

DRAFT FOR DISCUSSION*

Revised 3.13.2006

PROPOSED AMENDMENTS TO THE EDUCATIONAL FACILITIES CONSTRUCTION AND FINANCING ACT, P.L.2000, c.72 (C.18A:7G-1 et seq.)

SECTION 1

ADD new findings to Section 2 (C.18A:7G-2):

e. While providing that the educational infrastructure meets the requirements of a thorough and efficient education, the State must also recognize that new, renovated and expanded school facilities are an important part of the neighborhoods and cities in which they are located, and offer valuable opportunities for creation of multiple use and shared use facilities, as well as to further the development and redevelopment of the community.

f. The legislature finds that improving the state's educational infrastructure, and providing community schools with multiple use and shared use facilities that enhance the neighborhoods and cities in which they are located, are a public purpose for which municipal funds may be used and toward the achievement of which the municipality may take such other actions consistent with its general government powers.

SECTION 2

AMEND Section 3 (C.18A:7G-3) as follows:

ADD new definitions:

“Community School” means a school facilities project that incorporates facilities for multiple use by the school and the community; or includes or is integrated with complementary facilities, such as health care facilities, libraries, and public recreation facilities; or is contained within or integrated with a mixed use development which may contain residential or commercial as well as community-serving facilities; which through its design, use, and integration with other facilities furthers the revitalization of the neighborhood in which it is located; and which is planned and designed in accordance with the provisions of Sec. ___ of P.L.2000, c.72 as amended by P.L. ___ c. ___ (pending before the Legislature as this bill).

“Community school construction entity” means any entity, public or private, approved by the Authority or successor entity to conduct the planning, design and/or construction, as appropriate, of a community school project upon request by a school district as set forth in Sec. 6 of P.L.2000, c.72 as amended by P.L. ___ c. ___ (pending before the Legislature as this bill).

* This draft was written by Alan Mallach of the National Housing Institute with the involvement of a variety of contributors convened by the Housing & Community Development Network and the Education Law Center.

DELETE definition of “Demonstration Project”

AMEND definition of “Other allowable costs” to add underlined language:

“Other allowable costs” means the costs of site development, acquisition of land or other real property interests necessary to effectuate the school facilities project, fees for the services of design professionals, including architects, engineers, construction managers and other design professionals, legal fees, financing costs and the administrative costs of the authority, any entity to which the authority has delegated any responsibility for a school facilities project under subsection 13e or 13f of this act as amended by P.L. ____ c. ____ (pending before the Legislature as this bill), or the district incurred in connection with the school facilities project; and, in the case of community school facilities projects carried out under the provisions of section 6 of this act as amended by P.L. ____ c. ____ (pending before the Legislature as this bill), participatory community school planning.

ADD:

“Predevelopment costs” means any costs reasonably incurred by the authority, any entity to which the authority has delegated any responsibility for a school facilities project under subsection 13e or 13f of this act as amended by P.L. ____ c. ____ (pending before the Legislature as this bill), or the district, in order to complete schematic design of the project, including but not limited to costs associated with site evaluation or acquisition, fees for the services of architects, engineers and other design professionals, the cost of community outreach as required under subsection ____ of this act as amended by P.L. ____ c. ____ (pending before the Legislature as this bill) legal fees, the cost of such planning as may be necessary to ensure that the community school facilities project is integrated with other facilities and improvements being developed in the vicinity of the project site, and such other costs determined to be necessary and proper by the authority or successor entity.

“Turnkey agreement” means an agreement under which a community school construction entity constructs a school facilities project which is purchased by the district from the construction entity upon completion of construction, in which the lease amount or purchase price, or the method of determining the lease amount or purchase price, have been determined prior to the start of construction.

SECTION 3

AMEND Section 4 (C.18A:7G-4) as follows:

AMEND subsection d.

d. Each long range facilities plan shall include a cohort survival methodology or other methodology approved by the commissioner, accompanied by a certification by a qualified demographer retained by the district that serves as the basis for identifying the capacity and program needs detailed in the long-range facilities plan. Each long range facilities plan shall include a comprehensive assessment of new development, rehabilitation and demolition

anticipated to take place within the municipality, and the effect of such development on the district school enrollment.

