

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1025 Session of  
1997

INTRODUCED BY STRITTMATTER, BATTISTO, E. Z. TAYLOR, SCHULER,  
CLARK, ARMSTRONG, BROWN, SEMMEL, SATHER, LYNCH, STEIL,  
MILLER, HERSHEY, FLICK, RUBLEY, BARLEY, STERN, EGOLF, DRUCE,  
THOMAS, TRUE, MAITLAND, HENNESSEY, HUTCHINSON, WAUGH, GEIST,  
ROSS, LEH, ZUG AND SAYLOR, MARCH 19, 1997

REFERRED TO COMMITTEE ON EDUCATION, MARCH 19, 1997

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An  
2 act relating to the public school system, including certain  
3 provisions applicable as well to private and parochial  
4 schools; amending, revising, consolidating and changing the  
5 laws relating thereto," further providing for awarding of a  
6 contract or contracts, specifications and lowest responsible  
7 bids for construction or lease or purchase of buildings.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. Section 701.1 of the act of March 10, 1949  
11 (P.L.30, No.14), known as the Public School Code of 1949, added  
12 June 27, 1973 (P.L.75, No.34), is amended to read:

13 Section 701.1. Referendum or Public Hearing Required Prior  
14 to Construction or Lease.--(a) Except where the approval of the  
15 electors is obtained to incur indebtedness to finance the  
16 construction of a school project, the board of school directors  
17 of any school district of the second, third or fourth classes,  
18 shall not construct, enter into a contract to construct or enter  
19 into a contract to lease a new school building or substantial

1 addition to an existing school building without the consent of  
2 the electors obtained by referendum or without holding a public  
3 hearing as hereinafter provided. In the event that a new school  
4 building or a substantial addition to an existing building is to  
5 be constructed or leased, the school board shall, by a majority  
6 vote of all its members, authorize a maximum project cost and a  
7 maximum building construction cost to be financed by the  
8 district or amortized by lease rentals to be paid by the  
9 district. Building construction cost shall consist of the cost  
10 of all building construction including general construction  
11 costs, plumbing, heating, electrical, ventilating and other  
12 structural costs, equipment and fixtures and architectural and  
13 engineering fees relating thereto, but not including costs for  
14 site acquisition and development, rough grading to receive the  
15 building, sewage treatment facilities or equivalent capital  
16 contributions, and architectural and engineering fees relating  
17 thereto. In all cases, a public hearing shall be held not later  
18 than thirty (30) days before the school district submits the  
19 initial building construction cost estimates to the Department  
20 of Education for approval. Notice of the hearing shall be given  
21 not later than twenty (20) days before the date of the scheduled  
22 hearing. In the event that the maximum building construction  
23 cost authorization exceeds the aggregate building expenditure  
24 standard hereinafter specified, the aforesaid authorization of  
25 the school board shall be submitted to the electors of the  
26 school district for their approval within six (6) months prior  
27 to submission of the final building construction cost bids to  
28 the Department of Education for approval. Such referendum shall  
29 be held in the same manner as provided by law for the approval  
30 of the incurring of indebtedness by referendum. The question as

1 submitted shall specify the maximum project cost, the maximum  
2 building construction cost and the annual sinking fund charge or  
3 lease rental to be incurred by the school district and the  
4 portion of such charge or rental expected to be reimbursed by  
5 the Commonwealth. If the final building construction cost bids  
6 to be submitted to the Department of Education for approval are  
7 less than the aggregate building expenditure standard hereafter  
8 specified but exceed by eight (8) per cent or more the initial  
9 building construction cost estimates submitted to the Department  
10 for approval, a second public hearing shall be held before the  
11 Department shall give its final approval.

12 (b) The applicable aggregate building expenditure standard  
13 shall be a total amount calculated for each building or  
14 substantial addition by multiplying the rated pupil capacity  
15 under the approved room schedule by the following: two thousand  
16 eight hundred dollars (\$2,800) for each pupil of rated  
17 elementary capacity; four thousand two hundred dollars (\$4,200)  
18 for each pupil of rated secondary capacity in grades seven,  
19 eight and nine and five thousand two hundred dollars (\$5,200)  
20 for each pupil of rated secondary capacity in grades ten, eleven  
21 and twelve and five thousand two hundred dollars (\$5,200) for  
22 each pupil of rated vocational-technical capacity in grades ten,  
23 eleven and twelve to not include the cost of equipment and  
24 fixtures in such vocational-technical schools: Provided,  
25 however, That each of the preceding per pupil amounts shall be  
26 adjusted by the Department of Education on July 1, 1974; and  
27 annually thereafter by multiplying said amounts by the ratio of  
28 the composite construction cost index compiled and published by  
29 the United States Department of Commerce for the preceding  
30 calendar year to such index for the next preceding calendar

