

BUILDING A BETTER PROCESS FOR  
SCHOOL CONSTRUCTION REIMBURSEMENT:

# Recommendations of the PSBA Workgroup for PlanCon Improvements



**PSBA**  
Pennsylvania School Boards Association





The Pennsylvania School Boards Association is a nonprofit statewide association representing the 4,500 elected officials who govern the commonwealth's public school districts. PSBA is a member-driven organization that is pledged to the highest ideals of local lay leadership for public schools. We work to support reforms for the betterment of public education and to promote the achievements of public schools, students and local school boards.



# Introduction

Like many areas of Pennsylvania public education, school construction has been underfunded for several years. As a result, school districts are owed millions of dollars in promised state reimbursement for approved, current and/or completed construction and renovation projects. The delay in receiving reimbursement is so substantial that many of them have been waiting years for reimbursement. The cause of the problem is two-fold. First, there has been a sharp decrease in state funding over the past several years creating a backlog of projects to be moved through the approval process. Second, the state's complicated and antiquated process, known as PlanCon, for approval of these projects is in dire need of modernization.

Pennsylvania is at an important juncture in addressing both of these problems. Act 25 of 2016 authorized the borrowing of up to \$2.5 billion through the Commonwealth Financing Authority to provide for approved reimbursements to districts for school construction costs. The act also established a Public School Building Construction and Reconstruction Advisory Committee to review and recommend changes to the PlanCon process by May 15, 2017. In addition, Act 25 instituted a moratorium on new projects entering the program while the advisory committee crafts a new program. The moratorium became effective on May 15, 2016 and will expire on June 30, 2017.

As the state moves to resolve this two-fold problem, the Pennsylvania School Boards Association seeks to be part of the solution. The association has a seat on the state advisory committee. To ensure that its members' needs are identified and communicated to the advisory committee as well as the entire General Assembly, PSBA convened its own workgroup of stakeholders to examine these issues and offer recommendations for improvement.

The state's complicated and antiquated process, known as PlanCon, for approval of these projects is in dire need of modernization.

It is the intent of PSBA and the workgroup that the recommendations in this report will be considered in the efforts to provide for a more modern, simplified and financially sustainable process for state reimbursement to school districts.

Participating in the PSBA Workgroup's two-day session in August 2016 were school directors, superintendents, architects and solicitors. This report contains the result of that effort, and it will be shared with the Public School Building Construction and Reconstruction Advisory Committee and the entire General Assembly. It is the intent of PSBA and the workgroup that the recommendations in this report will be considered in the efforts to provide for a more modern, simplified and financially sustainable process for state reimbursement to school districts.



# Overview

## **Issue:** Decreases in state funding cause backlog, Act 25 creates bonding solution

The delay in reimbursement began as the state's level of support declined over the years due to the need to address overall deficit issues. In 2009-10, the state budget contained a high of \$318.5 million for the line item for the Authority Rentals and Sinking Fund. (This is the money dispensed for school construction projects going through the PlanCon process.) That dropped to \$314.9 million in 2010-11, and dropped further to \$296 million in 2011-12, where it stayed flat for the following two years. This resulted in a significant backlog of projects in the PlanCon pipeline and a significant delay in reimbursement. In 2014-15, the line item received a \$10 million boost to \$306 million, but the help it provided was not nearly enough to address the backlog.

Concerns worsened with the 2015-16 nine-month budget impasse. However, a plan to allow borrowing through the Commonwealth Financing Authority (CFA) for the purpose of clearing the backlog was agreed upon by the General Assembly for the 2015-16 state budget, and contained in provisions amending the state Fiscal Code under Act 25 of 2016, signed April 25, 2016. With that agreement, no funding was appropriated for the line item for the Authority Rentals and Sinking Fund. According to a fiscal note attached to the legislation that became Act 25, the enactment of the PlanCon provisions is estimated to result in finance costs of approximately \$1.5 billion over 20 years for the bonds authorized assuming an interest rate of 5% on the bonds.