AMEND subsection g.

g. (1) Each district shall ~~prepare submit~~ the long-range facilities plan ~~in conjunction with~~ ~~to~~ ~~the planning board of~~ the municipality or municipalities in which the district is situate ~~as set forth in section ___ of this act as amended by P.L. ___ c. ___ (pending before the legislature as this bill) for the planning board's review and findings.~~

(2) Each district shall submit the long-range facilities plan to the planning board of the municipality or municipalities in which the district is situate for the planning board's review and findings, which shall be provided in writing by the planning board and attached to the long-range facilities plan submitted to the Department.

ADD new subsections:

n. (1) To the extent feasible, new schools to be constructed or existing schools to be substantially expanded or reconfigured in Abbott districts shall be community schools as defined in this act. The manner in which such schools shall incorporate facilities for multiple use or complementary facilities, or shall be part of mixed use projects, shall be determined in conjunction with the municipality and the residents of the areas in which the community schools are to be located. The school district shall consult with any public agency or private entity that is engaged in development of housing or community facilities, or providing community services within an area planned for a new school or the substantial expansion or reconfiguration of an existing school.

(2) Abbott districts shall amend their long-range facilities plans to conform to the provisions of subsection n(1) above; provided, however, that no amendment shall be required with respect to any school facilities project that has been submitted to the commissioner for approval pursuant to the provisions of section 5 of this act prior to the effective date of P.L. ___ c. ___ (pending before the Legislature as this bill) if the school district finds that such amendment would unduly delay construction of said project.

(3) Each district shall specify within its long-range facilities plan which school facilities projects are to be considered community schools. School facilities projects so designated shall be governed by the provisions of section 6 as amended by P.L. ___ c. ___ (pending before the Legislature as this bill)

o. In preparing each school facilities project, Abbott districts shall seek opportunities wherever feasible and appropriate to incorporate school facilities projects in mixed use projects, including locating such facilities within mixed use projects being developed by public, private or nonprofit entities, or integrating their planning into common site plans with public or private buildings being designed for other uses, including residential and commercial uses.

- p. The long-range facilities plan, any material amendment thereto, and each school facilities project shall be prepared with the active participation and involvement of the residents of the community, in particular those areas in which new schools are proposed to be constructed, or existing schools substantially expanded or reconfigured. The long-range facilities plan and each school facilities project submitted to the commissioner shall include detailed information documenting the manner in which the school district sought and obtained the active participation and involvement of the residents of the community in its preparation.
- q. Each school district shall establish a facilities planning advisory committee that shall advise the district in the preparation of the long-range facilities plan and the development of each subsequent school facility project application made pursuant to the plan. The committee shall include representatives of municipal government and shall include individuals engaged in community development or service activities in the area or areas in which the new schools are anticipated to be sited, as well as such other individuals that in the judgment of the school district will provide useful advice in preparation of the plan and individual projects.

SECTION 4

Repeal existing Section 6 (C.18A:7G-6) in its entirety and replace it with a new Section 6 as follows:

- 6. The provisions of this section shall apply to any school facilities project meeting the definition of community school in this act, and designated as a community school by a school district in its long-range facilities plan.
 - a. A district may request that the authority plan, design and construct the school, may apply to the authority for the ability to plan, design and construct the school itself, or may apply to the authority for designation of a community school construction entity to act as the entity to plan, design or construct, as appropriate, any community school project. Such entity may be a public agency authorized by law to undertake public construction projects, may be a redevelopment entity, as defined in the Local Redevelopment and Housing Law, P.L.1992, c.79 (C.40A:12A-1 et seq.) or may be a private for-profit or not-for-profit entity qualified by experience and current capacity to undertake the community school project. The authority shall approve any such request where it finds:
 - (1) that the school district or the entity has the experience and capacity to undertake the community school project;
 - (2) that appropriate measures are in place, or can be put in place, to monitor the expenditure of public funds on the community school project.
 - b. The district, the authority, and the community school construction entity shall enter into an agreement to govern the conduct of the community school project by the entity and provide for payment to the entity by the authority for the State share of the project, which agreement may be structured as a turnkey or lease-purchase agreement, and may provide

for ownership or lease of the community school facilities project by the district upon completion, as the parties determine to be most appropriate. Said agreement shall also provide for a procedure by which residents of the neighborhood in which the community school project is to be constructed are afforded adequate opportunity to participate in the planning and design of the project, and may provide for advance payments by the authority to the district or the entity to cover pre-development costs as defined in Section 3 of this act as amended by P.L. ___ c. ___ (pending before the Legislature as this bill)

