



# Pennsylvania Association of School Business

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[House Education Committee](#)

[Public Hearing on House Bill 2124](#)

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My name is Jay Himes, and I am the Executive Director of the PA Association of School Business Officials (PASBO). I would like to thank Chairman Clymer and Chairman Roebuck, as well as Representative Grove and other members of the House Education Committee for the opportunity to discuss the important issue of PlanCon.

PASBO is a state wide association of school management personnel in school districts, intermediate units, career and technology centers and charter schools across the Commonwealth. PASBO members are responsible for the administration and direction of many non-instructional services that support classroom learning and promote student success. PASBO members lead the finance, accounting, facilities, transportation, food service, technology, human resources, purchasing and communications functions in k-12 schools.

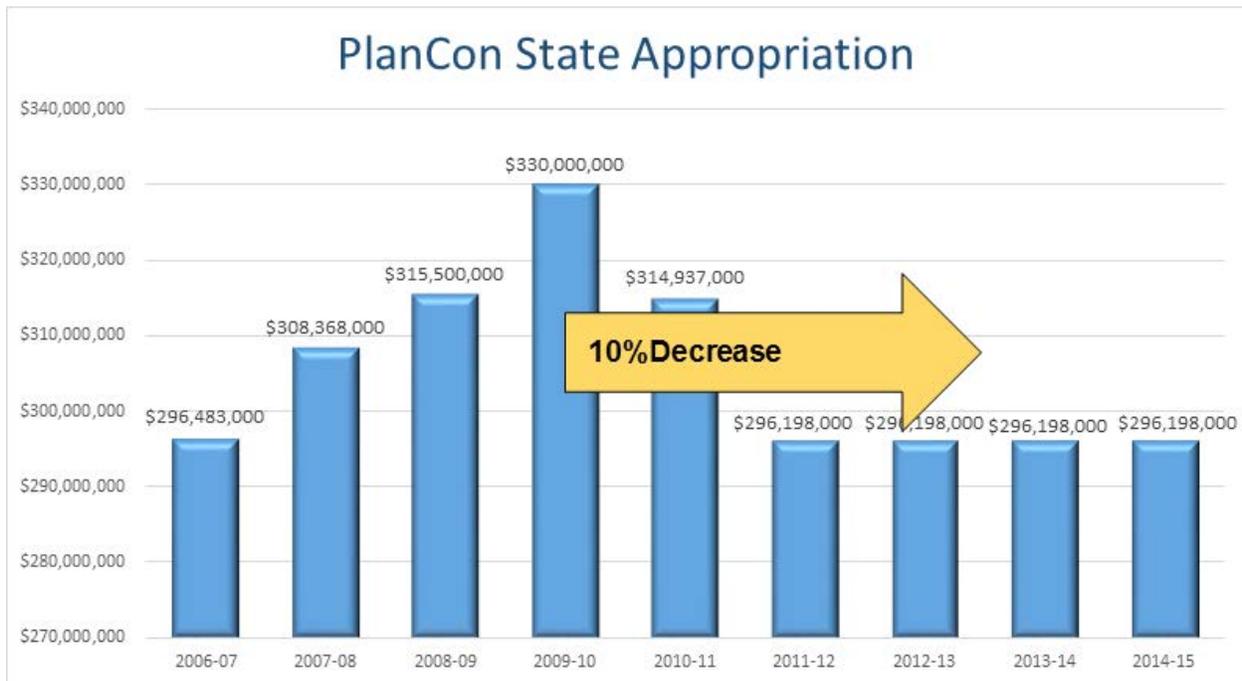
One of the issues of acute importance and priority to our membership is the issue of state reimbursement to school districts for their school construction and renovation projects through the PlanCon process. For decades, school districts have labored through a complex and lengthy process to receive state reimbursement for a portion of their school construction costs. Relatively recently, however, this process has ground to a halt, stranding school districts inside the program with no access to needed reimbursement and abandoning those districts that had not yet entered the PlanCon process. With millions of dollars due to school districts across the Commonwealth, a solution to the ongoing PlanCon nightmare must be achieved without further delay.

## PlanCon Background

PlanCon is a lengthy process of approvals required by the Department of Education (PDE) for schools to receive reimbursement for new construction projects or for renovations of existing buildings. The PlanCon process and the reimbursement to schools for a portion of the cost has been established in the School Code and State Board of Education regulations for decades.

