

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1010 Session of
1991

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COLAFELLA AND FLICK, APRIL 8, 1991

AS REPORTED FROM COMMITTEE ON EDUCATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 6, 1991

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,

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

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

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

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

8 (C) THE STATE BOARD OF EDUCATION SHALL, BY REGULATION, <—
9 ESTABLISH FOR LEASED BUILDINGS A METHOD FOR DETERMINATION OF
10 STANDARDS OF MEASUREMENT, INCLUDING, WITHOUT LIMITATION, THE
11 MAXIMUM BUILDING CONSTRUCTION COST, THE MAXIMUM PROJECT COST AND
12 THE AGGREGATE BUILDING EXPENDITURE STANDARD, WHICH ARE
13 COMPARABLE TO THOSE REQUIRED BY THIS SECTION FOR THE
14 CONSTRUCTION OF BUILDINGS. PENDING ADOPTION AND PUBLICATION OF
15 FINAL RULES AND REGULATIONS, THE STATE BOARD OF EDUCATION SHALL
16 HAVE THE POWER AND AUTHORITY TO PROMULGATE, ADOPT, PUBLISH AND
17 USE INTERIM REGULATIONS FOR THE IMPLEMENTATION OF THIS PROVISION
18 FOR A PERIOD OF ONE YEAR IMMEDIATELY FOLLOWING THE EFFECTIVE
19 DATE OF THIS SUBSECTION OR UNTIL THE EFFECTIVE DATE OF FINAL
20 RULES AND REGULATIONS, WHICHEVER FIRST OCCURS. NOTWITHSTANDING
21 ANY OTHER PROVISION OF LAW TO THE CONTRARY, THE INTERIM
22 REGULATIONS PROPOSED UNDER THE AUTHORITY OF THIS SUBSECTION
23 SHALL NOT BE SUBJECT TO REVIEW PURSUANT TO THE ACT OF JUNE 25,
24 1982 (P.L.633, NO.181), KNOWN AS THE "REGULATORY REVIEW ACT."

25 ~~(c)~~ (D) For purposes of this section: <—

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

30 (2) "Site development" includes excavation, grouting or

1 shoring, special foundations for buildings, access roads to
2 site, utilities on site, extension of utilities to site.

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

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

16 ~~(d) The Department of Education shall develop a means by~~ <—
17 ~~which school districts will establish for leased buildings a~~
18 ~~maximum building construction cost, a maximum project cost,~~
19 ~~aggregate building expenditure standard limits and such other~~
20 ~~measures as will effect limitations of leased buildings~~
21 ~~comparable to that for constructed buildings.~~

22 SECTION 2. SECTION 703.1 OF THE ACT, ADDED DECEMBER 6, 1972 <—
23 (P.L.1445, NO.323), IS AMENDED TO READ:

24 SECTION 703.1. LEASE OF BUILDINGS OR PORTIONS OF BUILDINGS
25 CONSTRUCTED OR ALTERED FOR SCHOOL USE.--(A) THE BOARD OF SCHOOL
26 DIRECTORS OF ANY DISTRICT IS HEREBY VESTED WITH THE POWER AND
27 AUTHORITY TO LEASE FOR AN EXTENDED PERIOD OF FIVE (5) YEARS OR
28 MORE, WITH OR WITHOUT PROVISIONS FOR ACQUISITION OF SAME,
29 BUILDINGS OR PORTIONS OF BUILDINGS CONSTRUCTED FOR SCHOOL USE
30 AND/OR OTHER BUILDINGS OR PORTIONS OF BUILDINGS ALTERED FOR

1 SCHOOL USE PROVIDED SUCH BUILDINGS COMPLY WITH STANDARDS AND
2 REGULATIONS ESTABLISHED BY THE STATE BOARD OF EDUCATION AND THE
3 DEPARTMENT OF LABOR AND INDUSTRY.

4 (B) THE LEASE AGREEMENT MUST BE EXECUTED PRIOR TO THE
5 COMMENCEMENT OF ANY WORK ON THE CONSTRUCTION OF A NEW BUILDING
6 OR THE COMMENCEMENT OF ANY WORK FOR THE ALTERATION OR RENOVATION
7 OF ANY EXISTING BUILDING. THE TERM OF THE LEASE AGREEMENT MUST
8 BEGIN AT ANY TIME PRIOR TO THE OCCUPANCY OF THE BUILDING. ANY
9 PROVISION OF THE LEASE AGREEMENT PROVIDING FOR ASSIGNMENT MUST
10 REQUIRE PRIOR WRITTEN CONSENT OF THE BOARD OF SCHOOL DIRECTORS.

