



The Greening of Kentucky Education

The Foundation:

In our nation's history of education law, "Rose vs. The Council for Better Education" has to be considered one of the most important cases to impact public education. The Council made up of sixty-six Kentucky school districts (mostly rural) brought suit against the Kentucky General Assembly challenging the constitutionality of Kentucky's system of common schools. In essence, the case contested that the education laws in Kentucky did not provide all students with like educational opportunities. The main two philosophical issues were a requirement for educational equity and adequacy. Following other state reforms that followed, the concerns of the Council were initially focused on finance and the inability of rural districts with low property assessments and revenue to be competitive with their more wealthy counterparts.

The Supreme Court decision supported the Council's position and set in motion a comprehensive overhaul of Kentucky's educational system of common schools. In 1990, the Kentucky General Assembly addressed the Court's findings, passing the Kentucky Education Reform Act (KERA). The broad legislation touched all aspects of the education delivery including establishing a Statewide Commissioner (appointed by the State Board of Education), reconstructing the Kentucky Department of Education, and providing revenue streams to support a new education funding formula.

In education reform case law, public school facilities are often found to be a measure of equity and adequacy, since they usually mirror the financial capacity of local school districts. As part of the Reform legislation, the Kentucky General Assembly promulgated KRS 157.440, the Facility Support Program of Kentucky which provided local districts the taxing authority to levy an equivalent of five cents per \$100 of assessed property value. This local assessment was equalized at 150% of the statewide average per pupil assessment from the Commonwealth's general fund, as part of the state education funding formula. The funds could only be used for capital construction priorities listed in an approved district facility plan. Sponsors of the original legislation noted that the "nickel levy" was adequate to eliminate the statewide unmet facility needs as reported by the School Facility Construction Commission (SFCC) (KRS 157.611). The FSPK levy also became a prerequisite for participation in the existing SFCC program which supported debt service from the state's general fund for local school districts, based on a district's pro rata share of unmet school facility needs. The existing KRS 157.420 Capital Outlay, a direct \$100 per (average daily) student attendance was also incorporated in the education formula as an appropriation from the General Assembly.

In Kentucky, the structure of public school facility funding, authority, and responsibility is built around the shared efforts of local school districts and the General Assembly. In simple terms, there were three concepts of funding: wealth (FSPK, state and local), facility needs (SFCC, state), and funds provided for the number of students served (Capital Outlay, state).

In national surveys of public school facility programs, it is not a surprise that states that financially support school construction require state and local oversight, and accountability. States that rely on local districts to provide their facility revenue generally have few standards and limited oversight. In Kentucky's case, there was a need to ensure appropriate stewardship of funds and consistent methodology for project delivery, as well as model systems that accomplished the equity and adequacy mission. In 1992 the State Board of Education promulgated 702 KAR 1:001, the Kentucky School Facility Planning manual. This new community-based process created an architectural model of equity and adequacy. Its holistic approach included the educational program, facility condition, educational suitability, cost of delivery of services, transportation, and local demographics. The new regulation incorporated facility accommodations for the KERA strands, Preschool, Technology, Family Resources, and School-Based Decision-making. Lastly, it established architectural components and school models built around research for educational quality, and cost of delivery of services. In 1994 the State Board of Education promulgated 702 KAR 4:160, the Capital Construction process which codified the legal, financial, and delivery requirements of public school construction projects following industry standards.

Armed with three powerful and diverse revenue streams, a new community-based planning regulation, and a new capital construction process, the General Assembly and the education community embarked on the largest, longest, and most comprehensive reconstruction of public school infrastructure in the history of Kentucky. In 1994, a national survey of state facility programs by the General Accounting Office, identified Kentucky as one of 13 states to have a comprehensive program that included all aspects of programs nationally, including technical support and state funding.

1995:

By 1995, the urgency of the Supreme Court ruling and the subsequent legislative action created a powerful guiding coalition and direction. A challenge to the vision of equity and adequacy, and the implementation of the KERA strands was the needed reparation of a crumbling education infrastructure. Local districts began in a serious way to address their facility needs with the new methodology. The annual volume of school construction grew to about \$300 million per year. Progress was substantial, despite the escalating construction costs and the implementation of the Prevailing Wage law.