In the 2016-17 budget, which was being negotiated simultaneously with the 2015-16 plan, the school construction reimbursement program was zero-funded for a second year. The 2016-17 state budget became law on July 12, 2016. In that same month the Commonwealth Financing Authority approved a bond resolution to authorize the borrowing of up to \$850 million for initial payments owed. That initial bond revenue is

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intended to be used to provide funding to districts for the missed 2015-16 and 2016-17 payments, and for projects that have been waiting for approval at Part H of the PlanCon process. The distribution of overdue payments to schools from the PA Department of Education began in late October following the sale of more than \$750 million in bonds in the first round of borrowing, and more payments are expected to occur before the end of 2016.

Two more rounds of borrowing are expected to occur to cover the costs for payments to school districts with projects in Parts A through F of the PlanCon pipeline. Meanwhile, school districts must continue to find ways to make payment on their construction obligations until the dollars are distributed.

### **Issue: Current PlanCon process causes major delays**

Along with inadequate funding, overly-complicated requirements have caused major delays in moving school construction projects forward. Districts that undertake projects and seek reimbursement must engage in a process to receive approval from PDE. The PlanCon process is an acronym for Planning and Construction Workbook. This process for reimbursement for a portion of the cost has been established in the School Code and state regulation for decades and is in dire need of modernization.

The process consists of 11 steps with a multitude of forms and procedures that require completion and approval from PDE at each interval in order to receive partial reimbursement for the project. The steps in the process consist of Parts A through K, beginning with the project justification and a description of the project through project accounting based on final costs and project refinancing if a reimbursable bond issue is refunded, refinanced or restructured. A project is deemed eligible for reimbursement upon PDE approval of PlanCon Part G; however, reimbursement does not begin until PDE has approved a PlanCon Part H application.

The PlanCon process is lengthy and requires PDE approval at multiple steps as a district proceeds with a project. Districts are required to hire architects and consultants, put project financing in place, and enter into construction contracts just to move through the process and towards reimbursement.

Many school districts have undertaken construction or renovation because of enrollment or safety needs that cannot be ignored. This includes projects to fix leaking roofs, failing mechanical and electrical systems, and crumbling infrastructure. Other projects are necessary to address overcrowded classrooms, school security and ADA compliance

concerns. The consequences of failing to provide state reimbursement to school districts that have complied with the rules are severe.

The downgrading of many school districts' bond ratings, mostly as a result of rising pension costs, health care costs and charter school tuition costs, also makes borrowing for school construction projects much more expensive for school districts and taxpayers.

Many school districts are likely to be put in the untenable position of being forced to reduce educational programs and staff in order to be able to pay for critical repairs addressing problems such as failing HVAC systems or leaking roofs.

While local taxpayers already bear much of the burden of needed school construction or renovation projects, in the absence of state reimbursement for school construction, local taxpayers could be forced to carry an even greater share of the load. However, the taxing constraints of Act 1 of 2006 prevent many school districts from being able to raise the resources necessary to complete such a project without state funding.

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# The History of PlanCon

(The following pieces are excerpts from the PA Department of Education's *Planning and Construction Workbook: A Report to the General Assembly, May 2013*)

The statutory requirements pertaining to the PlanCon process can be found in Articles VII and XXV of the Pennsylvania School Code. Generally, Articles VII and XXV require school districts to obtain PDE approval as a prerequisite to entering into a contract for a construction project and receiving commonwealth reimbursement for that project. Article VII provides that “no public school building shall be contracted for, constructed, or reconstructed in any school district of the second, third, or fourth class until plans and specifications have been approved by [PDE].” (24 P.S. 7-731) Article XXV mandates that **only** those projects that are PDE “approved” are eligible for commonwealth reimbursement. (24 P.S. § 25-2574)

