

The Ohio Coalition for Equity & Adequacy

Of School Funding

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The Solution to the Longstanding School Funding Problem: The Citizens of Ohio

For the past 30 years, I have been making presentations on school finance at each OSBA Capital Conference. Half of them were made during my tenure as Assistant Superintendent of Public Instruction. Each annual presentation has been related to the status of school funding. The annual appropriations to public K-12 education during this period have fluctuated from zero percentage increase to 10 percent depending on the economy, politics and Court decisions; however, the structure of the system has not changed significantly during those three decades. The structure of the system is ill-conceived in that funding levels do not relate to the cost of high quality educational opportunities.

A federally funded school finance study conducted by the Ohio Department of Education in 1976 concluded that the school funding system was inequitable & inadequate. A dozen major finance studies from 1976 to 1992 confirmed the same flaws in the system. The Ohio Supreme Court ruled the system unconstitutional several times; however, the egregious system remains. The structure of the system is at fault.

State Attempts To Provide Adequate Foundation Support Have Fallen Short Of Student Needs

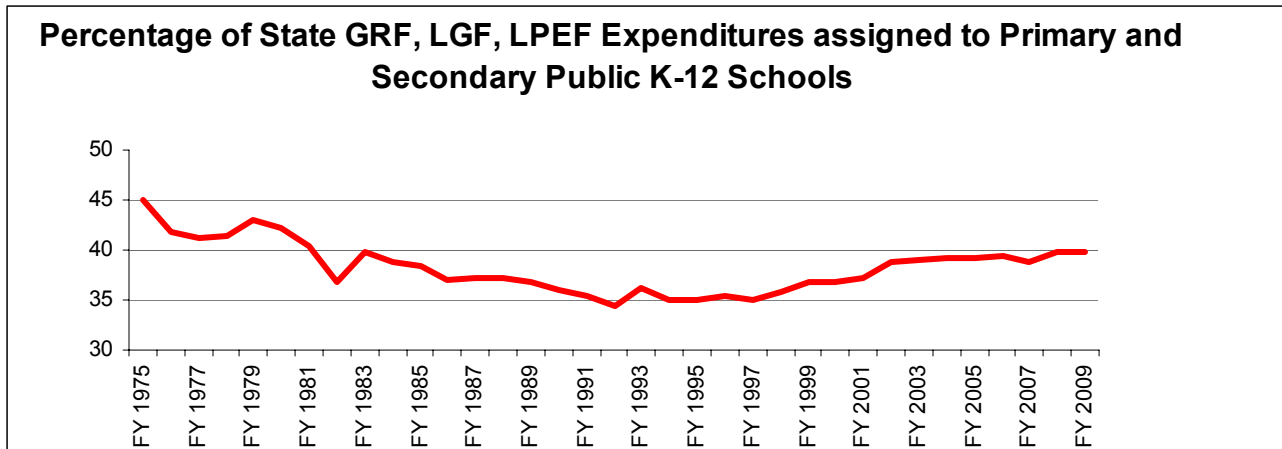
Ohio's first school foundation program was adopted in the mid 1930s. Prior to the first foundation program the state provided in the range of 5% of the revenue for public K-12 education. The first foundation program provided in the range of 50% of the revenue schools spent. The 50/50 split between state revenue and property tax continued until 1946. However, the state revenue portion declined after 1946 to a low point of about 30 percent in the late 1960s.

With the advent of the state income tax in the early 1970s, the state portion increased to about 48% by the end of the 1970s. The local revenue portion continues to exceed 50%. In the *DeRolph* decisions, the Ohio Supreme Court opined that emphasis on property tax is one of the factors that contributes to the unworkability of the system and must be eliminated. However, the property tax portion still contributes more than 50% of the revenue available to public schools.

The Decline Of State Budget Priority For Public K-12 Education From FY 1975 To FY 1992

The fact that the Ohio Constitution requires the state to place a high priority on public K-12 education is very clear. The portion of the state budget that is assigned to public K-12 education may be a barometer of state priorities. In FY 1975, 45% of the state general revenue budget was appropriated to

public K-12 education. By FY 1992 the state portion diminished to 34.5%. The force of the *DeRolph* litigation drove the percentage of the State Budget allocated to public K-12 education to 39.3 in FY 2004; 39.1 in FY 2005; 39.4 in FY 2006; 38.8 in FY 2007; 39.7 in FY 2008 and 39.8 in FY 2009.