The PlanCon approval process consists of 11 steps, covering everything from preliminary planning and facility design and to project financing and refinancing. Once the extensive series of preliminary planning steps have been completed and approved by PDE, debt is put into place, schools seek bids, begin construction, and then apply for partial reimbursement for a percentage of their project costs. Wealthier districts receive a very small share (usually under 10% of the total project cost) while lower wealth districts can receive a larger state share of the project costs.

The appropriation for PlanCon reimbursements to schools appears in the PDE budget as “Authority Rentals and Sinking Fund Requirements.” The line item for this reimbursement has been level funded at \$296 million since 2011-12, which is down by more than 10% from 2009-10.



On top of this decrease in funding, past legislation extended PlanCon funds for green incentives and to charter schools for lease reimbursement payments. Additionally, a 2005 School Code change increased the reimbursement formula for school constructions for the first time in more than 20 years. Increasing eligibility for PlanCon funds and increasing demand due to historically low interest rates to finance school construction resulted in a predictable log jam of school

construction projects awaiting state reimbursement. As a result, the response to school districts is “we don’t have any funds”—a wholly inadequate and unfair response that is simply reneging on a commitment at the expense of students, teachers and taxpayers.

As a result of this backlog, a moratorium on new construction or renovation projects entering the PlanCon pipeline went into effect in October 2012. This means that even a school district that needs to enter into a school renovation project to fix a leaking roof or a failing mechanical system during this period will not be eligible for state reimbursement. That moratorium was extended in 2013, and is now scheduled to continue through June 30, 2014 if it is not extended once more. Although new projects cannot enter the PlanCon process at this time, there are approximately 350 school construction and renovation projects currently in the PlanCon pipeline at various stages.

Of these projects, 203 are trapped in a massive backlog at Part G of the PlanCon process. These districts have issued debt, issued bids, and started construction. Because this backlog has grown so large, many districts have been waiting at Part G for over 3 years. These districts have completed their construction and the facilities are in use, they have submitted their applications for reimbursement, and their debt payments are due. For these districts, despite extensive financial planning, the significant delay in state construction reimbursement has forced them to cut programs and personnel, to increase taxes, to borrow additional dollars, or to pay down reserves to ensure that they do not default on their financing and contractual obligations. These school districts have significant financial obligations and do not have the liberty of simply delaying payment until state reimbursement is received.

While PDE’s May 2013 *Planning and Construction Workbook: A Report to the General Assembly* stated that appropriation at the current level will need to be in place for at least three years before the projects waiting at Part G can begin receiving funding, PASBO believes it is absolutely critical that these districts receive reimbursement in a timely manner. These school districts played by the rules and entered the PlanCon process with no knowledge of the impending backlog and no indication that reimbursement would be delayed in any way. They have significant financial obligations and do not have the liberty of simply delaying payment until state reimbursement is received.

## **House Bill 2124**

Overall, PASBO applauds Representative Seth Grove’s efforts to address the current situation with the PlanCon process. We appreciate his willingness to tackle this complex issue, which is a priority for our membership, and to include so many provisions in the bill that will benefit those school districts that are most immediately impacted by the current state of the PlanCon program.

PASBO certainly strongly supports the proposal to increase the total Authority Rentals and Sinking Fund Reimbursements line item by \$100 million, which would have the immediate result of providing relief to the many districts that have been trapped in the process waiting for

state reimbursement. Over the past several months, we have seen several states acknowledge the importance of funding school construction projects by allocating or proposing record levels of funding for school construction, far in excess of Pennsylvania's current PlanCon appropriation.

In New Jersey, for example, \$508 million was allocated to cover the state's share of a total of \$1.1 billion in school construction costs for 1,538 projects in 331 school districts. Similarly, Florida proposes to allocate nearly \$600 million in state funds to school construction, nearly \$400 million of which would go directly to school districts, while Ohio has provided, on average, \$690 million in state funds in each of the past four years for school construction needs.

While additional changes beyond an influx of dollars are needed, the proposed allocation of additional dollars to the PlanCon line item both recognizes the importance of aiding school districts in providing students with safe, appropriate and updated educational facilities and ensures that the state lives up to the promises it made to school districts that have already entered the lengthy PlanCon process.

