
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2291 Session of
2008

INTRODUCED BY DePASQUALE, HORNAMAN, ARGALL, BELFANTI,
BENNINGTON, CALTAGIRONE, CUTLER, DERMODY, GEORGE, GIBBONS,
GILLESPIE, GOODMAN, HARKINS, HELM, M. KELLER, KORTZ,
LEVDANSKY, MACKERETH, MARSHALL, McILVAINE SMITH, PASHINSKI,
PETRONE, PYLE, SCAVELLO, SWANGER, THOMAS, TRUE AND
YOUNGBLOOD, MARCH 5, 2008

REFERRED TO COMMITTEE ON EDUCATION, MARCH 5, 2008

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," providing for certificate of need for
6 public school construction.

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

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding a
11 section to read:

12 Section 701.2. Certificate of Need for Public School
13 Construction.--(a) (1) Where total estimated building
14 construction cost estimates exceed thirty thousand dollars
15 (\$30,000), no public school building, athletic facility or other
16 facility or substantial addition may be contracted for,
17 constructed or reconstructed by a school district until a
18 certificate of need is obtained from the Department of

1 Education.

2 (2) The total estimated building construction cost under
3 clause (1) shall be offset by credits provided by the department
4 for school building plans based on an approved school facility
5 design received from the department's school facility design
6 clearinghouse.

7 (3) The total estimated building construction cost under
8 clause (1) shall be offset by credits provided by the department
9 for school building plans that incorporate green building
10 features designed to meet silver, gold or platinum certification
11 from the United States Green Building Council's Leadership in
12 Energy and Environmental Design Green Building Rating System or
13 to receive two, three or four globes under the Green Building
14 Initiative's Green Globes Green Building Rating System provided
15 that the cost differential does not exceed seven (7) per cent.

16 (4) The total estimated building construction cost under
17 clause (1) shall be offset by credits provided by the department
18 for school building plans that maximize building reuse and
19 preserve open space, provided that the cost differential does
20 not exceed seven (7) per cent.

21 (5) The department shall establish standards and regulations
22 by which credits may be awarded under clauses (2), (3) and (4).

23 (b) (1) Projects requiring a certificate of need shall, at
24 the earliest possible time in their planning, be submitted to
25 the Department of Education in a letter of intent and shall
26 include a description of the proposed project and total
27 estimated building construction cost, the justification for its
28 need and any other information required by the department.
29 Within thirty (30) days after receipt of the letter of intent,
30 the department shall inform the applicant providing the letter

1 of intent whether the proposed project is subject to a
2 certificate of need review or if additional information is
3 required to make that determination. If the department
4 determines that the project is subject to a certificate of need
5 review, the project shall be subject to the remaining provisions
6 of this section.

7 (2) A school district desiring to obtain a certificate of
8 need shall apply in writing to the department, supplying
9 information required by the department, including a ten-year
10 plan for projects involving the construction of a public school
11 building for academic use and a twenty-year plan for projects
12 involving the construction of an athletic facility or other
13 public school building or facility for nonacademic use, and
14 certifying that all data, information and statements are factual
15 to the best of the applicant's knowledge, information and
16 belief. The department shall have sixty (60) days after the
17 receipt of the application within which to assess the
18 application and in which to request specific further
19 information. If further information is requested, the department
20 shall complete its preliminary assessment of the application
21 within forty-five (45) days of receipt of the same.

22 (3) Timely notice of the beginning of review of the
23 application by the department shall be published after
24 preliminary assessment of the application is completed by the
25 department. The date of notification of the beginning of review
26 shall be the date the notice is sent or the date such notice is
27 published in the Pennsylvania Bulletin or in a newspaper of
28 general circulation, whichever is latest.

29 (4) The department shall approve or disapprove the
30 application within ninety (90) days from the date of

notification of the beginning of the review unless the period for review is extended by the applicant in writing.

(5) A certificate of need shall state the maximum amount of expenditures which may be obligated under it, and applicants proceeding with an approved project may not exceed this level of expenditure except as allowed under conditions and procedures established by the department through regulation.