Source: Legislative Service Commission

It is apparent that there has been no consistent high priority given public K-12 education by the state. The priority changes not in accordance with student needs but in response to political considerations, and most recently in response to school funding litigation.

Public Education Is A State Responsibility: Myth Or Fact?

Article VI section 2 of the Ohio Constitution requires the state to secure a thorough and efficient system of common schools throughout the state. This constitutional provision seems very clear—public K-12 education is a state responsibility.

The Ohio Supreme Court, in the 1997 *DeRolph* decision, spoke to the issue of state responsibility. The Court opined that “thorough and efficient” is a purpose not local, not municipal but statewide. The Court quoted from the *Miller v. Korn*s (1923) decision in this regard: “This declaration is made by the people of the state. It calls for the upbuilding of a system of schools throughout the state, and the attainment of efficiency and thoroughness in that system is thus expressly made a purpose, not local, not municipal, but state-wide.” The state, therefore, has a constitutional responsibility to guarantee thorough, complete, effective educational programming to all students throughout the state regardless of geography or demographics.

The Court ruled that Ohio’s elementary and secondary schools are neither thorough nor efficient. The Court ordered the state to give the school funding system a complete systematic overhaul, citing four factors that contribute to the unworkability of the system and must be eliminated. The state has essentially ignored this order. During the ten years since the first *DeRolph* ruling, the state, at times, has thrown some more money at the problem but has not changed the structure of the school funding system. The emphasis on property tax has not changed and the funding formula level is still a function of residual budgeting. Contrary to Article VI, section 2, the quality of education is primarily a function of the amount of property wealth in the districts.

It is apparent that governors and legislatures have not treated public K-12 education as a state responsibility. Had they done so, the gross inequities, and more importantly the egregious inadequacies in the system, would not exist.

The state highway system is essentially uniform throughout the state, irrespective of the property or income wealth of the various political subdivisions. A state highway doesn't degenerate to a gravel path as it traverses through a property or income poor area. However, the state school system varies substantially due to variations in property and income wealth.

Ohioans must squarely confront the issue of state responsibility for public K-12 education. If we respect Article VI, section 2 of the Ohio Constitution, we must as citizens hold state officials accountable for securing a thorough and efficient system. If we become ambivalent about the issue, fearing loss of local control or some other potential consequence, then we should consider altering this constitutional provision.

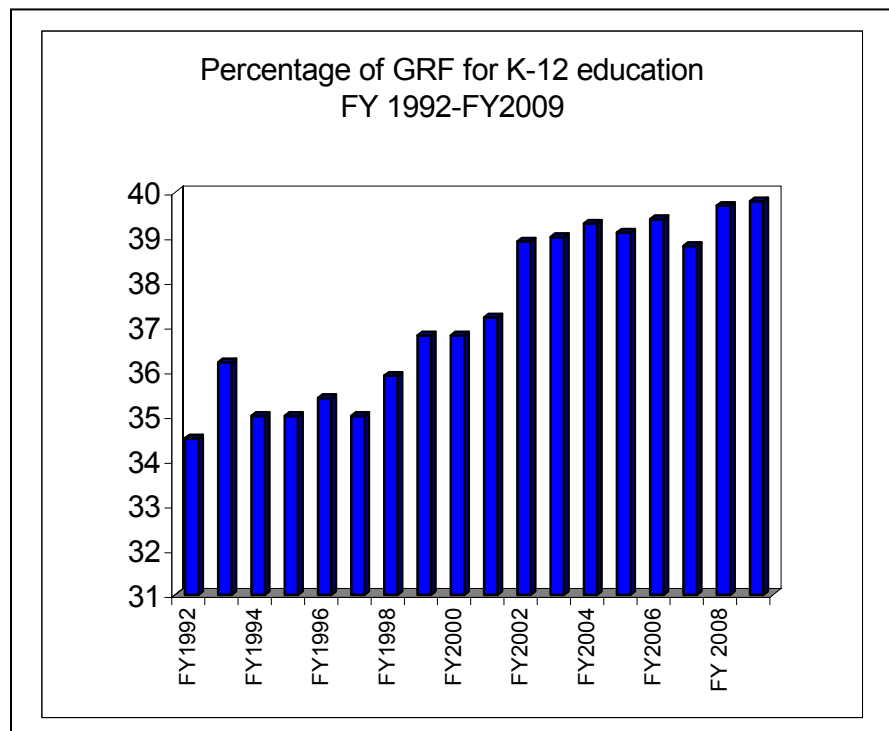
The formulation of a solution to the school funding problem must begin with a decision regarding state responsibility for public K-12 education. We, as a body politic, must decide whether we will put forward a state system or continue to tolerate a fragmented arrangement of 613 districts that receive some financial support from the state. The bottom line is that we, as Ohioans, must decide whether or not to perfect a **state system** –as the Constitution mandates.

