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# **Review of Selected States' Responses to Facility Surveys**

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**Presentation to  
Task Force to Study Public School Facilities**

**Department of Legislative Services  
Annapolis, Maryland**

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## **What We Reviewed**

In researching programs that fund school facilities construction in other states, the Department of Legislative Services (DLS) reviewed the following recent comprehensive studies of state school construction programs: *Update of School Construction Assistance Programs Survey for Wyoming State Legislature* by MGT of America, Inc. in 1999 and updated in 2002, *School Capital Funding: Supplementary State Profiles* compiled by the Comptroller of the Treasury of the State of Tennessee in August 2002, and the *Education Finance Database* compiled by the National Conference of State Legislatures. DLS also held conversations with and received written information from selected state school construction program officials.

## **What We Found**

After doing a broad review of all states with school facilities finance programs, DLS selected three states – Arizona, North Carolina, and Ohio – for in-depth review. Each of these states has conducted a comprehensive, statewide survey of school facilities, and has developed a new program of school facility funding based on the findings of the survey. A review of these states' programs revealed several key findings that may be of interest to the task force as it considers how to respond to the results of Maryland's facility survey:

- All three states linked the results of their facility surveys to their funding programs.
- All three states developed a specific time frame within which to correct facilities deficiencies.
- The three states are using both ongoing and targeted programs and funding these programs with a combination of capital debt and dedicated revenue sources.

## **Approaches in Three States to Achieving Minimum Standard Facilities**

Unlike Maryland, none of these states had a comprehensive, consistent system of school facility finance in place prior to conducting facilities surveys and developing the current programs. In this respect, Maryland probably faces fewer hurdles in achieving minimum standard facilities than the states reviewed here. However, the experiences and innovations in these states can provide useful examples as Maryland seeks to improve its program. Though two of these states, Arizona and Ohio, developed their current school facility programs in response to the specific mandates of adequacy litigation, some of their approaches may have useful applications in Maryland.

## **Arizona: A Facility-based Approach**

- **Key Features:**

- Centralized control, clear guidelines
- Targeted assistance programs
- Dedicated (almost) fund source

### **Background**

In 1994, Arizona courts ruled the state's system of school capital finance unconstitutional because it failed to meet the state constitution's "general and uniform" clause, based on the system's heavy reliance on local property wealth. In 1996, the Superior Court set a 1998 deadline to establish a constitutional system for school capital finance. Though the state had provided no funding for school facilities prior to the litigation, the court required the state to fund all improvements necessary to ensure that all facilities in the state met a minimum standard, though local governments can finance enhancements. The Students FIRST (Fair and Immediate Resources for Students Today) program was the direct result of this mandate.

The court required the State to develop minimum adequacy standards for public school facilities. The Students FIRST legislation created the Arizona School Facilities Board (SFB), which was charged with first developing statewide minimum adequacy standards for all school facilities. SFB determined that these standards should address not only the physical environment of the facilities, but also their ability to support an effective learning environment.<sup>1</sup> After consulting with an expert panel, SFB promulgated these regulations, and conducted a statewide survey of school facilities to measure their compliance against the new standards. This survey identified \$1.3 billion in facilities needs statewide to meet these minimum standards.<sup>2</sup>

### **Students FIRST: Responding to Needs**

The Students FIRST legislation established three programs to address the different types of facilities needs: the Deficiencies Correction Fund, the New School Facilities Fund, and the Building Renewal Fund. These programs are funded through a combination of bond issues and revenues from the state transaction privilege (sales) tax.<sup>3</sup> Arizona voters approved a 0.6 percent increase in the state sales tax to support K-12 education operating and capital expenditures.

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<sup>1</sup> Funding for Educational Facilities: What Ohio, Wyoming, Arizona and New Jersey are Doing to Fund their Public Educational Facilities, American Civil Liberties Union of Maryland

<sup>2</sup> Press Release, Arizona School Facilities Board, July 1, 2003.

<sup>3</sup> Arizona Revised Statutes (A.R.S.) Title 15, Chapter 16.

**Deficiencies Corrections Fund:** The enabling legislation designed this program to be self-directed, efficient and cost effective, without opportunity for additional involvement from the state or local officials. The legislature endowed SFB with direct bonding authority up to \$800 million for this program,<sup>4</sup> and further authorized SFB to annually instruct the state treasurer as to the amount of sales tax revenue to be transferred to this fund, without the need for separate legislative appropriation.<sup>5</sup> The legislation also gave SFB centralized control over the program in order to capitalize on economies of scale and minimize costs. SFB had the authority to bundle similar or geographically proximate projects in order to bid them together and to procure project management services for each bundled project.