1 year. Rated elementary pupil capacity or rated secondary pupil  
2 capacity for any school building shall be the rated pupil  
3 capacity determined on the basis of the method used by the  
4 Department for school building reimbursement purposes during the  
5 school year 1971-1972.

6 (c) The State Board of Education shall, by regulation,  
7 establish for leased buildings a method for determination of  
8 standards of measurement, including, without limitation, the  
9 maximum building construction cost, the maximum project cost and  
10 the aggregate building expenditure standard, which are  
11 comparable to those required by this section for the  
12 construction of buildings. Pending adoption and publication of  
13 final rules and regulations, the State Board of Education shall  
14 have the power and authority to promulgate, adopt, publish and  
15 use interim regulations for the implementation of this provision  
16 for a period of one year immediately following the effective  
17 date of this subsection or until the effective date of final  
18 rules and regulations, whichever first occurs. Notwithstanding  
19 any other provision of law to the contrary, the interim  
20 regulations proposed under the authority of this subsection  
21 shall not be subject to review pursuant to the act of June 25,  
22 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

23 (d) For purposes of this section:

24 (1) "Site acquisition" includes the cost of land and mineral  
25 rights, demolition and clearing, rights-of-way and related  
26 utility relocations, surveys and soils analysis, and the cost of  
27 all fees relating thereto.

28 (2) "Site development" includes excavation, grouting or  
29 shoring, special foundations for buildings, access roads to  
30 site, utilities on site, extension of utilities to site.

1       (3) "Equipment and fixtures" means property fixed or movable  
2 which is incidental and necessary to conduct the educational  
3 program, and includes, but is not limited to movable equipment  
4 such as desks, chairs, tables, portable physical education  
5 equipment, audio-visual equipment and science, homemaking,  
6 industrial art and business equipment and instructional  
7 materials and fixtures such as casework, laboratory equipment,  
8 kitchen equipment, auditorium seating and any other special  
9 fixtures or equipment required to conduct a particular  
10 educational program.

11       (4) "Substantial addition" means more than twenty (20) per  
12 centum of the area and replacement value of the structure to  
13 which the improvement is to be added.

14       Section 2. Section 703.1 of the act, added December 6, 1972  
15 (P.L.1445, No.323), is amended to read:

16       Section 703.1. Lease of Buildings or Portions of Buildings  
17 Constructed or Altered for School Use.--(a) The board of school  
18 directors of any district is hereby vested with the power and  
19 authority to lease for an extended period of five (5) years or  
20 more, with or without provisions for acquisition of same,  
21 buildings or portions of buildings constructed for school use  
22 and/or other buildings or portions of buildings altered for  
23 school use provided such buildings comply with standards and  
24 regulations established by the State Board of Education and the  
25 Department of Labor and Industry.

26       (b) The lease agreement must be executed prior to the  
27 commencement of any work on the construction of a new building  
28 or the commencement of any work for the alteration or renovation  
29 of any existing building. The term of the lease agreement must  
30 begin at any time prior to the occupancy of the building. Any

1 provision of the lease agreement providing for assignment must  
2 require prior written consent of the board of school directors.

3 Section 3. Section 751 of the act, amended July 13, 1979  
4 (P.L.94, No.41), October 10, 1980 (P.L.924, No.159) and May 4,  
5 1990 (P.L.164, No.38), is amended to read:

6 Section 751. Work to be Done Under Contract Let on Bids;  
7 Exception.--(a) (1) All construction, reconstruction, repairs,  
8 maintenance or work of any nature, including the introduction of  
9 plumbing, heating and ventilating, or lighting systems, upon any  
10 school building or upon any school property, or upon any  
11 building or portion of a building leased under the provisions of  
12 section 703.1, made by any school district, where the entire  
13 cost, value, or amount of such construction, reconstruction,  
14 repairs, maintenance or work, including labor and material,  
15 shall exceed ten thousand dollars (\$10,000), shall be done under  
16 a lease contract or separate contracts to be entered into by  
17 such school district with the lowest responsible bidder, upon  
18 proper terms, after due public notice has been given asking for  
19 competitive bids. [Whenever a board of school directors shall  
20 approve the use of a prefabricated unit, complete in itself, for  
21 a school building or other proper structure to be erected upon  
22 school property, the board of school directors may have prepared  
23 appropriate specifications detailing the size and material  
24 desired in a particular prefabricated unit, including all  
25 utilities such as plumbing, heating and ventilating, and  
26 electrical work, and may advertise for a single bid on all the  
27 work and award the contract therefor to the lowest responsible  
28 bidder:] The board of school directors shall, in its discretion,  
29 have prepared separate specifications for construction,  
30 plumbing, heating and ventilating and electrical work, or

1 separate bids on each of the branches of work or combinations  
2 thereof or a single bid on all the work. The board of school  
3 directors shall award the contract or contracts to the lowest  
4 responsible bidder or bidders: Provided, That if due to an  
5 emergency a school plant or any part thereof becomes unusable, a  
6 competitive bid or competitive bids for repairs or replacement  
7 may be solicited from at least three responsible bidders, and  
8 upon the approval of any of these bids by the Secretary of  
9 Education, the board of school directors may proceed at once to  
10 make the necessary repairs or replacements in accordance with  
11 the terms of said approved bid or bids.

12 (2) For the purposes of this subsection, "emergency" means  
13 an unforeseen event such as a fire, tornado, flood, explosion or  
14 other unforeseen event as may be determined by the Secretary of  
15 Education.

16 (a.1) Written or telephonic price quotations from at least  
17 three qualified and responsible contractors shall be requested  
18 by the board of school directors for all contracts that exceed  
19 four thousand dollars (\$4,000) but are less than the amount  
20 requiring advertisement and competitive bidding, or, in lieu of  
21 price quotations, a memorandum shall be kept on file showing  
22 that fewer than three qualified contractors exist in the market  
23 area within which it is practicable to obtain quotations. A  
24 written record of telephonic price quotations shall be made and  
25 shall contain at least the date of the quotation, the name of  
26 the contractor and the contractor's representative, the  
27 construction, reconstruction, repair, maintenance or work which  
28 was the subject of the quotation and the price. Written price  
29 quotations, written records of telephonic price quotations and  
30 memoranda shall be retained for a period of three years.

1 (b) The board of school directors in any school district may  
2 perform any construction, reconstruction, repairs, or work of  
3 any nature, where the entire cost or value, including labor and  
4 material, is less than five thousand dollars (\$5000), by its own  
5 maintenance personnel. The board of school directors in any  
6 school district may authorize the secretary of the board or  
7 other executive to award contracts for construction,  
8 reconstruction, repairs, or work of any nature, where the entire  
9 cost or value, including labor and material, is ten thousand  
10 dollars (\$10,000) or less, without soliciting competitive bids,  
11 subject, however, to the provisions of subsection (a.1).

12 (c) Every contract for the construction, reconstruction,  
13 alteration, repair, improvement or maintenance of public works  
14 shall comply with the provisions of the act of March 3, 1978  
15 (P.L.6, No.3), known as the "Steel Products Procurement Act."

16 (d) The board of school directors of any school district  
17 may, in addition to the power granted in subsection (b), utilize  
18 also its own maintenance or other personnel to perform  
19 maintenance work irrespective of the entire cost or value of  
20 such work.

21 (e) No person, consultant, firm or corporation contracting  
22 with a school district for purposes of rendering personal or  
23 professional services to the school district shall share with  
24 any school district officer or employe, and no school district  
25 officer or employe shall accept, any portion of the compensation  
26 or fees paid by the school district for the contracted services  
27 provided to the school district except under the following terms  
28 or conditions:

29 (1) Full disclosure of all relevant information regarding  
30 the sharing of the compensation or fees shall be made to the



1 board of school directors.

2 (2) The board of school directors must approve the sharing  
3 of any fee or compensation for personal or professional services  
4 prior to the performance of said services.

5 (3) No fee or compensation for personal or professional  
6 services may be shared except for work actually performed.

7 (4) No shared fee or compensation for personal or  
8 professional services may be paid at a rate in excess of that  
9 commensurate for similar personal or professional services.