(6) The department shall make written findings which state the basis for any final decision made by the department. The findings shall be served upon the applicant and provided to all persons expressing an interest in the proceedings and shall be made available to others upon written request.

(7) All decisions of the department shall be based solely on the record. No ex parte contact regarding the application between any employee of the department who exercises responsibilities respecting the application and the applicant, any person acting on behalf of the applicant or any person opposed to the issuance of the certificate of need shall occur after the commencement of a hearing on the application and before a decision is made by the department.

(8) Modification of the application at any stage of the proceeding shall not extend the time limits provided by this section unless the department expressly finds that the modification represents a substantial change in the character of the application.

(c) (1) Notice of a completed application for a certificate of need or amendment of an application and of the beginning of review shall be published by the school district in the appropriate news media and by the Department of Education in the Pennsylvania Bulletin in accordance with 45 Pa.C.S. Ch. 7 Subch.

1 B (relating to publication of documents), and the school
2 district shall notify affected persons with notice of the
3 schedule for review, the date by which a public hearing must be
4 demande and the manner notice will be given of a hearing, if
5 one is to be held. Notice to affected persons, other than
6 members of the public who are to be served by the proposed new
7 school district building project, shall be by mail, which may be
8 part of a newsletter. Members of the public may be notified
9 through newspapers of general circulation. Directly affected
10 persons may file objections within fifteen (15) days of the
11 publication with the department setting forth specifically the
12 reasons objections were filed. Persons filing the objections
13 shall be parties to the proceeding, unless and until objections
14 are withdrawn.

15 (2) Affected persons may request a public hearing, or the
16 school district may require a public hearing during the course
17 of review. Fourteen (14) days' written notice of the hearing
18 shall be given to affected persons in the same manner as a
19 notice of a completed application is provided in subsection
20 (d)(1). In the hearing, any person shall have the right to be
21 represented by counsel and to present oral or written arguments
22 and relevant evidence. A person directly affected may conduct
23 reasonable questioning of persons who make relevant factual
24 allegations. A record of the hearing shall be maintained.

25 (d) (1) Notification of the beginning of review of a
26 certificate of need application shall be published by the
27 Department of Education in the appropriate news media and in the
28 Pennsylvania Bulletin in accordance with 45 Pa.C.S. Ch. 7 Subch.
29 B. The notice shall identify the schedule for review, the date
30 by which a public meeting must be requested and the manner in

1 which notice will be given of a meeting, if one is held.

2 (2) Interested persons may request a public meeting within
3 fifteen (15) days of publication, and the department shall hold
4 a meeting or the department may require a public meeting during
5 the course of review. The department shall publish written
6 notice of the meeting in the appropriate news media and the
7 Pennsylvania Bulletin at least fourteen (14) days prior to the
8 public meeting date. In the meeting, the applicant and any
9 interested person providing prior notice to the department shall
10 have the right to present oral or written comments and relevant
11 evidence on the application in the manner prescribed by the
12 department. The department shall prepare a transcript of the
13 oral testimony presented at the meeting. Meetings shall be held
14 in accordance with the guidelines and procedures established by
15 the department and published in the Pennsylvania Bulletin as a
16 statement of policy. The department may require the applicant to
17 provide copies of the application to any interested person
18 making a request for the application, at the expense of the
19 interested person.

20 (3) The applicant may, for good cause shown, request in
21 writing a public hearing for the purpose of reconsideration of a
22 decision of the department within ten (10) days of service of
23 the decision of the department. The department shall treat the
24 request in accordance with the provisions of 1 Pa. Code § 35.241
25 (relating to application for rehearing or reconsideration). The
26 department shall set forth the cause for the hearing and the
27 issues to be considered at the hearing. If the hearing is
28 granted, it shall be held no sooner than six (6) days and no
29 later than thirty (30) days after the notice to grant a hearing
30 and shall be limited to the issues submitted for

1 reconsideration. Transcript shall be made of the hearing and a
2 copy of the transcript shall be provided at cost to the
3 applicant. The department shall affirm or reverse its decision
4 and submit the same to the person requesting the hearing within
5 thirty (30) days of the conclusion of the hearing. Any change in
6 the decision shall be supported by the reasons for the change.