This program was also designed to be temporary, providing funds to school districts to bring facilities up to the minimum standards within three years. The Students FIRST legislation required that all deficiency correction projects be approved by May 2002, awarded by June 2003, and complete by June 2004.<sup>6</sup> SFB met the award deadline of June 30, 2003, with the exception of certain projects that were postponed until fiscal 2005 due to the fiscal condition of the State. The deficiency corrections program included over 5,700 projects across the state, and met an estimated \$1.3 billion in statewide needs.<sup>7</sup>

**New School Facilities Fund:** The new school facilities program distributes funds for new schools to school districts that need additional space due to expanding enrollment or the need to replace a facility that has outlived its useful life. School districts submit annual capital plans to SFB, including specific funding requests for facilities that will be necessary in the next four years. Allocations for approved projects under this program are strictly formulaic, based on the number of students requiring additional square footage to meet adequacy standards, statewide square footage standards, and an indexed cost per square foot. SFB can review and revise district enrollment projections, and can also review districts' design plans for approved projects to comment on their efficiency and effectiveness in meeting state facility standards before releasing construction funds.<sup>8</sup>

This program is also funded through the state sales tax. The SFB annually informs the treasurer how much will be necessary in this program to fund approved projects, without the need for specific legislative appropriation.<sup>9</sup> However, in recent years, the legislature has overridden this authority, requiring the treasurer to disregard these instructions, and leaving these revenues in the general fund. For fiscal 2004, the legislature instead instructed SFB to enter into lease-purchase agreements up to \$250 million for new construction.<sup>10</sup> Additionally, the legislature can authorize SFB to issue up to \$200 million in bonds for new construction, though

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<sup>4</sup> A.R.S. Title 15, Chapter 16, Article 7 (15-2081).

<sup>5</sup> A.R.S. Title 15, Chapter 16, Article 1 (15-2002) and A.R.S. Title 42, Chapter 5, Article 1 (42-5030.01). Note: For AZ fiscal 2003-2004, the legislature enacted a session law that ordered the state treasurer to disregard these instructions, and instead required SFB to issue additional revenue bonds to meet the program need for that year (Chapter 264, Session Laws of 2003).

<sup>6</sup> A.R.S. Title 15, Chapter 16, Article 3 (15-2021).

<sup>7</sup> Press Release, Arizona School Facilities Board, July 1, 2003.

<sup>8</sup> A.R.S. Title 15, Chapter 16, Article 5 (15-2041).

<sup>9</sup> A.R.S. Title 42, Chapter 5, Article 1 (42-5030.01).

<sup>10</sup> Chapter 264, Section 18, Session Laws of 2003.

it has not done so to date. SFB has expressed interest in developing a permanent, dedicated funding source for this program.<sup>11</sup>

***Building Renewal Fund:*** The building renewal fund is the final major program under the Students FIRST legislation. This program provides funds to school districts for major renovation, repair, and infrastructure projects that will extend the useful life of individual facilities. Allocations in this program are determined by a formula based on the age and student capacity of the building.

This program is also funded through the state sales tax. Again, the SFB instructs the treasurer as to the funding necessary for this program, though the legislature must review the calculation before SFB can distribute funds to districts.<sup>12</sup> The legislature has consistently reduced the funding required by the formula in this program in order to balance the state budget. Several school districts sued the state over these reductions, on the grounds that the building renewal fund is the only long-term, consistent source of facilities funding under Students FIRST, and that the legislature’s suspending these funds violates the “general and uniform” clause. The Arizona Court of Appeals has ruled that these reductions were constitutional,<sup>13</sup> though plaintiffs have appealed the ruling to the Arizona Supreme Court.

***Miscellaneous Programs:*** Students FIRST also provides funding for routine maintenance and “soft capital” through a district’s operating budget.<sup>14</sup> Allocations are calculated through a per pupil formula. The Students FIRST minimum adequacy standards also addressed statewide technology standards. The state has spent over \$170 million to purchase computers, wire schools for network and internet connectivity, and develop an application service provider network.<sup>15</sup>

## **North Carolina: An Adjusted Approach**

- **Key Features:**
  - Combination of permanent and one-time financing
  - Sliding cost-share scale
  - Segmented allocations

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<sup>11</sup> School Facilities Board Five Year Strategic Plan, 12/31/2002.

<sup>12</sup> A.R.S. Title 15, Chapter 16, Article 4 (15-2031).