11 (C) THE BOARD OF SCHOOL DIRECTORS SHALL NOT EXECUTE ANY
12 LEASE AGREEMENT UNDER THE AUTHORITY OF THIS OR ANY OTHER
13 PROVISION OF THIS ACT UNLESS THE LEASE AGREEMENT REQUIRED BY ITS
14 EXPRESS TERMS THAT PREVAILING MINIMUM WAGES SHALL BE PAID IN
15 ACCORDANCE WITH THE PROVISIONS OF THE ACT OF AUGUST 15, 1961
16 (P.L.987, NO.442), KNOWN AS THE "PENNSYLVANIA PREVAILING WAGE
17 ACT," TO ALL PERSONS EMPLOYED FOR THE CONSTRUCTION,
18 RECONSTRUCTION, ALTERATION OR RENOVATION OF THE BUILDING SUBJECT
19 TO THE LEASE, INCLUDING, WITHOUT LIMITATION, IMPROVEMENTS MADE
20 DURING THE TERM OF THE LEASE.

21 Section ~~2~~ 3. Section 751 of the act, amended July 13, 1979 <—
22 (P.L.94, No.41), October 10, 1980 (P.L.924, No.159) and May 4,
23 1990 (P.L.164, No.38), is amended to read:

24 Section 751. Work to be Done Under Contract Let on Bids;
25 Exception.--(a) (1) All construction, reconstruction, repairs, <—
26 maintenance or work of any nature, including the introduction of
27 plumbing, heating and ventilating, or lighting systems, upon any
28 school building or upon any school property, or upon any
29 building or portion of a building leased under the provisions of
30 section 703.1, made by any school district, where the entire

1 cost, value, or amount of such construction, reconstruction,
2 repairs, maintenance or work, including labor and material,
3 shall exceed ten thousand dollars (\$10,000), shall be done under
4 ~~a lease contract or~~ separate contracts to be entered into by <—
5 such school district with the lowest responsible bidder, upon
6 proper terms, after due public notice has been given asking for
7 competitive bids. [Whenever a board of school directors shall
8 approve the use of a prefabricated unit, complete in itself, for
9 a school building or other proper structure to be erected upon
10 school property, the board of school directors may have prepared
11 appropriate specifications detailing the size and material
12 desired in a particular prefabricated unit, including all
13 utilities such as plumbing, heating and ventilating, and
14 electrical work, and may advertise for a single bid on all the
15 work and award the contract therefor to the lowest responsible
16 bidder:] ~~The board of school directors shall, in its discretion,~~ <—
17 ~~have prepared separate specifications for construction,~~
18 ~~plumbing, heating and ventilating and electrical work, or~~
19 ~~separate bids on each of the branches of work or combinations~~
20 ~~thereof or a single bid on all the work. The board of school~~
21 ~~directors shall award the contract or contracts to the lowest~~
22 ~~responsible bidder or bidders:~~ Provided, That if] BID <—
23 SPECIFICATIONS FOR CONSTRUCTION, PLUMBING, HEATING, VENTILATING
24 AND ELECTRICAL WORK SHALL BE PREPARED SEPARATELY. IF due to an
25 emergency a school plant or any part thereof becomes unusable, a <—
26 ~~competitive bid or~~ competitive bids FOR ONE OR MORE SEPARATE <—
27 CONTRACTS for repairs or replacement may be solicited from at
28 least three responsible bidders, and upon the approval of any of
29 these bids by the Secretary of Education, the board of school
30 directors may proceed at once to make the necessary repairs or

1 replacements in accordance with the terms of said approved bid
2 or bids.

3 (2) FOR THE PURPOSES OF THIS SUBSECTION, "EMERGENCY" MEANS <—
4 AN UNFORESEEN EVENT SUCH AS A FIRE, TORNADO, FLOOD, EXPLOSION OR
5 OTHER UNFORESEEN EVENT AS MAY BE DETERMINED BY THE SECRETARY OF
6 EDUCATION.