The Impact Of The *DeRolph* Litigation

Many have reminded me that the *DeRolph* case is over! In fact, several districts have not paid dues to the E & A Coalition yet this year because “it is over”. As indicated elsewhere in this presentation, the Court has released jurisdiction of the case but the impact lives on. The Ohio School Facilities Commission has not gone out of business. The percentage of the State GRF Budget increased from 34.5 in FY 1992 (down from 45% in FY 1975) to 39.3 in FY 2004 and 39.4 in 2006. It slipped to 38.8% in FY 2007 but rebounded to 39.7 in FY 2008 and 39.8 in FY 2009.

Year	Percentage for K-12 education
FY1992	34.5
FY1993	36.2
FY1994	35
FY1995	35
FY1996	35.4
FY1997	35
FY1998	35.9
FY1999	36.8
FY2000	36.8
FY2001	37.2
FY2002	38.9
FY2003	39
FY2004	39.3
FY2005	39.1
FY2006	39.4
FY2007	38.8
FY 2008	39.7
FY 2009	39.8

Source: Legislative Service Commission



The state's school facilities program lives on. It is essentially alive and well under the exemplary leadership of former Senator Michael Shoemaker. Prior to the *DeRolph* decisions the state provided only a pittance for school facilities. Let us review the state appropriations since *DeRolph*.

As of June 30, 2007 the Ohio School Facilities Commission had spent \$5.5 billion on school facilities. On July 1, 2007 the Commission committed another \$2 billion to school district projects. At a later date, an additional \$800 million was committed to projects. The Commission has available another \$2 billion that as of now has not been committed. Therefore, over \$10 billion has been spent, committed or made available to the Commission.

This is huge—all because of a kid named DeRolph.

The Violation Of The Rule Of Law

It appears that the Ohio Supreme Court attempted to avoid a constitutional crisis by releasing jurisdiction of the *DeRolph* case. Legislative leaders openly defied the Court order to give the school funding system a complete systematic overhaul. A day after the March 24, 1997 *DeRolph* decision, the Governor and majority leaders in the House and Senate blatantly railed against the decision and the Court. The Senate President told reporters on one occasion that the Supreme Court would never be able to enforce the decision. The same Senate President, after the third decision, (September 6, 2001) defiantly said that the state has no money for this and thus the Court has a problem. State executive and legislative leaders have resisted each of the other *DeRolph* decisions as well. The Court in the fourth decision (December 11, 2002), apparently recognizing that the legislature would continue to resist the “complete systematic overhaul”, released jurisdiction of the case. In this fourth decision, the Court repeated the state's responsibility to give the school funding system a complete systematic overhaul, but gave up any further monitoring of the case. Hence, Ohio has an unconstitutional system of school funding but the Court refuses to enforce a remedy. A declaratory judgment without a remedy makes both the judgment and Court of little consequence in this matter. It makes manifest a breakdown in the rule of law. Why would an individual or entity seek a judgment through the judiciary if a remedy were not forthcoming or enforced? We certainly have a constitutional crisis.

Ohio is in the throes of a constitutional crisis that is largely ignored by the state political leaders, members of the Ohio Supreme Court and Ohioans in general. Public officials and other citizens cringe when a foreign leader, allied with the United States, suspends his country's constitution but tolerate the fact that Ohio's constitutional provision for public K-12 education has been suspended.

The Current Governor's Commitment To Resolve The Unconstitutional School-Funding Problem

Governor Ted Strickland resolved during the campaign that he would be a law abiding Governor regarding the school funding matter. He has stated that commitment repeatedly since taking office in January 2007. There is no doubt that the Governor will do all that is within his power to resolve the school-funding dilemma. However, no Governor is all-powerful.