Although most important components were now in place, the General Assembly also passed KRS.157.621 in 1995, which allowed districts that met growth criteria, the authority to levy an additional five cents per \$100 dollar assessed property value for facilities growth needs. The levy was without recall and was not equalized by the General Assembly. Also in 1995, the State Board of Education promulgated 702 KAR 4:170 (architectural criteria for public school facilities) further defining provisions of the Kentucky School Planning Manual, and setting detailed design

standards (including the KERA strands) for Kentucky schools. They also published the Guidelines for Best Practices for Public School Buildings which provided school leaders with a workbook for implementation to help grow leadership capacity.

1998:

By 1998 all public school buildings had an architectural assessment and inventory based on the new standards. As construction costs escalated (almost tripling their 1990 levels) and better planning was accomplished, there was concern that school facility unmet needs were outpacing the construction effort. The \$800 million original estimate for the FSPK program had ballooned to over \$2 billion. More comprehensive planning, the inclusion of the KERA strands, unforeseen growth, the Americans with Disabilities Act, and higher construction costs grew the original state target facility scope. A need developed to better understand the fluidity of the program, and to present other facets of the facility needs assessment for transparency and accountability. Under amended and streamlined planning regulations, architectural assessments included a new template for equity and adequacy. The rating scale from the Kentucky School Planning Manual graded all school facilities on a one (new or almost new) to five (poorest condition) scale. This rating helped school leaders and legislators benchmark progress and strategically apply resources. The data was collected, kept current, and reported regularly to the Legislative Research Commission and the SFCC. The physical evaluations provided a second measure of progress to a somewhat misunderstood Unmet Need calculation, where progress could be masked by escalating construction costs. Successes were benchmarked and celebrated. The added condition data helped to provide credibility to long-range planning, and accountability for construction activities. The condition data helped to define the adequacy issue and became another measure of horizontal equity. (See 2001 map of districts below).

Ten years into education reform, much progress had been made and documented. Planning and construction regulations were amended, refined, and streamlined with an inclusive process. The revised regulations were even more focused on results, professional development, and leadership capacity. Exemplary districts emerged that were recognized by the Kentucky Board of Education to partner with districts that needed assistance. The total number of the state's poorest facilities had been reduced by 50%. A cadre of exemplary facility leaders was formed. The education of finance officers, facility directors, and education leaders was expanded by the Education Agency. The volume of school construction grew to over \$400 million per year.

As with many change efforts, ultimate success largely depends on making careful adjustments that enhance and maintain the vision, remove obstacles, and grow leadership. What had been seen to be an impossible task, was now a giant working change initiative, integral to the Reform Act. It had taken shape over its first ten years to achieve measurable equity and adequacy. Expectations were raised to include the connection between facilities and student performance. Technology was implemented on a massive scale. Facilities were no longer a barrier to student opportunity in many districts. Buildings became teaching tools, creating new learning opportunities. A real belief emerged that the vision of a statewide infrastructure of facility equity and adequacy could be accomplished in all districts. Many challenges and questions had been answered and addressed; the strategies for revenue, planning, and construction had proven to be effective. The goal now was not "how is this to be accomplished", but rather "how is this

accomplished in all districts"? What were the factors that caused success, and what were the missing components, that were still contributing to an underlying adequacy issue?

2003:

By 2003, many of the "fathers of education reform" held key leadership positions in the Kentucky General Assembly. Most of the original concerns about process, planning, and construction had been resolved satisfactorily and were incorporated into administrative regulations. Horizontal equity in revenue had been achieved, but in some cases, the desired results of facility adequacy had not. There was, however, confidence that the system had the appropriate accountability. The legislative leaders were ready to make available additional resources to speed the change effort.