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

22 (b) The board of school directors in any school district may
23 perform any construction, reconstruction, repairs, or work of
24 any nature, where the entire cost or value, including labor and
25 material, is less than five thousand dollars (\$5000), by its own
26 maintenance personnel. The board of school directors in any
27 school district may authorize the secretary of the board or
28 other executive to award contracts for construction,
29 reconstruction, repairs, or work of any nature, where the entire
30 cost or value, including labor and material, is ten thousand

1 dollars (\$10,000) or less, without soliciting competitive bids,
2 subject, however, to the provisions of subsection (a.1).

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

7 (d) The board of school directors of any school district
8 may, in addition to the power granted in subsection (b), utilize
9 also its own maintenance or other personnel to perform
10 maintenance work irrespective of the entire cost or value of
11 such work.

12 (e) No person, consultant, firm or corporation contracting
13 with a school district for purposes of rendering personal or
14 professional services to the school district shall share with
15 any school district officer or employe, and no school district
16 officer or employe shall accept, any portion of the compensation
17 or fees paid by the school district for the contracted services
18 provided to the school district except under the following terms
19 or conditions:

20 (1) Full disclosure of all relevant information regarding
21 the sharing of the compensation or fees shall be made to the
22 board of school directors.

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

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

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

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

14 SECTION 4. SECTION 791 OF THE ACT IS AMENDED BY ADDING
15 SUBSECTIONS TO READ:

16 SECTION 791. GRANTS, CONVEYANCES, APPROPRIATIONS TO,
17 CONTRACTS WITH, AND LEASES FROM, PROFIT OR NONPROFIT
18 CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS, OR PERSONS.--* * *

19 (C) A LEASE AGREEMENT AUTHORIZED BY THIS SECTION MUST BE
20 EXECUTED PRIOR TO THE COMMENCEMENT OF ANY WORK ON THE
21 CONSTRUCTION OF A NEW BUILDING OR THE COMMENCEMENT OF ANY WORK
22 FOR THE ALTERATION OR RENOVATION OF ANY EXISTING BUILDING. THE
23 TERM OF THE LEASE AGREEMENT MUST BEGIN AT ANY TIME PRIOR TO THE
24 OCCUPANCY OF THE BUILDING. ANY PROVISION OF THE LEASE AGREEMENT
25 PROVIDING FOR ASSIGNMENT MUST REQUIRE PRIOR WRITTEN CONSENT OF
26 THE BOARD OF SCHOOL DIRECTORS.

27 (D) THE BOARD OF SCHOOL DIRECTORS SHALL NOT EXECUTE ANY
28 LEASE AGREEMENT UNDER THE AUTHORITY OF THIS OR ANY OTHER
29 PROVISION OF THIS ACT UNLESS THE LEASE AGREEMENT REQUIRES BY ITS
30 EXPRESS TERMS THAT PREVAILING MINIMUM WAGES SHALL BE PAID DURING

1 AND THROUGHOUT THE TERM OF THE LEASE IN ACCORDANCE WITH THE
2 PROVISIONS OF THE ACT OF AUGUST 15, 1961 (P.L.987, NO.442),
3 KNOWN AS THE "PENNSYLVANIA PREVAILING WAGE ACT."

4 Section ~~3~~ 5. Section 2574(f) of the act, added June 1, 1972 <—
5 (P.L.325, No.89), is amended to read:

6 Section 2574. Approved Reimbursable Rental for Leases
7 Hereafter Approved and Approved Reimbursable Sinking Fund
8 Charges on Indebtedness.--* * *

9 (f) For the purchase of any building, reimbursement shall be
10 computed in the same manner as for constructed school buildings.
11 [and approved building cost shall be the lesser of

12 (1) The cost of purchasing the site and structure and the
13 cost of approved renovations including appropriate fixtures and
14 equipment, or