10 (f) No board of school directors shall evade the provisions  
11 of this section as to advertising for bids or purchasing  
12 materials or contracting for services piecemeal for the purpose  
13 of obtaining prices under ten thousand dollars (\$10,000) upon  
14 transactions which should, in the exercise of reasonable  
15 discretion and prudence, be conducted as one transaction  
16 amounting to more than ten thousand dollars (\$10,000). This  
17 provision is intended to make unlawful the practice of evading  
18 advertising requirements by making a series of purchases or  
19 contracts each for less than the advertising requirement price,  
20 or by making several simultaneous purchases or contracts each  
21 below said price, when in either case the transaction involved  
22 should have been made as one transaction for one price.

23 Section 4. Section 791 of the act is amended by adding a  
24 subsection to read:

25 Section 791. Grants, Conveyances, Appropriations to,  
26 Contracts with, and Leases from, Profit or Nonprofit  
27 Corporations, Partnerships, Associations, or Persons.--\* \* \*

28 (c) A lease agreement authorized by this section must be  
29 executed prior to the commencement of any work on the  
30 construction of a new building or the commencement of any work

1 for the alteration or renovation of any existing building. The  
2 term of the lease agreement must begin at any time prior to the  
3 occupancy of the building. Any provision of the lease agreement  
4 providing for assignment must require prior written consent of  
5 the board of school directors.

6 Section 5. Section 2574.2 of the act, added December 6, 1972  
7 (P.L.1445, No.323), is amended to read:

8 Section 2574.2. Approved Reimbursable Annual Rental for  
9 Leases of Buildings and Facilities for School Use.--(a) For  
10 extended leases of buildings and facilities for school use  
11 authorized under the provisions of section 703.1 which have been  
12 approved by the Secretary of Education, the Department of  
13 Education shall calculate an approved reimbursable annual rental  
14 charge.

15 (b) Approved reimbursable annual rental for such approved  
16 leases of building facilities constructed for school use shall  
17 be the lesser of (i) the product of the annual rental payable  
18 under the provisions of the approved lease agreement times the  
19 ratio of the pupil scheduled area to the architectural area, or  
20 (ii) the product of the rated pupil capacity as determined by  
21 the Department of Education at the time of initial lease times  
22 one hundred sixty dollars (\$160) for elementary schools, two  
23 hundred twenty dollars (\$220) for secondary schools, or two  
24 hundred seventy dollars (\$270) for area vocational-technical  
25 schools.

26 (c) Annual approved rental payable for approved leases of  
27 existing facilities altered for school use shall be the lesser  
28 of (i) the product of the annual rental payable under the  
29 provisions of the approved lease agreement times the ratio of  
30 the pupil scheduled area to the architectural area, or (ii) the

1 product of the rated pupil capacity, as determined by the  
2 Department of Education at the time of initial lease, times one  
3 hundred twelve dollars (\$112) for elementary, one hundred fifty-  
4 four dollars (\$154) for secondary, or one hundred eighty-nine  
5 dollars (\$189) for area vocational-technical schools.

6 (d) The State Board of Education shall, by regulation,  
7 establish for leased buildings a method for calculating  
8 reimbursement which shall provide reimbursement comparable to  
9 the reimbursement allowable for the construction of buildings.  
10 Pending adoption and publication of final rules and regulations,  
11 the State Board of Education shall have the power and authority  
12 to promulgate, adopt, publish and use interim regulations for  
13 the implementation of this provision for a period of one year  
14 immediately following the effective date of this subsection or  
15 until the effective date of final rules and regulations,  
16 whichever first occurs. Notwithstanding any other provision of  
17 law to the contrary, the interim regulations proposed under the  
18 authority of this subsection shall not be subject to review  
19 pursuant to the act of June 25, 1982 (P.L.633, No.181), known as  
20 the "Regulatory Review Act."

21 Section 6. (a) All provisions of prior acts with respect to  
22 the separation of construction specifications, construction bids  
23 or construction contracts are hereby repealed insofar as they  
24 are inconsistent with this act.

25 (b) All additional and otherwise applicable statutory  
26 provisions relating to projects of public work, public  
27 construction, school construction or public buildings are  
28 applicable to projects undertaken under this act, except to the  
29 extent to which this act is specifically inconsistent.

30 Section 7. This act shall take effect immediately.