

# Act 70 of 2019 School Construction & Maintenance Programs

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**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION**

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## Introduction to PlanCon Comprehensive Building Program

Pennsylvania law charges local boards of education with the responsibility of providing "necessary grounds and suitable school buildings to accommodate all the children between the ages of six and twenty-one years....so that every pupil in any such building may have proper and healthful accommodations" (Section 701 of the Public School Code of 1949, as amended). Generally, the determination of what constitutes "necessary grounds and suitable school buildings" is a local decision and one that is determined by the board of directors of each Local Education Authority (LEA). A LEA is defined in this Section of Act 70 as a school district or career and technical center.

When a LEA undertakes a major project and seeks reimbursement from the Commonwealth, a process known as PlanCon is initiated. PlanCon, an acronym for Planning and Construction Workbook, is a set of forms and procedures used to apply for Commonwealth reimbursement. The forms are designed to: (1) document the construction planning process; (2) justify the need for the project; (3) ensure compliance with state laws and regulations; and (4) establish the level of state reimbursement for the cost of the project.

State Board of Education regulations strongly emphasize the prerogative of local school boards to make decisions about construction projects. Therefore, PDE will approve LEA plans as long as they conform to laws and regulations, and include all necessary approvals from local, regional, and state agencies (22 Pa. Code Sections 21.71 and 21.81).

The Commonwealth reimburses LEAs for new construction, additions to existing buildings and renovations or alterations to existing buildings. Construction projects must meet the requirements of Basic Education Circular (BEC) 24 P.S. § 7-733, which details the policies and criteria governing the PlanCon process. Briefly, the criteria for a reimbursable school construction project are: (1) a district-wide facility study must be developed within five years of the submission of PlanCon Part 1; (2) the project must address the needs of the project building, as set forth in the facility study; and (3) if the project includes the renovation of an existing facility, the costs for such renovation must be greater than 20 percent of its replacement value, in accordance with the methodology specified in BEC 24 P.S. § 7-733, unless PDE grants an exception. In addition, a project is not reimbursable if the project building is less than 20 years old, or if PDE approved a reimbursable project within the preceding 20 years. However, under certain circumstances, PDE may grant an exception to this requirement.

PlanCon is divided into four parts. In order to ensure local participation, each part is submitted individually after board action. The following is a brief description of each part.

**Part 1, Project Justification:** The LEA justifies the need for the project. A LEA-wide facility study serves as the required basis for this justification. The LEA provides educational specifications and preliminary design drawings. PDE performs fiscal health checks to review the affordability of the planned project.

PDE reviews the educational specifications and schematics, calculates a preliminary reimbursement amount and verifies Act 34 compliance.

**Part 2, Construction Documents:** The LEA provides actual construction bid documents, bid tabulations, and notice of intent to award bids. It is also at this part that the LEA must provide evidence that the requirements of other agencies and localities have been met. PDE also revisits the fiscal health checks.

PDE reviews bid information and construction documents before the contracting occurs. If the LEA fails to receive PDE approval before contract signing, it will forfeit its PlanCon reimbursement eligibility. An advisory statement is made based upon the re-visited fiscal health checks. PDE revisits the project's Act 34 compliance and recalculates the reimbursement based on the updated information.

**Part 3, Project Bid Awards:** The LEA provides evidence that the school board has signed the contracts. In addition, the LEA provides an attestation stating that the fiscal health picture has not changed since Part 2 approval. PDE revisits Act 34 compliance one more time.

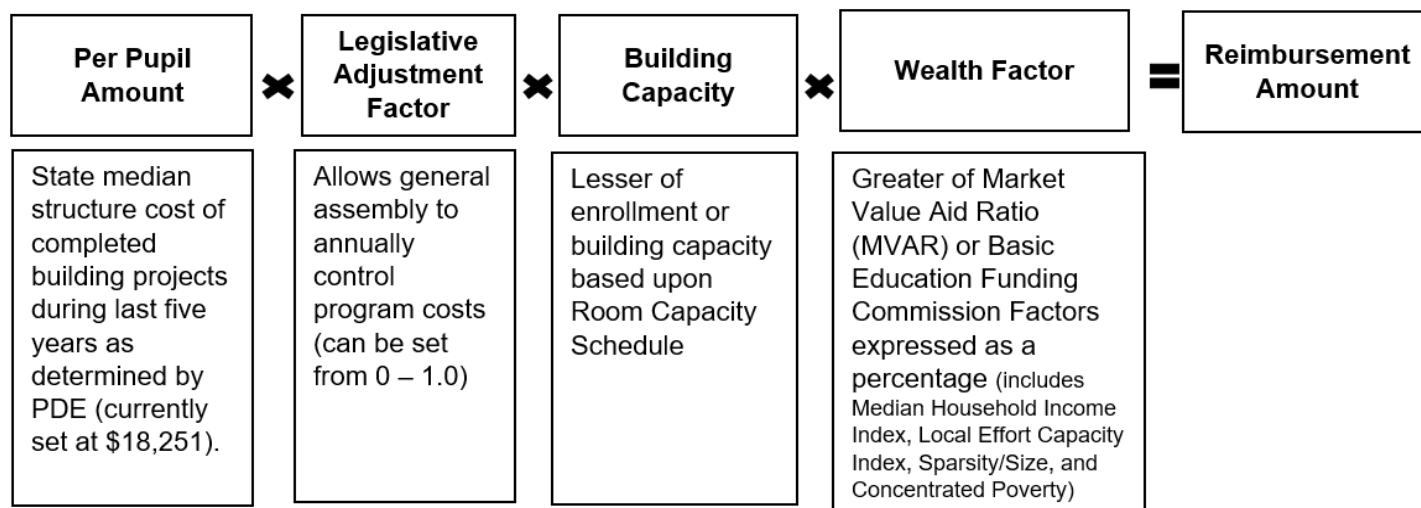
PDE approves the project and reimbursement commences.