In addition to the increased funding, PASBO generally supports the changes proposed in House Bill 2124. The combination of the backlog, the moratorium, the antiquated current PlanCon process, the lack of transparency and the funding concerns leads us to the conclusion that the current program needs an overhaul to ensure efficiency, predictability and transparency and to ensure that the program is sustained in the future. There are, however, some provisions of the proposed legislation in which we have specific comments about the proposed language, and we look forward to continuing to work with Representative Grove and the rest of the House Education Committee to enact needed changes to the program for school construction reimbursement. Our specific comments on each section of House Bill 2124 are below.

### ***Section 731***

PASBO strongly supports the addition of paragraph (7) to section 731 of the Public School Code. This addition creates a website containing information about the status of individual school construction projects, as well as charter school lease reimbursements, will provide needed transparency to school districts and taxpayers alike. This will help school districts plan, as it will be clear where each project is in the funding queue, and will automate what is now an unnecessary process to obtain information on the status of a district's project.

One beneficial addition to this proposed language would be potentially to require the reporting on the website of how much is paid out to each individual school district and charter school on an annual basis. Providing a listing of PlanCon revenues and expenditures would again allow for increased transparency and would permit school districts to better anticipate when funding is available and when funding is likely to be received.

### ***Section 731.2***

The creation of the Accountability and Reducing Costs in Construction (ARC Con) process in section 731.2 makes some beneficial and much-needed changes to the current antiquated and

burdensome PlanCon process. Simplifying an 11 step process into 5 steps, requiring only 5 school board resolutions, getting rid of the microfilm requirement, requiring PDE to automate the ARC Con process, where possible, and allowing for the electronic submission of plans and documents will reduce the administrative burden on school districts and all others involved in the school construction process. Overall, PASBO believes the streamlined process provided under House Bill 2124 is a needed step in the right direction of getting the current school construction reimbursement process back on track.

**Section 731.2 (a)** streamlines the current 11 step process into 5 steps. While we believe that much of the process is appropriate, we do have one concern with the temporary reimbursable percent calculated at Step 3 of ARC Con and the impact this will have at Step 4 of ARC Con.

While the current PlanCon process requires a 0.5% reduction of the temporary reimbursable percent, which is then paid to school districts once the interim reporting is complete and the permanent reimbursable percent is determined, House Bill 2124 increases this reduction from 0.5% to 20%. Under ARC Con, a school district's temporary reimbursable percent will factor in this 20% reduction until the permanent reimbursable percent is determined at Step 4, which could take several years to reach as a result of change orders, litigation or other delays. While we certainly support ARC Con's goal of moving as many projects—especially those that have been trapped in the PlanCon backlog for years—through the process to reimbursement as efficiently as possible, we are concerned that ARC Con's dramatic reduction of the temporary reimbursable percent at Step 3 will have the effect of creating the same bottleneck at Step 4 when the permanent reimbursable percent is to be calculated and paid.

Because the permanent reimbursable percent would require the payment of significantly more dollars to school districts at Step 4 than is currently required at Part J (due to the increase in the temporary reimbursable percent), it is possible that this effort would just move the backlog one step down the road—allowing districts to begin receiving reimbursement but creating a financial hardship on PDE to pay based on the permanent reimbursable percent. Additionally, as so many districts have been trapped in the PlanCon backlog at Part G for years—awaiting their temporary reimbursable percent and payment—many of these districts would likely be awaiting approval at Step 3 and Step 4 of ARC Con simultaneously, negating any potential benefit from increasing the reduction in the calculation of the temporary reimbursable percent.

To avoid creating a new funding backlog, PASBO recommends a return to the previous 5% temporary reimbursement rate. The current 0.5% withholding reduces the accounting and oversight of project payouts. With a significant increase in the temporary reimbursement rate, districts will wait longer and the both districts and PDE will be vulnerable to the accumulation of “orphan” funds. In some school projects, the requirements to completing the PlanCon steps (other than a financing of the debt) concludes at PlanCon J. Unfortunately, this change could result in repeating history. In 1995 a performance audit of PDE by then Auditor General Barbara Hafer criticized the department and school districts for the backlog of funds created by the failure to close-out school projects with the submission of PlanCon J. Holding on to committed

funds requires increased recordkeeping by PDE. For districts, in some cases those most closely working on the school project may no longer be employed at the district, and new administrative personnel may have no first-hand knowledge of final project filings being due.