- c. A community school facilities project may request inclusion in its final eligible costs the cost of all or any portion of the cost of any community design features, including any area, rooms, equipment, recreational area or playground included in the project which are to be used in common by students of the district and by residents of the community, but there shall not be included in the final eligible costs any portion of the cost of any features that are not so located that they can be easily used by the students of the school. The commissioner shall approve the inclusion of the community design features as part of the community school facilities project if he finds that the inclusion of the community design features as part of the community school facilities project would be conducive to the usefulness and success of the project for both the students of the district and the residents of the community, and that the costs of the community design features are not excessive in light of the benefits conferred therefrom. The commissioner may condition his approval on the adoption by the district of policies suitable for assuring continuing community or educational access to the community design features.
- d. The cost of the community design features approved by the commissioner shall be reviewed by the authority. The district shall submit the documentation required by the authority for the authority to make its determination. The authority shall, in its recommendation to the commissioner pursuant to section 5 of this act, include its recommendations with respect to the cost of the community design features. The commissioner shall make the final determination with respect to the inclusion of the cost of community design features in the final eligible costs in keeping with the standards of subsection (c) of this section.
- e.
 - (1) In order to facilitate the development of community school facilities projects which shall contain complementary but separate facilities or which shall be part of mixed use projects, school districts may submit projects to the commissioner for approval which include the use of additional non-school revenue sources and which shall include a plan for the use of such revenue sources for construction of the project or the larger project of which the school facilities project is a part, which may include but are not limited to (1) state funds as set forth in subsection ___ below; (2) other public funds from Federal, state, county or local government; (3) foundation, individual or corporate grants; and (4) loans where the debt service is supported by facility revenues or other non-school sources.
 - (2) The commissioner shall approve the project if he finds that the plan for additional non-school revenue sources is sound; that the additional revenue sources are

- realistically available; that it embodies a realistic timetable for obtaining all necessary funding commitments; and that any debt proposed to be raised for the project can be repaid from sources other than the school district operating budget.
- (3) The authority may expend funds, or provide funds to the district or community school construction entity, for costs up to but not beyond completion of project design, including site acquisition, prior to receipt by the district of all additional non-school revenue sources; provided, however, that if the authority finds, in the course of project monitoring, that the district has failed to adhere to the plan in material fashion, or that one or more anticipated commitments have become realistically unavailable, the authority may suspend the provision of funds to the project, or may condition continued funding of the project on changes to the plan or the project to ensure its completion, except that if the district can demonstrate that the loss of funding commitments does not materially affect the district's ability to complete the school facilities project, the authority shall not suspend the provision of funds to the project.
- f. Notwithstanding the provisions of any other law, where the construction of a community school has been planned in conjunction with a comprehensive strategy for the revitalization of the neighborhood or area in which it is located, and where that strategy will be materially furthered by the availability of funds for other purposes in conjunction with construction of the community school, other agencies of state government, including but not limited to the Departments of Community Affairs, Environmental Protection and Transportation, shall give priority to funding requests for such funds from any discretionary grant programs under their jurisdiction.
- g. In conjunction with the school siting and planning review process set forth in Section ___ of P.L. ___ c. ___ (pending before the Legislature as this bill), the school district and municipality in which the school is situate shall consult with any organizations or non-profit entities engaged in undertaking development or providing community services in the area in which a community school facilities project is proposed, in order to determine which complementary activities, facilities or projects will best enhance the effectiveness of the community school facilities project and the revitalization of the area in which it is located, and shall to the extent feasible take steps to ensure that such activities, facilities and projects are incorporated in the municipality's plans and programs, including making funding applications pursuant to subsection f. above. School districts shall cooperate fully with the municipality, as well as organizations or non-profit entities engaged in undertaking development or providing community services in the area in which a community school facilities project is proposed, to further achievement of the objectives of this subsection.
- h. Notwithstanding the provisions of any other law, school districts may lease space within community school facilities projects to public, nonprofit and private entities for activities complementary or supportive of the community school facility project, including commercial and residential use as well as community service facilities; and may establish or participate in condominium regimes for the ownership of community school facilities projects developed under this section.

