, or repairs and replacements to, movable furnishings or equipment, or other expenditures as determined by the Commissioner which are not required to maintain the original condition over the facility's useful life;

"Report on the Cost of Providing a Thorough and Efficient Education" or "Report" means the report issued by the commissioner pursuant to section 4 of P.L.1996, c. 138;

"School district" means any local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes;

"School enrollment" means the number of pupils other than evening school pupils who, on the last school day prior to October 16 of the current school year, are recorded in the registers of the school. For determining school enrollment in districts that do not qualify for early childhood program aid pursuant to section 16 of P.L. 1996, c.138, preschool students shall not be counted, and kindergarten students shall be counted at 50% of the actual count of kindergarten students. In districts that qualify for early childhood program aid pursuant to section 16 of P.L. 1996, c.138, preschool students shall be counted at 50%, and kindergarten students shall be counted at 100%, of the actual counts of preschool and kindergarten pupils;

"School facilities" means and includes any structure, building or facility used wholly or in part for academic purposes by a school district, county special services school district, or county vocational school district and shall exclude athletic stadiums and grandstands and any structure, building or facility used wholly for school administration;

"Special education services pupils" means a pupil receiving specific services pursuant to chapter 46 of Title 18A of the New Jersey Statutes;

"Unhoused students" means the number of full-time equivalent (FTE) students who are projected to be enrolled in five years in preschool handicapped, preschool, kindergarten, grades one through twelve, and special education services pupil educational programs, located and currently being provided in a school district or county vocational school district or which will be located and provided in a school district or county vocational school district within five years, which are in excess of the functional capacity of the district's current school facilities or the

functional capacity of the school facilities which will be available within five years other than the school facilities for which the approved cost is determined, based upon a long-range facilities plan as prescribed by the commissioner. The determination of unhoused capacity shall separately consider projected enrollments and functional capacities at the early childhood and elementary (preschool through grade 5), middle (grades six through eight) and high school (grades nine through 12) levels. The long range facilities plan shall be submitted to and approved by the commissioner and shall include a cohort survival enrollment projection in which special education services students shall be considered part of the grade level to which the students' chronological age corresponds. For the purposes of calculating unhoused students in all districts, kindergarten students shall be counted at 50% of the actual count of kindergarten students within the elementary enrollment category. In districts that qualify for early childhood program aid pursuant to section 16 of P.L. 1996, c.138, there shall be an additional early childhood enrollment category in which preschool students and kindergarten students shall be counted at 50% of the actual counts of preschool and kindergarten pupils. In districts that do not qualify for early childhood program aid pursuant to section 16 of P.L. 1996, c.138, preschool students shall not be counted.

2. (New section) State aid for capital investment in school facilities shall be distributed to each school district, county special services school district and county vocational school district according to the following formula:

Aid is the sum of A for each issuance of facilities bonds or certificates of participation for lease purchase agreements issued after July 1, 1998.

where

$A = B \times AC/P \times CCSAID/TEBUD \times M$ , with  $AC/P = 1$  whenever  $AC/P$  would otherwise yield a number greater than one,

and where

B is the district's debt service or lease purchase payment for the individual issuance for the fiscal year;

AC is the total approved costs for facilities projects for which the individual issuance is made, determined pursuant to subsection a. of this section;

P is the principal of the individual issuance plus any other funding sources approved for the project;

CCSAID is the district's core curriculum standards aid amount, determined pursuant to section 15 of P.L.1996, c. 138;

TEBUD is the district's T&E budget, determined pursuant to section 13 of P.L.1996, c. 138;  
and

M is a factor representing the degree to which a district has fulfilled maintenance requirements for a project, determined pursuant to subsection g. of this section.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.

a. Approved costs for facilities consistent with the district's long-range facilities plan shall be determined according to the formulas in this subsection. A board of education or state district superintendent of an Abbott district may apply to the commissioner for an adjustment of approved costs if it can demonstrate that facilities needs related to required programs cannot be addressed within the facilities efficiency standards established in this section and that all other proposed spaces are consistent with the facilities efficiency standards. To house the district's central administration, a district may apply for an adjustment to the approved area for unhoused students of 1.55 square feet for each FTE student in the projected total district school enrollment if the proposed administrative offices will be housed in a school facility and the district can demonstrate either that the existing central administrative offices are obsolete or that it is more practical to convert them to instructional space.

For the purposes of this section:

CEA is the allowance for civil engineering fees, determined pursuant to subsection c. of this section;

AA is the percentage allowance for architect/MEPS (mechanical-electrical-plumbing-structural) engineering fees, determined pursuant to subsection d. of this section;

IA is the percentage allowance for issuance costs, determined pursuant to subsection e. of this section;

SDA is the allowance for site development determined pursuant to subsection f. of this section.

