

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1601

H. P. 1124

House of Representatives, April 26, 1967

Referred to Committee on Appropriations and Financial Affairs. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Hinds of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

**AN ACT Providing Appropriations for Payment of School Construction Aid to
the Cities of Westbrook and South Portland.**

Emergency Preamble. Whereas, Acts and Resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the said 90-day period will not terminate until after the beginning of the next fiscal year; and

Whereas, the direct and immediate reason for the required appropriation is the unanimous decision of the Honorable Justices of the Supreme Judicial Court in the case of the City of Westbrook, plaintiff, v. William T. Logan, Jr., Commissioner of Education, ruling for the plaintiff and overturning the denial of the Commissioner of Education of a claim by the City of Westbrook for school construction aid on a project involving an athletic field and appurtenances in which case it was stipulated that the subsidy, if found to be payable, should be and is \$31,510.25; and

Whereas, the City of South Portland had completed a similar project on which the eligibility for construction aid was dependent upon the decision of the Justices in the Westbrook case, and the accumulated subsidy on reimbursable expenditures by the City of South Portland through November 1, 1966 amounted to \$29,858.35, to which amount the city is entitled as the result of the decision in the Westbrook case; and

Whereas, the Department of Education, by adjustment of appropriations for other programs not needed for the original purpose during the balance of the

current fiscal year, can make available only \$15,200 out of the required \$61,368.60 payable as the result of judicial decree; and

Whereas, funds not otherwise appropriated in an amount sufficient to meet the balance of the said construction subsidies are available within the general fund of the State for the fiscal year ending June 30, 1967 but are not estimated to be available for such purposes in the fiscal year beginning July 1, 1967 and ending June 30, 1968, making it advisable and necessary that an appropriation from revenue be made in the current fiscal year of the State; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Appropriation. There is appropriated for the fiscal year ending June 30, 1967 out of any moneys in the General Fund not otherwise appropriated the sum of \$45,448.60 which shall be expended under the direction of the Department of Education in accordance with the following breakdown:

	1966-67
EDUCATION, DEPARTMENT OF	
General purpose subsidies to Cities and Town	
All Other	\$45,448.60

Sec. 2. Appropriations Adjusted. Appropriations made by the 102nd Legislature for the Department of Education for the fiscal year beginning July 1, 1966 and ending June 30, 1967 are hereby increased and decreased in accordance with the following breakdown, decreases being indicated by figures within parentheses:

	1966-67
EDUCATION, DEPARTMENT OF	
General purpose subsidies to Cities and Towns	
All Other	\$15,200
Vocational Education Subsidies	
All Other	(1,000)
Special Education Subsidies	
All Other	(3,100)
Driver Education Subsidies	
All Other	(3,600)
Secondary Education of Island Children	
All Other	(3,000)
New England Higher Education Compact	
All Other	(4,500)

there being no change in the total appropriations for the Department of Education as the result of these adjustments.

Sec. 3. Allotments and work programs. Upon receipt of allotments duly approved by the Governor and Council based upon work programs submitted to the State Budget Officer, the State Controller shall authorize expenditures of the appropriations provided under sections 1 and 2 of this Act on the basis of such allotments and not otherwise.

Emergency Clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Statement of Facts

In 1964 the Commissioner of Education denied a claim for school construction aid submitted by the City of Westbrook on a project for the construction of an athletic field and related equipment, including spectator bleachers, on the basis that the type of project for which assistance was claimed did not meet the statutory definitions of allowable capital outlay purposes whereupon the City of Westbrook brought suit against the Commissioner of Education which was taken directly to the Supreme Judicial Court on report for a determination of the eligibility of this type of project for construction assistance.

In a unanimous decision rendered on March 28, 1967 the Justices ruled that the project did qualify for construction aid and that the stipulated subsidy of \$31,510.25 properly is payable to the City of Westbrook.

The City of South Portland had completed a similar project in 1965 financed partly by local appropriations and partly by bond issues which, if eligible, would have entitled the city to initial subsidy payment in December of 1965 and recurring subsidy annually thereafter for the duration of the bond issues based upon annual expenditures for interest and redemption of bonds. The total of such subsidy payments payable through December of 1966 was \$29,858.35.

The Westbrook decision makes South Portland eligible for subsidy on the same type of project, which the Justices noted in their decision, had been given statutory sanction by the enactment of Chapter 475, Public Laws of 1965.

Since the subsidy in the one case was the subject of a judicial decision and in the other resulted from it, payment should be made immediately. However, funds for the full expense are not available to the Department of Education, requiring a legislative appropriation of \$45,448.60 over and above the \$15,200 which the Department can make available through adjustment of existing appropriation balances in special subsidy accounts on which activity has been completed for the fiscal year.