- i. Notwithstanding the provisions of any other law, any district may enter into a lease for all or part of any community school facility project constructed under this section for such term as is most appropriate in light of the nature and cost of the project, not to exceed 30 years.
- j. With respect to any community school facilities project in which any entity other than the school district has responsibility for any part of the maintenance or operations of the facility, or has an ownership or leasehold interest, in any part of the facility, the district shall submit to the commissioner a plan for the operation and maintenance of the project, which shall include agreements between the district and all entities sharing responsibility for the project, governing their respective responsibilities for the maintenance of the project.

SECTION 5

New section

- a. In each Abbott school district whose long-range facilities plan contains provisions for one or more newly constructed schools the municipality and the school district shall establish a joint school siting review committee, for the purpose of reviewing sites for individual school facilities project applications, or for inclusion in the long-range facilities plan. Such committee shall consist of nine members, as follows: (1) three municipal representatives, including one member of the municipal governing body and the municipal official or officials responsible for planning and community development; (2) three school district representatives, including one member of the school board and the school district official responsible for facilities planning; and (3) three community representatives, who shall be individuals engaged in community development or service activities in the area or areas in which the new schools are anticipated to be sited, of whom at least one shall be a resident of said area.
- b. The municipal official or officials responsible for planning and community development and the school district official responsible for facilities planning shall work cooperatively to identify the school site or sites that best meet the following criteria:
 - (1) The sites are consistent with the school district's educational needs and the geographic distribution of its student body;
 - (2) Acquisition, remediation, if necessary, and site preparation can be carried out in a timely and cost-effective manner, compared to available alternatives;
 - (3) The sites further the improvement and revitalization of the areas in which the schools are proposed to be constructed;
 - (4) Displacement of residents and businesses is limited, compared to available alternatives.

All proposed sites shall be reviewed by the full committee.

- c. Prior to making any siting recommendations to the school board and the municipal governing body, the school siting review committee shall hold at least one public meeting in the area in which a proposed site is located. The meeting shall be in an accessible public place and shall be widely publicized within the municipality and the area in which the proposed site is located. Information about proposed sites shall be made available by the committee through written and electronic means at least two weeks prior to the date of each meeting. A stenographic or electronic record shall be maintained of each meeting. Interested parties may submit written comments to the committee for a period that shall be no less than two weeks after the meeting. The record of all meetings and all written comments shall be part of the record submitted by the committee to the school board, the municipal governing body, and the municipal planning board.
- d. Upon receipt of the committee recommendations, the municipal planning board shall have 45 days to review the recommendations, and make any comments on the recommendations. The comments of the planning board will be transmitted to the committee, the municipal governing body, and the school board.
- e. Upon receipt of the planning board comments, or 45 days after receipt of the committee recommendations, the municipal governing body shall have 30 days to object to any site proposed by the committee. If the governing body objects to any site proposed by the committee, the school board may take no action with respect to the committee recommendations for 90 days, during which time the committee shall review the comments from the governing body, and make any changes deemed necessary.
- f. Upon the completion of all time periods set forth herein, the school board may accept the committee report and incorporate it into the long-range facilities plan or school facilities project, as applicable, or may modify the committee report. Any material modifications that the school district makes to the committee report shall be submitted to the municipal planning board and governing body for their review as set forth in subsections (d) and (e) of this section.

SECTION 6

New section

- a. In the development of each school facilities project and in the programming, planning and design of all schools to be constructed or substantially expanded or reconfigured under this act, the school district shall consult fully with the residents of the area in which the school is to be constructed, substantially expanded or reconfigured, including but not limited to the following:
 - (1) The scope of community school features, including multiple use areas, complementary uses, or the incorporation of schools in mixed use facilities;
 - (2) The interior configuration of the school building, and the programming of the spaces therein;

(3) The site planning of the school, including the relationship of the building to on-site open space and adjacent properties, and the pedestrian and vehicular circulation scheme:

(4) The architectural design of the school.

To this end, the school district shall use community meetings, forums, design charrettes, surveys, and other means of eliciting community input. The school district shall prepare and widely disseminate written and electronic materials in timely fashion to enable interested parties to participate effectively in the planning and design process.