**Part 4, Project Completion:** Within one year of occupancy of the building following construction, the LEA must attest to Act 34 compliance. The LEA must provide finalized construction costs to PDE to confirm Act 34 adherence. The actual floor plan and costs are also used to calculate the final reimbursement.

PDE withholds scheduled reimbursement payment until the LEA provides finalized schematics, floor plan, and costs.

## Reimbursement Formula

**Step 1:** The formula uses four base components multiplied as follows to arrive at the reimbursement amount.



### Room Capacity Schedule

Name of Space	Capacity
Pre-K / Kindergarten Classroom	25
Special Education Classroom	15
Alternative Ed. Classroom	20
Regular Classroom <sup>1</sup>	25
Art/Music Classroom <sup>2</sup>	28
Career/Tech-Ed/TV Studio	32
Labs <sup>3</sup>	33
Library/Gyms <sup>4</sup>	70

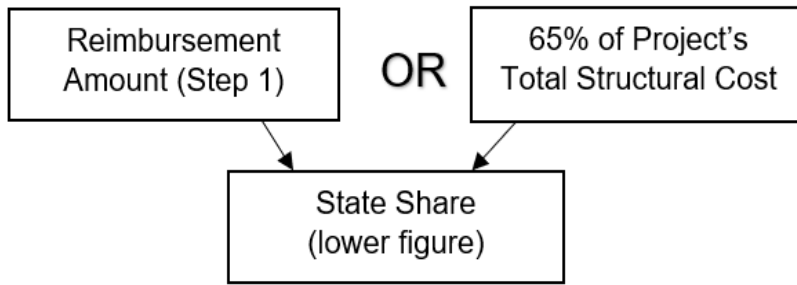
<sup>1</sup> A regular classroom is defined as a general instruction space, with no specialized structural modifications

<sup>2</sup> This category includes band, orchestra, and choral rooms

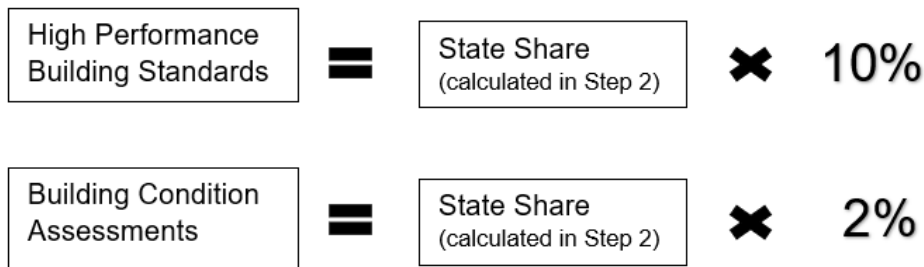
<sup>3</sup> This category includes science, consumer science, business, and computer labs

<sup>4</sup> This category includes auxiliary gyms.

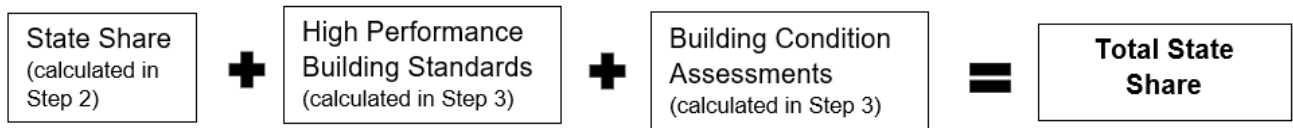
**Step 2:** The project's reimbursement amount calculated in Step 1 is then compared as follows to the project's structural costs arriving at a State Share.



**Step 3:** If eligible for enhancements, a project's State Share amount (calculated in Step 2) is increased as follows:



**Step 4:** A project's Total State Share amount is then calculated as follows:



**Act 34 of 1973:** Act 34 of 1973 (Act 34) requires that a public hearing be held on all new construction and substantial additions for second, third and fourth class LEA. A building addition is considered substantial when the new architectural area divided by the existing structure's architectural area is greater than 20 percent. Act 34 applies only to costs for new construction. The legal requirements do not address the costs for alterations to existing structures or costs for site development.