Although the commonwealth has been providing funding for school district construction since the 1950s, the origins of the modern-day PlanCon process can be traced to Act 34 of 1973. In addition to codifying the PDE approval requirements (now found in 24 P.S. § 7-731), Act 34 contains provisions (now found in 24 P.S. § 7-733) that require public school buildings “hereafter built or rebuilt” to “conform to standards established by the State Board of Education...” (24 P.S. § 7-733)

Shortly after the passage of Act 34, the State Board of Education began promulgating a complex set of standards and regulatory requirements (codified at Chapter 21, *School Buildings* and Chapter 349, *School Building Standards*) to which school construction projects must conform. PDE developed the multi-step PlanCon process that exists today to carry out its duties as the regulatory agency charged by the General Assembly with the oversight of public school construction in the commonwealth. Section 731 of the Pennsylvania School Code provides that

PDE “with respect to construction and reconstruction of public school buildings, shall have the power and its duty shall be ... [t]o review all projects, plans and specifications for school building construction and reconstruction...” (24 P.S. 7-731)

Act 24 of 2011 amended the Pennsylvania School Code at Section 703 to only require PDE approval of projects that were seeking reimbursement from the commonwealth.

PlanCon is now an 11-step process which a school district or career and technology center (also referred to as a local education agency (LEA)) uses to apply for commonwealth reimbursement for construction and improvements as authorized by the Pennsylvania School Code and associated regulations. The process is designed to document a local school district’s planning process; provide justification for a project to the public; ascertain compliance with state laws, regulations and standards; and establish the level of state participation in the cost of the project.

Participation in PlanCon is voluntary, but required if an LEA seeks reimbursement from the commonwealth. From the initial stages of project development through project completion and debt payoff, applicants are required to submit information to PDE. The PlanCon approval process from Part A to Part J can take several years. The commonwealth may reimburse LEAs for debt payments for as many as 30 years or more. PDE staff review proposed school building projects, including their plans and specifications, enrollments, building utilization and building condition. PDE does not make quality judgments regarding the merits or demerits of a project. PDE’s staff also calculates state reimbursement for qualified construction projects, and reviews and approves financing for reimbursable projects.

The level of state reimbursement is determined by a formula, which is based on the total project cost, including debt service and considers the type of school (elementary or secondary), relative school district wealth and number of students in each classroom. Pursuant to the formula, less wealthy school districts receive a higher rate of reimbursement than more wealthy school districts.

## Overview of the 11-step PlanCon process

### 1) Part A (Project Justification)

- District-wide Facility Study (prerequisite)
- Preliminary calculation of building capacities
- Bring entire building up to current standards
- 20-Year rule and 20% rule for alteration costs

### 2) Part B (Schematic Design)

- First of three architectural reviews (advisory in nature)
- Review schematic site plan, floor plan, educational specifications
- Discuss applicable Pennsylvania School Code and PDE requirements
- Focus on health/safety issues
- Promote sustainable/high performance “green” school design

### 3) Part C (Site Acquisition)

- Acquisition of land and/or buildings (if applicable)

### 4) Part D (Project Accounting Based on Estimates)

- Estimated project costs
- Act 34 of 1973 – First Hearing and Referendum checks
- Various “financial ability” tests are performed
- Provides estimate of commonwealth reimbursement

### 5) Part E (Design Development)

- Second of three architectural reviews (advisory in nature)
- Interim review of project when the design is more fully developed

### 6) Part F (Construction Documents)

- Final architectural review (actual bid documents)
- Final calculation of building capacities
- Confirm compliance with applicable Pennsylvania School Code and PDE requirements
- Part F approval letter – First “final” approval
- Part F approval letter – Needs to be issued prior to entering into contracts

### 7) Part G (Project Accounting Based on Bids)

- Review actual construction bids
- Act 34 of 1973 – Second Hearing check and Referendum recheck
- Various “financial ability” tests are performed again
- Part G approval letter – Confirms “eligibility” for reimbursement

