

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 706 Session of  
1995

INTRODUCED BY STRITTMATTER, SCHULER, MELIO, BARLEY, STEIL,  
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GODSHALL, REINARD, MILLER, TULLI, BROWNE, MARSICO, SATHER,  
CLARK, LEH, CARONE, FLICK AND MERRY, FEBRUARY 13, 1995

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, FEBRUARY 13, 1995

## 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

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

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

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

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

7 (c) The State Board of Education shall, by regulation,  
8 establish for leased buildings a method for determination of  
9 standards of measurement, including, without limitation, the  
10 maximum building construction cost, the maximum project cost and  
11 the aggregate building expenditure standard, which are  
12 comparable to those required by this section for the  
13 construction of buildings. Pending adoption and publication of  
14 final rules and regulations, the State Board of Education shall  
15 have the power and authority to promulgate, adopt, publish and  
16 use interim regulations for the implementation of this provision  
17 for a period of one year immediately following the effective  
18 date of this subsection or until the effective date of final  
19 rules and regulations, whichever first occurs. Notwithstanding  
20 any other provision of law to the contrary, the interim  
21 regulations proposed under the authority of this subsection  
22 shall not be subject to review pursuant to the act of June 25,  
23 1982 (P.L.633, No.181), known as the "Regulatory Review Act."

24 (d) For purposes of this section:

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

29 (2) "Site development" includes excavation, grouting or  
30 shoring, special foundations for buildings, access roads to

1 site, utilities on site, extension of utilities to site.

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

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

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

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

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

1 begin at any time prior to the occupancy of the building. Any  
2 provision of the lease agreement providing for assignment must  
3 require prior written consent of the board of school directors.

4 Section 3. Section 751 of the act, amended July 13, 1979  
5 (P.L.94, No.41), October 10, 1980 (P.L.924, No.159) and May 4,  
6 1990 (P.L.164, No.38), is amended to read:

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

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

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

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

1 memoranda shall be retained for a period of three years.

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

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

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

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

30 (1) Full disclosure of all relevant information regarding



1 the sharing of the compensation or fees shall be made to the  
2 board of school directors.

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

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

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

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

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

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

29 (c) A lease agreement authorized by this section must be  
30 executed prior to the commencement of any work on the

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

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

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

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

27 (c) Annual approved rental payable for approved leases of  
28 existing facilities altered for school use shall be the lesser  
29 of (i) the product of the annual rental payable under the  
30 provisions of the approved lease agreement times the ratio of

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

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

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

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

1       Section 7.   This act shall take effect immediately.