The Governor is working with legislative leaders and an Ohio Supreme Court that do not share his commitment to fix the system. They seem to believe that the system has already been fixed.

The Governor inherited the confluence of an Ohio economy, state tax system and state budget that is not conducive to a school funding solution. Even with the Governor insisting on a high budget priority for public K-12 education, one-half of Ohio school districts will receive no increase in state revenues during this two-year budget period.

The Governor has been reaching out to the statewide education organizations, local education community members and various sectors of the public to gather information and data toward a solution. Virtually all sectors of the education community are encouraged by the Governor's ongoing commitment to solve the school-funding problem. Numerous meetings between various sectors of the education community and the Governor and key administration officials reinforce the hope that the Governor will eventually formulate a plan to reform public education, which will include a funding piece.

The education community is rightfully putting considerable faith in the Governor regarding the funding dilemma. The Governor, in the past, filed several amicus briefs in support of the plaintiffs in the *DeRolph* litigation. He personally paid for a brief in support of the E & A Coalition's petition for writ of certiorari before the U. S. Supreme Court. He has a long history of genuine support for public education.

The Governor's hands-on approach and personal understanding of education issues is encouraging. He truly has the potential of being Ohio's first "education governor".

Before we all get carried away with the notion that the Governor will be able to single-handedly fix school funding, lets do a reality check. The legislature in place today (at least, the majority leadership) is the same one that has not fixed the system. There is no current legislative movement on either side of the aisle to do anything with school funding.

The Ohio Supreme Court is tilted further away from school funding reform than in several previous decades. There will be no help from this branch of government for several years, if then.

Ohio's economy is still lagging behind the rest of the nation. Ohio is nearly first in the nation in home mortgage foreclosures and nearly last in the nation in job creation. Ohio has dropped below the national average in personal income and education attainment. Ohio exports more college degree holders than it imports. Additionally, Ohio's budget has some serious structural defects. All of the aforementioned factors will make a school funding solution extremely difficult for the Governor and his allies to reduce reliance on property tax and match the funding levels with the needs of students.

The Approach To Breaking The Log Jam: A Constitutional Amendment

Under current circumstances in Ohio, lobbying the legislature to fix the school funding system is not a gainful exercise. Further state litigation, considering the makeup of the Ohio Supreme Court, would be fruitless at this time. Given the boundaries of the current legislative districts (most of which are not competitive), the chances of changing the leadership of both houses of the legislature within the next few years is not encouraging.

So what intervention strategies are available? Article I, section 2 of the Ohio Constitution states:

§ 1.02 Right to alter, reform, or abolish government, and repeal special privileges (1851)

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

Article II, section 1 of the Constitution provides for the right of initiative petition to change the laws or the Constitution. There seems to be general consensus in the education community that additional constitutional direction must be given by the people of Ohio to the legislature and Governor. Simply put, Ohioans must pass a constitutional amendment to resolve the school-funding dilemma in this state. It is of interest that since the beginning of statehood there has been a constitutional amendment regarding public education every 50 or so years. The last educational amendment was adopted 54 years ago.

Why is an additional constitutional mandate necessary? What kind of decree is needed? What essential elements must be included in the mandate? Will a majority of Ohioans readily embrace a proposal that guarantees all school children high quality educational opportunities? Will the education community muster the courage and determination to coalesce around a plan that resolves the problems inherent in the current system? Will state officials meet the obligations imposed upon them by new constitutional language? These are some of the questions that must be pondered, examined and answered as attempts are made to resolve the school funding dilemma via a constitutional amendment.

The leaders of eleven statewide education organizations came together on February 14, 2006 to develop a strategy for resolving the long-standing school-funding problem. In an all day session, facilitated by a federal mediator, these leaders agreed on nine principles necessary to solve the problem:

- ✓ Each student has a fundamental right to a high quality public education.
- ✓ There must be a process established to define the components of a high quality education. The components must be updated on a regular basis.
- ✓ Phantom revenue must be eliminated.
- ✓ An objective process to determine cost must be established.
- ✓ School funding is a state responsibility.
- ✓ Educational opportunities must extend from Pre-K through grade 12.
- ✓ Enforceability of the right of students to high quality educational opportunities must be included in the package.
- ✓ The over-reliance on property tax must be reduced. Property tax relief must be achieved.
- ✓ The quality of education must not be a function of school district property valuation or district income.