8) Part H (Project Financing)

- Review financing documents
- Calculate a temporary reimbursable percent
- Part H approval letter – Obligates the commonwealth to reimburse the project

9) Part I (Interim Reporting)

- Reporting of change orders and supplemental contracts during construction
- Act 34 of 1973 – Second Hearing and Referendum rechecks
- Part F building capacities adjusted (if applicable)

10) Part J (Project Accounting Based on Final Costs)

- Final project accounting after construction is completed
- Calculation of a permanent reimbursable percent

11) Part K (Project Refinancing)

- Review refinancing documents
- Used only if a bond issue is refunded, refinanced or restructured





# Case Study: Massachusetts

The PSBA Workgroup heard a presentation from representatives of the Massachusetts School Building Authority (MSBA), an organization created in 2004 to address problems created when the previous building assistance program became unsustainable.

The state's original School Building Assistance Program had been created in 1948 as a temporary way to address growing enrollments following World War II. School districts borrowed to pay for the cost of a project and were then reimbursed by the state for 50% to 90% of costs, although there was no dedicated source of revenue and little control or oversight of projects. The program continued to grow and by the late 1990s, the scale and pace of it was no longer financially sustainable as the waiting list for reimbursement grew and funding was unable to keep up with costs.

In 2004 the MSBA was established as an independent public authority to replace the state's former program. The law creating it also established the School Modernization and Reconstruction Trust Fund (SMART Fund) that receives a dedicated revenue stream of 1% of the 6.25% statewide sales tax. The state authorized \$1 billion in General Obligation bonds to initially capitalize the SMART Fund.

Since its inception, the MSBA has made more than \$12.1 billion in reimbursements for school construction projects. Instead of waiting years for reimbursement, districts receive payments from the MSBA as costs are incurred, usually within 15 days of submitting a request to the MSBA. The state aid matching percentage varies depending on district wealth, with a base rate of 31% up to a maximum 80% of project costs. There are three ability-to-pay factors that can increase the reimbursement rate that are based on the wealth of the community.

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In exchange for this efficiency, the MSBA implemented many new oversight rules and controls to ensure that the grant program stays within available resources. It must be involved in all phases of a project from initial statement through feasibility study, design development, construction and project close-out. Any studies or work done without MSBA participation is not eligible for reimbursement. Projected school enrollments must be generated through MSBA's online enrollment projection system and must be agreed upon before the project can move forward. For new schools, basic classroom sizes must meet MSBA guidelines. The process also includes specific rules regarding costs, designer selection, schedule and budget of district projects.

More details are available on MSBA's website at [www.MassSchool-Buildings.org](http://www.MassSchool-Buildings.org)



# PSBA Workgroup Discussion

A deeper discussion with the workgroup on the problems with the 11-step PlanCon process revealed concerns with a complicated structure that is burdensome, expensive and needlessly complicated for school districts. Much of the process includes specific mandates contained in the School Code and other laws, as well PDE and State Board of Education regulations, standards and Basic Education Circulars. Members felt that this combination of oversight was too prescriptive and could be politically influenced.

## Focusing on the process

The group agreed that the PlanCon process has created a series of challenges that have escalated over a period of years since it was first developed in the 1970s. School districts must hire architects and consultants, put project financing in place, and enter into construction contracts just to move through the PlanCon pipeline towards reimbursement. Rounds of reviews and revisitation of matters are embedded in the process. Further, the process is full of antiquated requirements; one such example is the rule which mandates the submission of plans and bid specifications on microfilm.

One problem noted by the group relates to PDE's rules for project justification under Part A, although the department can grant some variances. The 20-year clock rule states that a project building is only eligible for reimbursement on a comprehensive project once every 20 years. Also a problem is the 20% rule for alteration costs; that is, alteration costs are compared to 20% of the cost of a new building.

Group members felt there should be an accelerated progression for emergency needs such as repairs for failing HVAC systems or leaking roofs.