- b. The cost of community participation activities as set forth above shall be deemed an eligible cost for purposes of each school facility project, as well as an eligible predevelopment cost as defined in Section ___ of P.L. ___ c. ___ (pending before the Legislature as this bill).
- c. (1) With respect to any school facilities project that is located in an area that is the subject of a redevelopment plan adopted by the municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.), a neighborhood revitalization plan submitted to and approved by the Department of Community Affairs pursuant to P.L.2001, c.415 (C.52:27D-490 et seq.) or any other plan for the revitalization or preservation of the area duly adopted by the municipal governing body, the authority, district, or school construction entity, shall carry out its planning and design activities in close consultation with representatives of the municipal government and any non-profit entity designated the lead entity for implementation of the neighborhood revitalization plan.
- (2) With respect to any material planning or design feature of a school in such an area that is inconsistent with or in conflict with the redevelopment plan or neighborhood revitalization plan, the school district shall review the conflict or inconsistency, and shall not approve the design of the project unless it adopts a written statement by a 2/3 majority setting forth the reasons for the conflict or inconsistency.

SECTION 7

AMEND Section 13 (C.18A:7G-13) as follows:

Amend 13a. as follows:

- a. Except as provided in subsection (e) below, The authority shall be responsible for the financing, planning, design, construction management, acquisition, construction and completion of school facilities projects. Upon submission to the authority of a final project report, the authority shall undertake the acquisition, construction, and all other appropriate actions necessary to complete the project. [etc.]

Add new subsection 13e. as follows:

- e. Notwithstanding the foregoing, the authority may delegate specific responsibilities under the act to a school district or other entity as follows:

- (1) The authority may enter into agreements with a school district and a community school construction entity under the provisions of section 6 of this act as amended by P.L. ___ c. ___ (pending before the Legislature as this bill) under which any or all of the actions necessary to plan, design and construct a community school facilities project may be delegated to the district or said entity.
- (2) The authority may enter into an agreement with any school district under which the authority shall delegate the responsibility for any of the actions necessary for the planning, design and construction either of specific school facilities projects or the entire school facilities construction program set forth in the district's long range facilities plan. Prior to approval of any such agreement, the district shall submit a management plan to the commissioner and receive approval of the management plan from the commissioner.
- (3) The management plan shall set forth with specificity (i) the school facilities project or projects for which the district is seeking delegation of responsibility; (ii) the scope of the actions, with respect to each project, for which the district is seeking delegation of responsibility; (iii) the qualifications of the district and its professional staff, consultants, or advisors to carry out the actions for which the district is seeking delegation of responsibility; and (iv) a plan of action, including projected timetables and estimated budgets, for carrying out the actions for which the district is seeking delegation of responsibility.
- (4) The commissioner shall approve the management plan where he finds that the plan (i) provides a realistic and timely plan for the provision of school facilities projects in the district; and (ii) can be implemented with adequate safeguards to ensure the prudent expenditure of public funds.
- (5) The agreement between the authority and the district shall provide for ongoing monitoring of the district's activities by the authority, and for evaluation of performance on a periodic basis, including such provisions as may be necessary to ensure the prudent expenditure of public funds.

SECTION 7

AMEND Section 14 (C.18A:7G-14) as follows:

Amend subsection 14a. to add underlined language as follows

- a. The authority shall have the power, pursuant to the provisions of this act and P.L.1974, c.80 (C.34:1B-1 et seq.) to issue bonds and refunding bonds, incur indebtedness and borrow money secured, in whole or in part, by moneys received pursuant to sections 17, 18 and 19 of this act for the purposes of: financing all or a portion of the costs of school facilities projects and any costs related to the issuance thereof, including, but not limited to, the administrative, insurance, operating and other expenses of the authority, or any

entity delegated responsibility by the authority pursuant to the provisions of subsection 13e of this act as amended by P.L. _____ c. _____ (pending before the Legislature as this bill) to undertake the financing, design, construction and maintenance of school facilities projects, including the cost of making long-term lease payments on behalf of a district entering into a lease for a community school facilities project pursuant to subsection 6i of this act as amended by P.L. _____ c. _____ (pending before the Legislature as this bill) [etc.]

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