(1) Construction of new facilities and additions to facilities, characterized by an increase in the square footage of the facility, shall generate State aid only if necessary for reasons of unhoused students.

$$\text{Approved costs} = \text{AU} \times \text{C} \times (1 + \text{AA} + \text{IA}) + \text{CEA} + \text{SDA}$$

where

AU is the approved area for unhoused students, determined pursuant to subsection b. of this section; and

C is the area cost allowance.

(2) Approved costs shall be calculated as follows for reconstruction, remodeling, alteration, modernization, renovation or repair of school facilities that were originally constructed by the district or that the district purchased more than five years previous to the date of issuance, and

that have not generated any state aid pursuant to this section as a result of an issuance within the previous 15 years. The commissioner may waive the 15 year requirement if the district can satisfactorily demonstrate that extraordinary circumstances apply.

$$\text{Approved costs} = R \times A$$

where R = the replacement costs of the facility = GA x C x (1 + AA + IA) + CEA + SDA and where

GA is the gross area (square footage) of the existing school facility or portion thereof being reconstructed, remodeled, altered, modernized, renovated or repaired;

C is the area cost allowance; and

A is a factor determined by the age of the school facility, the measure of which commences with occupancy of the facility, according to the following table:

<u>Age of the School Facility</u>	<u>A</u>
15 years or less	zero
16 years or more and less than 26 years	50%
26 years or more and less than 41 years	60%
41 years or more	85%

For the purposes of this section the age of the school facility shall be a composite measure of the age of individual sections of the building determined in accordance with a method approved by the commissioner. The commissioner may adjust A for a district that demonstrates that additional renovation expenditures are necessary to address health and safety conditions or obsolescence.

(3) New construction done in lieu of renovations shall be aided as new construction, with approved costs determined pursuant to paragraph (1) of subsection a. of this section, only when the decision to replace a facility is supported by a feasibility study, and either the age of the building being replaced is 41 years or greater or the commissioner determines that extraordinary circumstances apply. When new construction done in lieu of renovations qualifies for aid as new construction, the approved area for unhoused students shall be determined by the commissioner, with consideration of the existing facilities in the district.

New construction done in lieu of renovations when the conditions of the previous paragraph are not met shall be aided in accordance with the methodology for aiding renovations, with the approved costs determined pursuant to paragraph (2) of subsection a. of this section.

(4) For purchase of an existing facility, and renovations and/or additions made to a purchased facility within five years of purchase: (a) purchase of an existing facility shall be aided as new construction, with approved costs determined pursuant to paragraph (1) of subsection a. of this

section; and (b) the total approved costs of any addition and/or reconstruction, remodeling, alteration, modernization, renovation or repair made to the purchased facility within five years of purchase shall be determined as follows:

$$\text{Approved Costs} = (\text{ACP-PC}) \times (\text{C/CP})$$

where

ACP is approved costs for the facilities purchase pursuant to (a) of this paragraph;

PC is purchase cost for the facility;

C is the area cost allowance at the time of issuance; and

CP is the area cost allowance at the time of issuance for the purchase.

Approved costs so calculated shall not be less than zero.

b. The approved area for unhoused students shall be determined according to the following formula:

$$\text{AU} = (\text{UEC} \times \text{SEC}) + (\text{UE} \times \text{SE}) + (\text{UM} \times \text{SM}) + (\text{UH} \times \text{SH})$$

where

UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and

SEC, SE, SM, SH are the area allowances per full-time equivalent student in the early childhood, elementary, middle, and high school enrollment categories, respectively.

In fiscal years 1998-99, 1999-2000, and 2000-2001, the area allowance per full-time equivalent student shall be as follows:

For all districts other than Abbott districts:

<u>Enrollment Category</u>	<u>Area Allowance Per FTE Student</u>
Elementary: Grades kindergarten-5 (E)	113 square feet (SE)
Middle: Grades 6-8 (M)	110 square feet (SM)
High: Grades 9-12 (H)	141 square feet (SH)

For all Abbott districts:

<u>Enrollment Category</u>	<u>Area Allowance Per FTE Student</u>
Elementary: Grades kindergarten-5 (E)	115 square feet (SE)
Middle: Grades 6-8 (M)	111 square feet (SM)
High: Grades 9-12 (H)	142 square feet (SH)

For all districts that qualify for early childhood program aid pursuant to section 16 of P.L. 1996, c.138, the area allowance (SEC) shall be 80 square feet per full-time equivalent student in the early childhood enrollment category (EC).