The timelines with the public hearing process required under Act 34 of 1973 and contained in Part D can sometimes cause delays. Act 34 requires public hearings prior to construction, and a second hearing is required if the bids received for a construction project exceed the initial PDE-approved estimates by 8%. Act 34 is sometimes referred to as the “Taj Mahal Law” because it requires voter approval of a building project that exceeds per-pupil cost figures that are revised annually to reflect changes in the cost of living. Some of the group members felt that taxing limitations and referendum rules under Act 1 of 2006 (and modified by Act 25 of 2011), as well as the authority of PDE to disapprove pieces of a project provide sufficient transparency and protections for taxpayers. Members also noted that Act 34 only applies to school districts of the second, third and fourth class.

Another issue that was identified is the rules at Part I regarding the need for reporting changes during construction and obtaining approval from PDE. The approval is required if the cumulative total is greater than plus or minus 3% or \$300,000 (whichever is less) of the total contract award amount, change orders and supplemental contracts greater than \$19,400. A Part I approval letter must be issued by PDE before engaging in work or signing contracts as a condition of eligibility for reimbursement. This requirement can cause problems for districts that need to make timely decisions and be able to move forward with their projects.

The slowness of the approval process is a concern when emergency projects become necessary. Group members felt there should be an accelerated progression for emergency needs such as repairs for failing HVAC systems or leaking roofs.

Compounding the problems is the fact that PDE has decreased the number of staff dedicated to evaluating the hundreds of pages of hundreds of applications. Having fewer staff extends the time it takes for review and move projects through the pipeline.

In conjunction with problems identified with many of the specific rules under the PlanCon process, there is an overarching concern that it doesn't allow districts to address the educational needs of today's and tomorrow's schools. Modern classrooms must have the space and design to accommodate special education students, science and technology curriculums, and the arts, as examples. In addition, districts need to include safety and security features in their buildings. The workgroup strongly believes that the current PlanCon process limits the creativity of school districts in planning for their students and their communities.



## Looking at costs and reimbursement

Although the state has included a line item in the state budget for school construction reimbursement costs (Authority Rentals and Sinking Fund), the amount allocated to it varied with the will of the General Assembly each year. With the new bonding plan that was included under Act 25 of 2016, the line item was zeroed out. The workgroup felt it is critical for the state to fulfill its promise to reimburse districts for the money owed now, provide for those projects currently in the PlanCon pipeline, and to continue providing funding for future projects.

Members also voiced concerns with the reimbursement formula that is outdated and complicated, and does not take local factors into consideration. The per-pupil reimbursement rates for eligible projects have not been increased since 2005. In addition, there are no deadlines that the state must follow regarding the reimbursement process or when funds are issued.

The group also discussed two other factors that can add time and/or cost to a construction project. First is the state's Separations Act. Under current law, if a construction project will cost more than \$18,500, a school district must solicit separate bids and award separate contracts for certain portions of a construction project instead of hiring a single general contractor. This results in school districts entering and managing separate contracts for electrical, heating, ventilating, and plumbing work, which is administratively burdensome, often results in schedule overruns and change orders, and tends to be more costly.

Second is the Prevailing Wage Act. Under this law, school districts must pay state-mandated prevailing wage and benefit rates for workers on every construction or renovation project in which estimates exceed \$25,000, a number that has not been adjusted in 54 years since the enactment of the law in 1961. The prevailing wage rates set for each county are not reflective of the actual wage rates in the local community, and inflate the cost of construction projects.