Also during this first meeting a consensus emerged that a constitutional amendment would be required. Additional meetings to develop a plan were set.

The amendment was developed through intense discussion in more than 50 protracted sessions. The Ohio Mayors' Education Roundtable, which had been meeting to consider a constitutional amendment, was involved periodically and on a regular basis after June 2006. The education group and mayors group reached agreement on the content of the amendment in a meeting on November 10, 2006.

During the process of developing the amendment, two opinion polls and three focus groups were conducted. The emerging content of the amendment was "shopped" to superintendents, board

members, treasurers and other local school personnel in several regional meetings. Discussions were held with other education organization leaders, business leaders, union officials and members of the general public.

After the agreement on November 10 and before the amendment was made public on January 17, 2007, the Ohio Mayors' Education Roundtable withdrew from the effort. This caused some of the education organizations leaders a measure of discomfort but all organizations decided to forge ahead with the public announcement and the petition process.

It was assumed that the local constituents of the involved statewide education organizations would enthusiastically follow the lead of the organizations. It was further assumed that the local school community would garner at least one petition signature for each student in each school district in a short period of time. These assumptions were much too optimistic. The petition drive went much slower than anticipated.

There were several reasons that the local education community did not totally embrace the amendment. Some were philosophically opposed to any constitutional amendment or didn't want to affront the legislature and/or the Governor. Others had issues with the content of the amendment (it was not perfect in their mind). Still others believe they should give the Governor a chance to fix the school funding system. Still others wanted to know exactly how much their districts would receive under the amendment.

However, more than 16,000 Ohioans have carried petitions thus far. Nearly 200,000 signatures have been garnered. A group of superintendents, under the leadership of R. Kirk Hamilton, Dick Murray and Joe Regano, are spearheading a drive to finish the task of collecting a total of 403,000 valid signatures.

Since there were insufficient signatures to qualify for the November 2007 ballot, many assumed that the campaign ended in July. Others became discouraged and quit gathering signatures. However, the petition effort is going forward. Some statewide organizations are placing greater emphasis on the petition effort than others.

Below is a statement agreed upon last week by the consortium of statewide education organizations.

The Getting It Right For Ohio consortium includes twelve of the leading educational organizations in Ohio who are working together to achieve adequate funding for a high quality public education for all Ohio students. All members of the consortium have agreed to, and fully support, nine basic principles for the reform of school funding. They are:

1. Each student has a fundamental right to a high quality public education.
2. There must be a process established to define the components of a high quality education. The components must be updated on a regular basis.
3. Phantom revenue must be eliminated.
4. An objective process to determine cost must be established.
5. School funding is a state responsibility.
6. Educational opportunities must extend from Pre-K through grade 12.
7. Enforceability of the right of students to high quality educational opportunities must be included in the package.
8. The over-reliance on property tax must be reduced. Property tax relief must be achieved.

9. The quality of education must not be a function of school district property valuation or district income.

Members of the consortium are using a variety of methods to achieve these goals. Some members are actively circulating petitions in support of an amendment to the Ohio constitution to prioritize and adequately fund public education. To date, those efforts have garnered over 165,000 signatures, possibly the largest all volunteer effort in recent years.

Members also are focused on influencing the Governor, the legislature and the State Board of Education in the development of a comprehensive solution consistent with the consortium's governing principles. Regardless of the individual organization's focus, all members agree that the quality of public education is directly tied to the economic welfare of our state and that comprehensive educational reform, including funding reform, is essential. All members have pledged their continuing efforts toward a collaborative solution to this problem.

The petition effort is going forward.

A Defining Moment For The Education Community

The education community at the state level demonstrated that it could work together on a very complex and difficult issue. These major organizations are committed to continue to work together collaboratively on the school funding problem until it is resolved. At this juncture, each organization has its own area of emphasis.

The organization that I represent, the E & A Coalition, is committed to completing the petition effort to garner more than 403,000 valid signatures for the amendment.

It is my personal opinion that the constitutional amendment is the only viable solution. The amendment is not perfect, but it will remove the flaws the Court found with the system and ensure high quality educational opportunities for all students.

Failure to secure the required number of signatures would send the wrong message to state officials. It would diminish any political clout the education community now has. It would send the message that the education community is not dissatisfied with the current system.