Moreover, we believe that there should be a concentrated effort to focus on a one-time payment to districts, reducing state costs and local costs for debt. Upfront funds, as is done in states such as Maryland, reduces borrowing needs and therefore costs. As such, we are strongly supportive of House Bill 2124's addition of **section 2581** to the Public School Code, allowing PDE to provide school districts—upon the mutual consent of both the school district and PDE—with a lump sum payment of 75% of the total allowable state construction reimbursement. This upfront payment to school districts would be beneficial to both PDE and school districts. Allowing the state an opportunity to save money while providing school districts with a one-time payment option moves the program in a positive direction.

**Section 731.2(e)** proposes to change the current 20 year rule to a 30 year rule, prohibiting reimbursement for a reconstruction project on an existing building within 30 years of the last project involving that facility. While there is a narrow exception built into this new 30 year rule, it applies only to emergencies, which are defined as natural disasters, fires or floods. While we understand the reasons for modifying this rule, and we believe any exceptions provided must be appropriately limited to ensure that the exception does not become standard practice, we do believe that the exception provided must be broadened to provide some reasonable safeguards to school districts.

For example, it will be nearly impossible for a school district to project enrollment changes accurately over a 30 year period. The approval of new development projects by a municipality or even changing economic conditions could result in a school district seeing an unanticipated influx of students that a 25 year old facility is unequipped to serve. In this case, all that may be required is an addition of classrooms to the existing facility, but the proposed 30 year rule would prevent such renovation, and instead, seems to incentivize new construction, which is generally more costly and may be inappropriate based on the needs of the district. In addition to an influx of students, a school facility's electrical or mechanical system simply may not last 30 years, and without an exception to provide for the replacement and upgrade of a failing system, which can be extremely costly, school districts and local taxpayers will be forced to finance this necessary project without state reimbursement. In each case, we would certainly support the requirement that appropriate documentation demonstrate that the exception is truly needed.

**Section 731.2(f)** of House Bill 2124 changes the current 20 percent rule to a 40 percent rule, meaning that school districts would not be eligible for state reimbursement for a school construction or reconstruction project for any existing building where the cost of expansion or renovation of the building is less than 40% of the replacement value of the entire building. Again, while we understand the goals behind the modification of the current rule, we have concerns that the effect may be incentivizing new construction or, at the very least, deferring needed maintenance until the needs of the facility are critical and the costs dramatic.

Additionally, we believe that the same exception that applies to the proposed 30 year rule, as discussed above, apply here, as there will likely be situations—such as those that result from a natural disaster, fire, flood or influx of students—that leave a school district with no choice but to engage in a renovation project regardless of whether they meet the 40 percent rule.

**Section 731.2(i)** of House Bill 2124 contains a clarification about the applicability of the ARC Con process, stating that school districts will not be required to resubmit plans, drawings, bid specifications or other documents for which PDE received a completed application by October 1, 2012. While October 1, 2012 is an appropriate beginning date, as this was the date the current moratorium went into effect, the moratorium did not apply to projects that were already in the PlanCon pipeline. During the moratorium, school districts have continued to submit applications and receive approval for subsequent stages of the PlanCon process.

Therefore, to ensure that school districts that are in the pipeline and have submitted documentation to PDE after October 1, 2012, such as the many school districts that have submitted their PlanCon Part H applications for reimbursement, should not have to resubmit those documents under the new process. PASBO believes that the language could be clarified to read as follows:

*(i) A school district shall not be required to resubmit to the department any completed plans, drawings, bid specifications or other documents for a school construction or reconstruction project for which the department received a completed application on or after October 1, 2012 through the effective date of the ARC Con process, due to the implementation of this section.*

**Section 731.2(k)** requires PDE to develop the guidelines and rules for implementing the ARC Con process by July 1, 2015, and specifies that PDE cannot include additional steps or require more than one school board resolution at each step of the proposed process. PASBO recommends consideration of additional language that would provide a time period for PDE review and approval of the documentation provided each step of the ARC Con process. If PDE would fail to either approve or respond to a school district with a request for additional information by the end of the timeframe enumerated, the application would be deemed approved.