The group also considered pros and cons of the Massachusetts model for reimbursement, noting that the state had experienced problems with funding and a backlog of projects similar to Pennsylvania prior to the establishment of its Massachusetts School Building Authority (MSBA). It was agreed that many of the features of the MSBA reimbursement process are effective and valuable, particularly with the creation of the SMART Fund that receives a portion of the state's sales tax and is not part of the annual budget. Schools receive payments due under a timely, "pay as you build" and "audit as you build" system. With the benefits, however, are concerns with the MSBA law and regulations that can serve

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Without dedicated funding, Pennsylvania's ability to reimburse districts depends on appropriations by the General Assembly in each year's state budget.

to severely control and limit local school construction decisions. The group also expressed concerns that creating a similar system in Pennsylvania that would be funded through a portion of the state sales tax or another dedicated source could be difficult to attain. However, without dedicated funding, Pennsylvania's ability to reimburse districts depends on appropriations by the General Assembly in each year's state budget.

Members did express interest and support for MSBA's fully funded practice for new construction building commissioning, which is a process involving independent third-party testing to verify a building's systems, materials and the operation of the building as a whole. The MSBA commissioned buildings undergo an intensive quality assurance process. Commissioning verifies building envelopes, roofing, mechanical HVAC, plumbing, electrical power and lighting, data, and safety systems. There are many benefits to the school districts, and it is a critical component to any "green" building program. The group felt that commissioning helps to identify issues and possible concerns, and assures that new buildings function as intended and result in more efficient and sustainable operations. In Massachusetts, commissioning is 100% funded by the MSBA. For similar success in Pennsylvania, members underscored the importance of state funding.



# PSBA Workgroup Recommendations

The recommendations of the workgroup reflect careful consideration of the current PlanCon process and problems associated with it.

**Recommendation 1:** The state must continue to play a role in providing reimbursement for school construction. There should be annual funding in the state budget to ensure payment due for approved projects and for the continued sustainability of the program. The state should review other state programs and consider whether the creation of a new authority to administer the program would be beneficial.

**Recommendation 2:** The current PlanCon approval process should be restructured and consolidated. A restructured reimbursement program should:

- Contain fewer steps and require fewer approvals that will save time and reduce the burden and cost to school districts as well as PDE. For example, steps E and I could be eliminated, and steps A, B and D could be combined as is the process for the School District of Philadelphia and Pittsburgh Public Schools.
- Prioritize different types of projects – such as smaller projects or maintenance projects.
- Include an accelerated process for emergency projects with a condensed review period.
- Eliminate outdated requirements. Allow electronic submission of construction documents and a reduction in the data requirements needed to conform to the process. Doing so would reduce time

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A restructured process should include provisions that give schools more flexibility and local control in making project decisions affecting design and cost issues.

and cost for school districts and PDE, and would make storage, prioritization and management of school construction projects more efficient.

**Recommendation 3:** The state must increase staffing and support at PDE to review and respond to school district applications. Doing so would help to lessen the backlog of projects to be processed through the pipeline.

**Recommendation 4:** A restructured process should include provisions that give schools more flexibility and local control in making project decisions affecting design and cost issues. The state should:

- Re-establish a mandate waiver program that would enable districts to save money and time in moving projects through the process.
- Allow districts to bundle projects needed at more than one building for purposes of obtaining bids.
- Exempt school construction projects from the Separations Act requirements, and allow districts to decide how best to bid a construction project – using either multiple prime contracts as is required now or using a single prime contract to do the needed work. If projects are not exempt from the Separations Act requirements, the threshold should be raised as a cost control measure.
- Exempt school construction projects from the Prevailing Wage Act requirements. At the very least, the threshold should be raised as a cost control measure.

**Recommendation 5:** The state should simplify the reimbursement formula and update the factors used to drive the funds to schools. A scoring matrix should be created for the new formula to determine the distribution of state dollars. The formula should use updated measures of local wealth/poverty, resources, enrollment, maintenance need, etc., to more accurately and effectively distribute state funds. However, the state should not limit who receives funds; all districts with approved projects should receive reimbursement.

**Recommendation 6:** Moving forward, the state should be required to review (and modernize, when necessary) the process and rules for reimbursement on a regular timeframe. Stakeholders should be involved in the review and have input on proposed changes.





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