<sup>13</sup> *Roosevelt Elementary School District No. 66 et al. v. State of Arizona*, 205 Ariz. 584.

<sup>14</sup> A.R.S. Title 15, Chapter 9, Article 4 (15-962).

<sup>15</sup> Arizona School Facilities Board Technology Initiatives Overview, [http://www.sfb.state.az.us/sfb/sfbdoc/tech/tech\\_initiatives\\_overview.pdf](http://www.sfb.state.az.us/sfb/sfbdoc/tech/tech_initiatives_overview.pdf), accessed 11/20/03.

## **Background**

The North Carolina legislature created the School Capital Construction Study Commission in 1995 to undertake a comprehensive assessment of school facilities and school facility finance. The commission required each school administrative unit to submit a five-year facilities needs assessment report, approved by both the local board of education and the board of county commissioners. The study was not strictly based on a set of minimum standards, though the state did provide workshops and consultations to assist systems in identifying needs. This survey identified approximately \$6.2 billion in facility needs. To meet these needs the study commission recommended maintaining existing school facility finance programs and also issuing \$1.8 billion in bonds. Though Maryland and North Carolina have very different bond issue programs, the allocation of bond funds and matching requirements in each school system may have interesting applications in Maryland.

### **Public School Building Capital Fund: A Permanent Program of School Finance**

The Public School Building Capital Fund was established in 1987 and remains North Carolina's permanent program for school finance. A portion of each quarter's corporate income tax revenue is deposited into this fund. Each county has a separate account within this fund, and receives an allocation based on average daily membership (ADM). Counties are also entitled to any interest that accrues on their accounts. Counties may access these funds when the Department of Public Instruction (DPI) approves a school facility project. All counties must provide a one-dollar match for every three dollars of state funding, unless funds are for school technology, which requires no match.<sup>16</sup>

This program has generated over \$853 million in tax revenues and interest since its inception in 1987. Counties have used over \$783 million in state funds to support public school construction. The total amount of school construction this fund has actually supported is difficult to ascertain, since school technology projects do not require a match. However, funding received under this program varies widely from \$62 million in one of the largest counties to \$618,000 in one of the smallest.<sup>17</sup> DPI staff indicates that while this fund makes significant contributions to school construction in the state, several barriers limit its ability to meet statewide facility needs.<sup>18</sup>

- Counties with low enrollment do not accrue enough funds to support significant projects;
- similarly, in high growth counties, funds do not keep pace with the need for new facilities; and
- poor counties often cannot raise matching funds.

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<sup>16</sup>*Procedures Manual: Public School Building Capital Fund*, North Carolina Department of Public Instruction, Division of School Support, School Planning. Revised 2003.

<sup>17</sup>*Public School Building Capital Fund, Fiscal Year Totals Report*, North Carolina Department of Public Instruction.

<sup>18</sup>Conversation with Jim Lora, School Planning Consultant, North Carolina Department of Public Instruction, 11/13/03.

## **Public School Building Bonds Fund**

The Public School Building Bonds Fund was created in response to the needs identified in the 1995 survey and designed to address the shortcomings in the existing school finance programs. North Carolina does not necessarily authorize capital bond issues each year as Maryland does, but instead issues bond initiatives in response to specific needs. Prior to the 1996 authorization, the last bond issue for primary and secondary school facilities was in 1973.<sup>19</sup>

Chapter 631 of the General Statutes of 1995 provided for a bond issue of \$1.8 billion to assist counties in construction of public school facilities. \$30 million of this was set aside for small systems with above average facility needs and property tax rates. Each school system's allocation of the remaining \$1.77 billion was specified in statute based on three components: ADM, ability to pay, and high-growth status. ADM based funding totaled \$708 million (40 percent), low-wealth \$619.5 million (35 percent), and high-growth \$442.5 million (25 percent).<sup>20</sup>

One of the commission's key findings was that the current system of shared state-local responsibility for school facilities was appropriate. The commission recommended that local governments remain primarily responsible for school capital expenses due to the importance of these facilities in their communities, but that the State should provide assistance to ensure that facilities are adequately funded, especially in low-wealth communities. Systems were required to match the ADM and high-growth portions of their allocations, but not the low-wealth or small county funds. If a system did not raise its total required match funds by 2003, its unmatched funds would be reallocated to systems that had met the match.