This would be especially helpful for school districts with respect to the current Part G process. While school districts solicit bids just prior to submitting their Part G applications, these bids generally go stale within a period of 60 days. School districts are cautioned against entering into contracts prior to receiving Part G approval from PDE, however, because PDE routinely takes longer than 60 days to approve a Part G application, school districts are often left with the difficult choice of entering into contracts prior to approval or redoing the bidding process and resubmitting a Part G application. In situations like this, creating a concrete timeframe of 60 days for PDE approval from the date each application or document is received by PDE would give school districts much needed predictability in the process, allowing them to more effectively engage in the long-term planning that is so critical in a school building project.

### ***Section 732.1***

PASBO appreciates the addition of section 732.1 to the Public School Code. First, this proposed section sets a deadline for PDE to present the findings of their statewide analysis of school facilities and future capital needs by May 1, 2015. While a May 1, 2014 deadline for a preliminary report is required under current law, the addition of a timeframe for the final analysis as well as details regarding the submission of the final analysis is a welcome addition.

Second, PASBO fully supports the addition of **subsection 732.1(c)** to the Public School Code, which allows those school districts that need to engage in a school construction or renovation project during the period of the moratorium to remain eligible for state reimbursement for a portion of their school construction costs following the expiration of the moratorium. Engaging in school construction is not a decision that a school district and community takes lightly, and many districts have long-term facility plans for maintaining, renovating and improving their facilities. The moratorium that went into effect in October 2012 threw an unwelcome wrench into many long-term facility plans, changing the rules in the middle of the game and leaving school districts suddenly ineligible for state reimbursement through no fault of their own.

While some school districts have managed to scrape by, hoping to further defer maintenance or other construction needs until the moratorium is lifted, there are some that have had no choice but to move forward despite the moratorium. For these districts, the financial impact of engaging in such a project without state reimbursement is tremendous, and as school districts receive reimbursement based upon wealth, the impact targets small, less wealthy districts and their taxpayers most significantly.

While we are troubled by the fact that the moratorium has already been extended once, and have heard indications from PDE that they will recommend its extension for another year, we do applaud the efforts of House Bill 2124 to recognize the importance of state reimbursement and provides some relief to those districts that the moratorium has adversely affected.

### ***Section 732.2***

As discussed above, another critical issue for PASBO members and school districts across the Commonwealth is the current backlog of PlanCon projects trapped at Part G and awaiting state reimbursement. Although the tremendous backlog and funding shortfall that is impacting over 200 school construction projects did not happen overnight, it certainly occurred without any warning to the districts that are currently involved. For these districts, many of which have been waiting for over 3 years to receive state reimbursement and have been forced to cut programs, increase taxes or even pay down reserves to cover absent state dollars, House Bill 2124 provides some overdue acknowledgement that PDE changed the rules mid-stream and up-ended the careful financial plans these districts had in place.

The addition of section 732.2 to the Public School Code makes those school districts that have submitted PlanCon applications to receive Part H approval and subsequent state reimbursement,

yet have been trapped in the Part G backlog for over a year following submission of their Part H application, eligible to receive interest on the delayed state reimbursement. While this interest payment cannot make up for the financial hardship created by the delayed state reimbursement, it will provide those school districts that have been most adversely affected by the backlog with some additional relief when the state reimbursement does begin to flow. PASBO strongly supports this provision of House Bill 2124, as well as the inherent acknowledgement that PDE's backlog has had a negative financial impact on school districts.

### ***Section 2575.1***

House Bill 2124 modifies section 2575.1 of the Public School Code to remove the capital account reimbursement fraction (CARF) from the calculation and to use aid ratio when determining payments to school districts. While this change would have no impact on nearly 75% of school districts, it would impact just under 25% of districts adversely to varying degrees, as their CARF is greater than their 2013-14 aid ratio (defined in section 2501 as the market value aid ratio). While this change would affect both rural and suburban and both wealthy and poor school districts, it would obviously have a more adverse impact on rural and poor school districts that would otherwise receive a larger share of state reimbursement than wealthy suburban districts.

At the very least, PASBO asks that the effective date for the changes in section 2575.1 does not impact any district that is currently in the PlanCon pipeline, and thus applies only to those school construction projects that enter the school construction process following the expiration of the moratorium.

### ***Section 2581***

PASBO is strongly supportive of the addition of section 2581 to the Public School Code. Please see our comments on page 6 above.

Thank you for your time and your attention to this important issue. Again, PASBO looks forward to working with Representative Grove and the rest of the House Education Committee to make these needed changes to the current school construction reimbursement process. I am happy to try to answer any questions you may have.

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