Those who are waiting for a perfect amendment are being naïve. The one on the table is as perfect as can be devised. Those who are waiting to see how the amendment will impact their own district are being unrealistic. That impact cannot be determined until the state actually determines the cost of a high quality education. But one thing is sure—the current level of state funding is totally inadequate and the amendment will force the state to ensure an adequate level.

Those who are waiting to learn where the state will get the money are expecting the impossible. The state has demonstrated various state budget priorities for public K-12 education over the years; from 45% of the state budget allotted to public K-12 education in FY 1975 to 34.5% in FY 1992 and 39.8% in FY 2009. Ohio won't collect \$14 billion during this two-year budget cycle due to loopholes in the state tax system. State officials could close some of the loopholes. The state couldn't find money for school facilities until the *DeRolph* litigation, but state officials have found over \$10 billion since 1997.

Those who are waiting for the Governor to resolve the problem without the support of a constitutional amendment have not learned from school funding history of the last 200 years. The Governor, regardless of commitment, cannot work miracles.

Those who are waiting for other state officials to fix the system are being blind to the facts. Fixing the school funding problem is not on their radar screen.

Those who are waiting on someone else to do the heavy lifting are being selfish. The signature campaign will not be successful without the involvement of more people.

Those who are too busy to get involved are much too busy. This amendment effort is the only one in our lifetime that we will have a chance to set in motion a process to ensure high quality educational opportunities for all students. Everyone has time to do what is important to them. This is a one-in-a-lifetime opportunity.

Summary of the amendment

Specifically, the proposal embodies the following concepts:

- ▶ Establishes a fundamental right to a high quality education for all public school pupils in Ohio.
- ▶ Creates an Education Accountability Commission, appointed by the Governor, Speaker of the House and President of the Senate, to monitor and annually report to the Governor, the General Assembly and the State Board of Education regarding the extent to which high quality educational opportunities and new state investments are delivered in a cost efficient and effective manner and their impact on student performance.
- ▶ Directs the State Board of Education to conduct extensive, thorough, validated studies every two years to determine the components, and the cost of those components, of a high quality education for all types of students (regular, special, gifted, poverty, etc.) at all grades and specifies certain subjects (research, best practices, incentives, location, professional development, etc.) to be considered by the Board during that process. Directs State Board to appoint diverse 18-member advisory commission to assist.
- ▶ Specifies that the Board's recommendations shall constitute a "thorough and efficient system" and that sufficient funds to underwrite these costs shall be deposited by the State Treasurer into the School Trust Fund to be distributed to districts. Authorizes the General Assembly to override the State Board's recommendation with a three-fifths vote of both Houses, as long as the General Assembly's plan provides essentially the same components, programs and services.
- ▶ Establishes the first year of implementation to be the third fiscal year (2011) following adoption. During two intervening years (2009 and 2010), base cost funding is to increase by 5% each year, plus appropriate inflationary increases.

- ▶ Establishes permanent local contribution for school districts (interpret as “charge-off”) to be the revenue from 20 mills of property taxation or their equivalent in school district income tax revenues or revenues from other forms of authorized taxation. This will occur at the end of a six-year phase-in period beginning in FY2012. In districts with effective operating millage of more than 20 (up to a maximum of 34), the required local contribution in 2011 shall consist of their actual millage (up to 34). Beginning in FY2012, the required local contribution will be lowered each year by 1/6 of the difference between the FY2011 level and 20 mills until all districts reach 20 mills of required contribution in FY2017. All of the mills above 20 continue in place subject to the rate reduction factors of the Constitution (H.B. 920). Beginning in FY2011, 20 mills will be exempt from the rate reduction factors. Meanwhile, no district will receive less state aid during the phase-in period than it did in FY2008 or FY2010, whichever is greater.
- ▶ Directs State to continue its current facilities program through its planned completion and develop and maintain an ongoing facilities program and funding schedule thereafter.
- ▶ Provides for a permanent Local Government Fund, adjusted annually for inflation.
- ▶ Maintains higher education funding at a minimum of 2007 levels, adjusted annually for inflation.
- ▶ Creates direct access to Ohio Supreme Court for purposes of enforcing these funding provisions.
- ▶ Provides targeted property tax relief for seniors and the permanently disabled.