15 (2) For the purchase of any building (I) the product of the
16 rated pupil capacity as determined by the Department of
17 Education at the time the purchase is approved and (i) one
18 thousand one hundred dollars (\$1,100) in the case of elementary
19 schools, (ii) one thousand seven hundred dollars (\$1,700) in the
20 case of secondary schools, and (iii) an amount in the case of
21 combined elementary-secondary schools obtained by multiplying
22 the rated elementary pupil capacity by one thousand one hundred
23 dollars (\$1,100) and the rated secondary pupil capacity by one
24 thousand seven hundred dollars (\$1,700) and dividing the sum by
25 the total rated pupil capacity; and (II) in the case of
26 renovation of any building including appropriate fixtures and
27 equipment, reimbursement shall be (i) one thousand two hundred
28 dollars (\$1,200) for elementary schools, (ii) one thousand three
29 hundred dollars (\$1,300) for secondary schools, and (iii) for
30 combined elementary-secondary schools an amount obtained by

1 multiplying the rated elementary capacity by one thousand two
2 hundred dollars (\$1,200) and the rated secondary pupil capacity
3 by one thousand three hundred dollars (\$1,300).]

4 Section 4 6. Section 2574.2 of the act, added December 6, <—
5 1972 (P.L.1445, No.323), is amended to read:

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

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

24 (c) Annual approved rental payable for approved leases of
25 existing facilities altered for school use shall be the lesser
26 of (i) the product of the annual rental payable under the
27 provisions of the approved lease agreement times the ratio of
28 the pupil scheduled area to the architectural area, or (ii) the
29 product of the rated pupil capacity, as determined by the
30 Department of Education at the time of initial lease, times one

1 hundred twelve dollars (\$112) for elementary, one hundred fifty-
2 four dollars (\$154) for secondary, or one hundred eighty-nine
3 dollars (\$189) for area vocational-technical schools.

4 ~~(d) The Department of Education shall develop a means for~~ <—
5 ~~calculating reimbursement for leases relating to construction~~
6 ~~projects contracted for after the effective date of this act~~
7 ~~approved after July 1, 1991, which shall provide reimbursement~~
8 ~~comparable to that available for constructed buildings.~~

9 ~~Section 5. The Department of Education shall within six~~
10 ~~months of the effective date of this amendatory act publish the~~
11 ~~measures developed as called for in sections 701.1 and 2574.2.~~

12 (D) THE STATE BOARD OF EDUCATION SHALL, BY REGULATION, <—
13 ESTABLISH FOR LEASED BUILDINGS A METHOD FOR CALCULATING
14 REIMBURSEMENT FOR LEASES RELATING TO CONSTRUCTION PROJECTS
15 CONTRACTED FOR AFTER THE EFFECTIVE DATE OF THIS ACT AND APPROVED
16 ON OR AFTER JULY 1, 1991, WHICH SHALL PROVIDE REIMBURSEMENT
17 COMPARABLE TO THE REIMBURSEMENT ALLOWABLE FOR THE CONSTRUCTION
18 OF BUILDINGS. PENDING ADOPTION AND PUBLICATION OF FINAL RULES
19 AND REGULATIONS, THE STATE BOARD OF EDUCATION SHALL HAVE THE
20 POWER AND AUTHORITY TO PROMULGATE, ADOPT, PUBLISH AND USE
21 INTERIM REGULATIONS FOR THE IMPLEMENTATION OF THIS PROVISION FOR
22 A PERIOD OF ONE YEAR IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF
23 THIS SUBSECTION OR UNTIL THE EFFECTIVE DATE OF FINAL RULES AND
24 REGULATIONS, WHICHEVER FIRST OCCURS. NOTWITHSTANDING ANY OTHER
25 PROVISION OF LAW TO THE CONTRARY, THE INTERIM REGULATIONS
26 PROPOSED UNDER THE AUTHORITY OF THIS SUBSECTION SHALL NOT BE
27 SUBJECT TO REVIEW PURSUANT TO THE ACT OF JUNE 25, 1982 (P.L.633,
28 NO.181), KNOWN AS THE "REGULATORY REVIEW ACT."

29 Section 6 7. (a) All provisions of prior acts with respect <—
30 to the separation of construction specifications, construction

1 bids or construction contracts are hereby repealed insofar as
2 they are inconsistent with this act.

3 (b) All additional and otherwise applicable statutory
4 provisions relating to projects of public work, public
5 construction, school construction or public buildings are
6 applicable to projects undertaken pursuant to this act, except
7 to the extent to which this act is specifically inconsistent.

8 Section 7 8. This act shall take effect immediately.

<—