The commissioner shall develop, for the March 2000 and subsequent Reports on the Cost of Providing a Thorough and Efficient Education, prototypes of elementary, middle, and high schools consistent with the core curriculum school delivery assumptions in the report and sufficient for the achievement of the Core Curriculum Content Standards, and for the provision of required programs in Abbott districts and early childhood programs in the districts in which these programs are required by the State. These prototypes shall constitute facilities efficiency standards from which the space allowances per full-time equivalent student in each class of district shall be derived.

c. Determination of the allowance for civil engineering fees (CEA) for new buildings shall be made according to the following formula:

$$\text{CEA} = \$25,000 + \$5,000 \text{ per each acre of the site.}$$

The civil engineering allowance for additions shall be 75 percent of the amount calculated as for new buildings.

The civil engineering allowance for renovations shall be 25 percent of the amount calculated as for new buildings.

d. Determination of the percentage allowance for architect/MEPS (mechanical-electrical-plumbing-structural) engineering fees (AA) shall be made according to the following table:

For new construction and additions:

<u>Approved Area for Unhoused Students</u>	<u>Allowance (AA)</u>
<u>(AU)</u>	
Under 3,700	10.00 %
3,700	9.00 %
7,350	8.50 %
11,000	8.25 %
14,650	8.00 %
18,300	7.50 %
25,700	7.25 %
36,700	7.00 %
55,000	6.75 %
73,400	6.50 %
101,000	6.25 %
128,450	6.00 %
156,000	5.75 %
183,500 and above	5.50 %



For the purposes of this section, when the approved area for unhoused students is between any two successive amounts listed above, the allowance for architect/engineering fees shall be determined by summing the two amounts obtained by first applying the greater percentage to the lesser approved area amount on the list and then applying the lower percentage to the amount of the approved area in excess of the lesser amount on the list, and then dividing the sum by the actual approved area for unhoused students. For reconstruction, remodeling, alteration, modernization, renovation or repair, the allowance shall be one and one-quarter of the percentages calculated pursuant to this paragraph.

e. The percentage allowance for issuance costs (IA) for projects financed from the proceeds of school bonds shall be one and one-half percent, except that IA shall be neither less than  $\$50,000/(AU \times C)$  or  $\$50,000/(GA \times C)$ , whichever is applicable, nor greater than  $\$150,000/(AU \times C)$  or  $\$150,000/(GA \times C)$ , whichever is applicable.

The allowance for issuance costs for projects financed by a lease purchase agreement shall be three and one-half percent, except that IA for these projects shall be neither less than  $\$50,000/(AU \times C)$  or  $\$50,000/(GA \times C)$ , whichever is applicable, nor greater than  $\$350,000/(AU \times C)$  or  $\$350,000/(GA \times C)$ , whichever is applicable.

f. The allowance for site development (SDA) for new buildings shall be the sum of:  
\$50,000 per acre for up to ten acres of the site;  
\$30,000 per acre for the number of acres of the site in excess of ten and up to 20; and  
\$5,000 per acre for the number of acres of the site in excess of 20.

The allowance for site development for additions shall be 50 percent of the amount calculated as for new buildings.

The allowance for site development for renovations shall be 25 percent of the amount calculated as for new buildings.

g. The maintenance factor (M) shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:

(1) Effective ten years from the date of the enactment of this act, the maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation or repair, or for an addition to a facility, shall be zero for all projects for which the district fails to demonstrate a net investment over the ten years preceding issuance in maintenance of the related facility of at least two percent of the replacement cost of the facility, determined pursuant to paragraph (2) of subsection a. of this section using the area cost allowance of the year ten years preceding the year in which the school bonds or lease purchase agreement is issued;

(2) For new construction, additions, and facilities aided under paragraph (2) of subsection a. of this section supported by financing issued after July 1, 1998, beginning in the fourth year after occupancy of the facility, the maintenance factor shall be reduced according to the following schedule for all projects for which the district fails to demonstrate in the prior fiscal year an investment in maintenance of the related facility of at least two-tenths of one percent of the replacement cost of the facility, determined pursuant to paragraph (2) of subsection a. of this section.

<u>Maintenance Percentage</u>	<u>Maintenance Factor (M)</u>
.199% - .151%	75%
.150% - .100%	50%
Less than .100%	Zero

(3) Within one year of the enactment of this Act, the State Board of Education shall promulgate rules requiring districts to develop a long-range maintenance plan and specifying the expenditures that qualify as an appropriate investment in maintenance for the purposes of this subsection.

3. (New section) For each issuance of facilities bonds or certificates of participation in a lease purchase project issued before July 1, 1998,

Aid = the sum of A

where

$$A = B \times \text{CCSAID/TEBUD}$$

and where

B is the school district's, county special services district's or county vocational school district's total debt service or lease purchase payment for the individual issuance for the fiscal year;

CCSAID is the district's core curriculum standards aid amount, determined pursuant to section 15 of P.L.1996, c. 138; and

TEBUD is the district's T&E budget determined pursuant to section 13 of P.L.1996, c. 138.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.