Commonwealth statute (24 P.S. § 7-701.1) requires the school board to hold a second Act 34 hearing on a project whenever the maximum building construction cost based on bids exceeds the maximum building construction cost based on estimates by eight percent or more. Moreover, a referendum must be held on a project if the maximum building construction cost based on bids exceeds the aggregate building expenditure standard. The second Act 34 hearing or referendum must be held before a LEA enters into construction contracts and commences work on any portion of a project, the cost of which would cause the statutory limit to be exceeded.

Under the law's provisions, an Act 34 project remains subject to the second hearing and referendum requirements until the LEA completes all construction. In fact, an Act 34 referendum or second hearing may be required even during construction if a project's accumulated costs, including any planned equipment purchases or future construction work, exceed a project's statutory limit. When the Act 34 referendum limit or second hearing limit for a project is exceeded, the only options available are: (1) to hold a referendum or hearing before proceeding with any work or equipment purchases causing the statutory limit to be exceeded; or (2) to reduce the scope of any proposed work or equipment purchases.

If a LEA does not comply with the Act 34 requirements it may forfeit its state reimbursement. PDE reviews Act 34 at all four parts of the PlanCon process to ensure compliance.



**Maintenance Program:** Section 2604-J of Act 70 of 2019 created a Maintenance Grant Program to assist LEA's with ongoing maintenance and repairs that fall outside the scope of eligibility for the PlanCon program. The following maintenance projects are eligible for these grants:

1. Roof repairs and roof replacement
2. Heating, ventilation and air conditioning equipment
3. Boilers and controls
4. Plumbing systems
5. Energy saving projects
6. Health and safety upgrades
7. Emergencies
8. Other projects approved by the Secretary

PDE must award no less than 20 percent of the funds allocated to the Maintenance Grant Program to projects that enhance school building and safety.

No grant award for a maintenance project may exceed \$1,000,000 and no LEA may receive an annual allocation that exceeds 20 percent of the total funds available under the program.

LEA's will be required to match each grant award by at least 50 percent. The match requirement is waived for grants awarded for emergency projects.

PDE will allocate funds through a competitive grant review process. Grant applications and the awarding of funds will occur twice a fiscal year. A LEA will submit its application via an online application system.

**Funding is not guaranteed.** All grant applications are competitive, reviewed and scored on the following criteria:

1. LEA wealth
2. Prior receipt of grant awards
3. Building conditions
4. Emergency status
5. Safety and security

## APPENDIX I – Example Reimbursement Formula Calculation:

- School district has three K-6 schools, one 7-8 middle school, and one 9-12 high school.
- Project is at the high school
  - Highest enrollment (Actual vs Projections) = 925
  - Building Capacity (per Room Capacity Schedule) = 1,350
  - Additions/Alterations with Total Structure Costs = \$23,000,000
  - Pursuing a LEED Gold Certification
- Legislative adjustment factor = .8
- Wealth Factor = MVAR greater at .5285

Step 1:  $\boxed{\$18,251} \times \boxed{.8} \times \boxed{925} \times \boxed{.5285} = \boxed{\$7,137,784}$  (Reimbursement Amount)

Step 2:  $\boxed{\$7,137,784}$  OR  $\boxed{\$14,950,000}$  (23,000,000 x .65) =  $\boxed{\$7,137,784}$  (State Share)

Step 3 (For LEED Gold):  $\boxed{\$7,137,784} \times \boxed{.10} = \boxed{\$713,778}$

Step 4:  $\boxed{\$7,137,784} + \boxed{\$713,778} + \boxed{\$0} = \boxed{\$7,851,562}$  (Total State Share)

$(\$7,851,562 / 20 = \$392,578$  per year for the next twenty years)

## APPENDIX II – Example Act 34 of 1973 Calculation

The following is an Act 34 Calculation for a school district that is planning additions/alterations at their K-5 elementary school.

1. Act 34: Substantial Addition Determination:

Architectural Area – Addition - 42,325 sq. ft.

Architectural Area – Existing - 48,066 sq. ft.

Act 34 Percentage - 88.06%

**Subject to Act 34**

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2. Act 34 Maximum Building Construction Cost:

A. Estimates (prior): \$4,364,068

x 1.08

B. = \$4,713,193

C. Actual Bids Accepted: \$4,350,172

Line C does not exceed line B.

A 2<sup>nd</sup> hearing is **not** required.

3. Act 34 Referendum:	
A. Structure Costs, Insurance, Architect's Fee, Movable Fixtures and Equipment	\$5,222,552
B. Excludable Costs for New Construction (Site Development Costs, Insurance, Architect's Fees, & for Vocation Projects Only – Movable Fixtures & Equipment)	\$872,380
C. Maximum Building Construction Cost (A minus B)	\$4,350,172
D. Aggregated Building Expenditure Standard (Act 34 Elementary Capacity times Scheduled Area Factor times the Per Pupil Cost Limit <sup>5</sup> )	\$5,832,316

Line C does not exceed line D.

A referendum is not required for this project.

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This brochure is intended to be a general and informal introduction to school construction policies and procedures. As such, many generalizations are used. Readers should consult actual laws, regulations and standards for definitive answers.

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<sup>5</sup> the Per Pupil Cost Limits are updated on July 1st of every year.