7 (4) Where hearings under subsection (e)(2) are held on more
8 than two (2) days, consecutive days of hearings and intervening
9 weekends and holidays shall be excluded in calculating the time
10 permitted for the department to conduct its review, and, if
11 briefs are to be filed, ten (10) days subsequent to the
12 adjournment of the hearing shall also be excluded.

13 (e) Good cause shall be deemed to have been shown if:

14 (1) there is significant, relevant information not
15 previously considered;

16 (2) there is significant change in factors or circumstances
17 relied on in making the decision;

18 (3) there has been material failure to comply with the
19 procedural requirements of this section; or

20 (4) good cause is otherwise found to exist.

21 (f) During the course of review the Department of Education
22 shall upon request of any person set forth the status, any
23 findings made in the proceeding and other appropriate
24 information requested. The department may require the request in
25 writing.

26 (g) (1) An application for certificate of need shall be
27 considered for approval when the Department of Education
28 determines that the application substantially meets the
29 following requirements:

30 (i) There is need by the population served or to be served

by the proposed construction project in meeting the requirement of the duty to provide necessary grounds and suitable buildings contained in section 701.

(ii) The proposed construction project is sufficient to meet the need under subclause (i).

(iii) The plan for the proposed construction project meets construction standards regarding space, materials and equipment best suited to the educational goals of the district.

(2) The department shall issue a certificate of need if the project substantially meets the criteria of clause (1) unless the department can demonstrate any of the following:

(i) There is a more appropriate, less costly or more effective alternative method of accomplishing the goal of providing students with an education in suitable buildings and necessary grounds.

(ii) The building project is not financially and economically feasible, considering projected enrollment and the availability of reasonable financing based on information received from the applicant and other sources during the review process.

(iii) The proposed building project will have an inappropriate, adverse impact on property taxes and the overall level of education expenditures in the area.

(3) Notwithstanding the provision of clauses (1) and (2), applications for projects described in clause (4) shall be approved unless the department finds that the building project as proposed is not needed or that the project is not consistent with any applicable Federal law. An application made under this clause shall be approved only to the extent that the department determines it is required to overcome the conditions described

1 in clause (4).

2 (4) Subject to the provisions of clause (3), clauses (1) and
3 (2) shall not apply to capital expenditures required to:

4 (i) eliminate or prevent imminent safety hazards as a result
5 of violations of safety codes or regulations; or

6 (ii) comply with accreditation standards, compliance with
7 which is required to receive reimbursement or payments under the
8 No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat.
9 1425).

10 (h) A certificate of need or an amendment to it shall expire
11 two (2) years from the date of issue unless substantially
12 implemented, as defined by regulation. The Department of
13 Education may grant extensions for a specified time upon request
14 of the applicant and upon a showing that the applicant has or is
15 making a good faith effort to substantially implement the
16 project. An expired certificate of need shall be invalid, and no
17 person may proceed to undertake any activity pursuant to it for
18 which a certificate of need or amendment is required.

19 (i) (1) The Department of Education shall prepare and
20 publish not less frequently than annually reports of reviews
21 conducted under this section, including a statement on the
22 status of each review and of reviews completed by it and
23 statements of the decisions made in the course of reviews since
24 the last report. The department shall also make available to the
25 general public for examination at reasonable times of the
26 business day all applications reviewed by it. The reports and
27 applications shall be considered public records.

28 (2) The department's report shall be submitted to the
29 Education Committee of the Senate and the Education Committee of
30 the House of Representatives and shall contain the following

1 information:

2 (i) The volume of applications submitted, by project type,
3 their dollar value, and the numbers and costs associated with
4 those approved and those not approved.

5 (ii) A detailed description of projects involving green
6 design or other energy savings initiatives and the decisions
7 made on each of these projects.

8 (iii) The average time for review, by level of review.

9 (iv) The fees collected for reviews and the cost of the
10 program.

11 Section 2. This act shall take effect in 60 days.