The match rate differed for each county, based on its ranking on a list of counties from lowest to highest wealth as a percentage of the State average wealth. A county's match rate equals its ranking times three cents for every dollar in state aid, with the lowest wealth county matching \$0.03 for every dollar, and the wealthiest county matching \$3.00 to every dollar in state funds. To date, voters have approved an additional \$4.7 billion in local bond issues for matching funds in addition to other revenues for school construction.<sup>21</sup> No county failed to meet its match requirement by 2003.<sup>22</sup>

## **Ohio – A Systemwide Approach**

- **Key Features:**
  - Strong coordination between state and local officials
  - Sliding cost-share scale
  - Flexible funding for special concerns

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<sup>19</sup> Conversation with Jim Lora, 11/13/03.

<sup>20</sup> Chapter 631, North Carolina General Statutes of 1995.

<sup>21</sup> "Local Bond Issues for Schools since 1995," North Carolina Department of Public Instruction, 11/10/2003.

<sup>22</sup> Conversation with Jim Lora, 11/13/03.

## **Background**

In 1997, the Ohio Supreme Court ruled that the state's system of education finance was unconstitutional in *DeRolph v. State*. The court included facilities in good repair and appropriate educational supplies in the requirements for a constitutionally mandated "thorough and efficient" education.<sup>23</sup> In response to this ruling, the Ohio state legislature created the Ohio School Facilities Commission (OSFC) to oversee school construction in the state, and initiated an entirely new program of school facility finance in the state. Additionally, the governor put forward a 12-year funding plan, *Rebuilding Ohio's Schools*, pledging over \$10.2 billion in funding for school construction and maintenance. This figure was based on adjusted needs identified in a 1990 statewide school facilities survey. The funding included \$5.9 billion in bond funding, \$1.8 billion in general and other fund appropriations and interest earnings, and \$2.5 billion in tobacco settlement funding.<sup>24</sup>

### **Classroom Facilities Assistance Program (CFAP)**

The Classroom Facilities Assistance Program (CFAP) is the core program of Ohio's school facilities initiative. Under CFAP, OSFC evaluates the facility needs of an entire district, and funds all construction and renovation needs identified. The program will correct all facilities needs throughout the state over its 12-year duration. The enabling legislation required the program to rank each district according to its wealth, begin with the least wealthy district in the state and move up the list to the wealthiest.

When a district becomes eligible for CFAP funds according to its wealth ranking, a school facilities assessment team inventories all facilities in that district to determine their conformity to state standards. This assessment becomes the basis for a district Facilities Master Plan. OSFC works with district officials to develop a comprehensive strategy of renovations, expansions, and new construction to best meet facilities needs and enrollment projections in that district over the next ten years. District officials and community members have the opportunity to review and comment on master plans, and these will generally be negotiated until they are acceptable to both OSFC and the community. OSFC must approve each plan, and request the State Controlling Board to encumber approved funds.<sup>25</sup>

After a plan is approved, districts have one year to raise their portion of the total cost of the master plan. Ohio also uses a sliding scale based on wealth to determine a district's matching requirement. Districts are required to pay the higher of two amounts: a percentage equal to the district's wealth percentile in the state (e.g. a district at the 25th percentile would pay 25 percent of the total costs), or the amount of indebtedness the district would have to incur in order to reach a minimum indebtedness threshold, which is also derived from the district's wealth percentile. Districts may use tax proceeds, donations, debt, or a combination to reach these amounts. Each district is also required to enact a half mill levy for maintenance. If the district does not pass the necessary levies within one year, all encumbered state funds revert back to the

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<sup>23</sup> *DeRolph v. State*, 97 Ohio St. 3d.

<sup>24</sup> "Rebuilding Ohio's Schools: A 12-Year Commitment," [www.osfc.state.oh.us](http://www.osfc.state.oh.us)

<sup>25</sup> "Tell Me About...*The Classroom Facilities Assistance Program*," Ohio School Facilities Commission.

CFAP program for distribution to another district. A district that loses CFAP funding for not passing its levies will receive first priority once it does raise these funds.<sup>26</sup> To date, 97 percent of jurisdictions have secured the necessary funding in the required time frame.<sup>27</sup>

### **Targeted Initiatives**

Within CFAP, there are several targeted programs to meet immediate or extraordinary needs. The largest-scale of these programs is the Accelerated Urban Initiative (AUI). This program allows six of the state's largest urban districts to receive funding immediately, though their rankings on the wealth list do not make them eligible for CFAP yet. The match requirements are the same under this program as they would be under the regular CFAP procedures. Each of these districts has developed a Master Plan, which has been broken into several segments. The districts seek approval and raise the funds required for each of these segments separately. The state has committed to almost \$2.8 billion of over \$5.7 billion in projects in these districts.<sup>28</sup>