Since as early as 1998, there have been informal discussions and studies to expand the FSPK program from five to ten cents. This strategy would maintain the horizontal equity of revenue while helping to achieve the desired facility adequacy. The drawback was providing the equalization which was upwards of \$75 million per year, a problematic appropriation. There was a consensus among legislative leaders that no additional local taxes should be authorized unless state equalization was provided. Since this was not feasible, the General Assembly took some incremental steps, that in the short run upset the horizontal equity of facility revenue. These moves brought facility equity and adequacy in some districts but with compromises to the overall revenue system. Critics argued that these events were harmful to the systems already in place.

2003 legislation established an Urgent Needs program that helped districts fund debt service to replace the poorest facilities. Also, the SFCC appropriation was increased for all districts, and a third nickel for growth districts was provided without recall; this time with equalization. The bold, three-pronged action set a huge increase in school construction to over \$3/4 billion in 2004. Within a two-year period, the state's worst schools were eliminated from service. Critics again expressed concern that the new Urgent Need strategy and growth district equalization focused on a vertical equity model. Without a long-range plan to correct the horizontality of revenue streams, the original KERA mission could be compromised. Subsequent legislation continued Urgent Needs and equalization of recallable and other dedicated facility nickels.

House Bill 380:

In 2005 under HB 380 some facility actions were suspended, and a Facility Task Force was formed to make recommendations on all aspects of the program including funding. The Picus group (special consultants that helped develop the education funding formula), and the Facility Task Force recommended supporting a ten-cent FSPK concept (already achieved by several districts). All other "nickels" were recommended to be folded into a unilateral (ten-cent) FSPK program as conceived in 1990. Picus also supported targeted funding, provided the horizontal revenue streams were repaired (and in this case expanded) for adequacy. The Task Force reported their findings to the General Assembly in September of 2006. Since then, more districts have levied recallable facility nickels and have been equalized. Other key recommendations caused revisions to limit the size of projects and require the participation of local school boards in Local Planning Committee orientation.

2010:

More recently, the General Assembly has moved legislation that ties the ten cent FSPK revenue (for horizontal equity) to Urgent Needs targeted funding. The Task Force discussed this strategy as a method that improved the vertical equity of facilities while incrementally moving toward a goal of a ten-cent FSPK program and repairing the equity of revenue systems. The latest group of districts received debt service for projects in the poorest condition only after they put a ten-cent facility revenue stream in place. Taxing authority was provided without recall, and equalization was provided for twenty years (the length of the bond issue).

In 2001 there were 54 green districts, 82 yellow districts, and 40 red districts. In *2010 there are 98 green districts, 67 yellow districts, and 9 red districts. (consistent with the 2001 map, the conditions include projects currently underway with approved finances).

Future:

Kentucky has made great progress toward an ambitious vision of establishing education reform opportunities in all schools and constructing an adequate and equitable public infrastructure that (in some cases) was over one hundred years old. All of this was completed in twenty years. On the other hand, until the entire map of Kentucky is green, the vision of equity and adequacy for all children is not yet accomplished.

As Kentucky moves ahead, there is consolation in now having models of improvement for all types of Kentucky districts, large and small, rich and poor, and growing and declining. Here are three important recommendations from Picus from the 2006 Facility Task Force that will be critical to Kentucky's ultimate success.

- In our opinion, one possible and comprehensive way to resolve the foregoing issues would be to increase the Capital Outlay, add a second FSPK equalized nickel, retain an unequalized growth nickel, and merge the regular SFCC program with the funding of the urgent needs. The other funding streams could then be rolled into the second FSPK nickel, to increase the horizontal equity of the system as a whole.
- We recommend that the state improve its system for measuring the quality of buildings, as this would improve its ability to direct funding to the districts with the greatest needs.
- Finally, we recommend that the state commission an adequacy study of its facilities finance system. This should occur after a new system to measure building quality is in place.

Although not complete, it is encouraging that current legislation has elements of each of these recommendations. Achieving the original goals for all of Kentucky's students and anchoring the success in our culture of education reform remains in our path. To achieve ultimate success, it is essential for the education community to recognize and celebrate the progress, stay united in its vision and beliefs, maintain the necessary resolve, grow the leadership, and not forget history.