The Exceptional Needs, Emergency Repair, and Emergency Assistance Programs allow other districts to access CFAP funds under special circumstances even when they are not technically eligible for them. The Exceptional Needs Program (ENP) allows low wealth districts not yet eligible for CFAP to submit applications for replacement of individual facilities in order to address immediate health and safety needs. OSFC develops a master plan for an ENP district to ensure that the building replacement will fit with the community's long-term needs. OSFC can allocate up to 25 percent of CFAP's yearly appropriation to ENP projects, though that amount has never been necessary. Approximately \$245 million has been encumbered for ENP projects to date.<sup>29</sup> The Emergency Repair program provides funds to low-wealth districts for repairs to existing facilities that will address immediate health and safety needs. The Emergency Assistance program provides funding to school districts and facilities impacted by "acts of God."

The Expedited Local Partnership Program (ELPP) allows wealthier school districts to work with OSFC to develop a master plan prior to their eligibility for CFAP. A district can then use its plan and fund part of it entirely with local funds. When the district does become eligible for CFAP, it will receive credit towards its required local contribution for all funds it contributed through ELPP.<sup>30</sup>

### **Long-term Facility Needs**

After the 12-year Rebuilding Ohio's Schools initiative, Ohio will continue to fund the CFAP program through a School Facilities Trust Fund and other regular capital and operating budget appropriations. The School Facilities Trust Fund has an endowment of \$2.1 billion in tobacco settlement funds. The interest on this fund will be used for school facilities. The

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<sup>26</sup> Ohio Revised Code, Title 33, Chapter 3318.

<sup>27</sup> Memorandum from Andrea Phillips, Ohio School Facilities Commission, November 17, 2003.

<sup>28</sup> *Building Our Future*, Annual Report 2002 of the Ohio School Facilities Commission.

<sup>29</sup> Memorandum from Andrea Phillips, Ohio School Facilities Commission, November 17, 2003.

<sup>30</sup> *Building Our Future*, Annual Report 2002 of the Ohio School Facilities Commission.

Rebuilding Ohio's Schools plan dedicates between \$116 million and \$273 million in tobacco settlement funds for school construction each year.

## **Conclusion**

As is often the case, states have taken different approaches to financing local school construction. The three states presented here have developed their programs specifically in response to the issue of facilities standards, either under court order or voluntarily. Though some of their approaches may have been heavily influenced by the specific circumstances of the adequacy litigation, they do present interesting policy options for other states grappling with facility standards concerns to consider.

### **Finite Timeline**

Each of these states established a time frame within which to correct deficiencies identified in the survey. Arizona established an aggressive schedule to identify statewide deficiencies within one year and correct them in the following three years. This timetable was influenced by the court's mandate; however, Arizona's success in allocating all funds by the 2003 deadline speaks to the efficiency of the program. Ohio developed a 12-year program with yearly targets, also in response to litigation in the state. Ohio's program can also be considered aggressive, since it seeks to meet all facilities needs statewide and provide sufficient capacity to meet 10-year enrollment projections in each jurisdiction. Though North Carolina's program was voluntary in that it was not predicated by a court mandate, policy makers still provided a strong incentive for districts to act quickly to correct deficiencies by requiring them to meet matching thresholds within a five-year period.

### **Wealth-based Variable Match Rates**

North Carolina and Ohio both allow considerable variation in districts' match rates. North Carolina also exempted certain portions of low-wealth counties' allocations. In North Carolina, required district contributions range from 3 percent of total cost for the lowest-wealth district to 75 percent of total cost in the highest wealth district. In Ohio, district contributions range from 1 percent to 95 percent. Ohio also addressed the issue of a district's prior efforts to provide school facilities by including the minimum indebtedness threshold. North Carolina's study commission also commented on the disparate efforts of various counties to maintain school facilities, and crafted its policy to provide relief to counties that had been making a good faith effort to meet facilities needs.

### **Strong Planning Organizations**

Both Arizona and Ohio appear to have benefited from establishing strong, central planning organizations. Arizona provided the School Facilities Board with considerable authority to issue bonds, secure funding necessary to meet project needs, and bundle projects in order to maximize competitive bidding. Again, this decision was largely due to the court

mandate; however, its success in meeting established deadlines indicates that this process has been worthwhile. Ohio instituted strong communication between local officials and the statewide School Facilities Commission. State and local officials work closely to develop plans that meet both community and state needs. The 97 percent success rate in passing local bond initiatives indicates that this process has fostered strong local buy-in and acceptance of the program.