

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 174

H. P. 144

House of Representatives, January 27, 1977

Referred to the Committee on Education. Sent up for concurrence and 2,000 copies ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Birt of East Millinocket.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to School Construction.

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

Whereas, there is an urgent need for some administrative units to construct facilities for school pupils; and

Whereas, it is in the best interest of local units and the State to know on what basis school construction projects will be approved; and

Whereas, some students are attending schools which are unsafe and obsolete; 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. 20 MRSA § 3457, as last amended by PL 1975, c. 746, § 20, is further amended by inserting before the first paragraph, a new paragraph to read:

This section shall apply only to school construction projects approved by the State Board of Education prior to July 1, 1977.

Sec. 2. 20 MRSA § 3458, as last amended by PL 1975, c. 272, § 1, is further amended by inserting before the first paragraph, a new paragraph to read:

This section shall apply only to school construction projects approved by the State Board of Education prior to July 1, 1977.

Sec. 3. 20 MRSA § 3459, as last amended by PL 1975, c. 272, §§ 10 and 11, is further amended by inserting before the first paragraph, a new paragraph to read:

This section shall apply only to school construction projects approved by the State Board of Education prior to July 1, 1977.

Sec. 4. 20 MRSA § 3460, as last amended by PL 1975, c. 272, § 12, is further amended by inserting before the first paragraph a new paragraph to read:

This section shall apply only to school construction projects approved by the State Board of Education prior to July 1, 1977.

Sec. 5. 20 MRSA c. 502 is enacted to read:

CHAPTER 502 SCHOOL CONSTRUCTION

§ 3471. School construction projects

This chapter shall apply only to school construction projects approved by the State Board of Education subsequent to June 30, 1977.

1. **Definition.** School construction projects shall be defined as on-site additions to existing schools, new schools, the cost of land acquisition, the building of or acquisition of other facilities related to the operation of administrative units and major renovations to existing schools, which in the judgment of the commissioner are more feasible than new construction. Off-site construction may only be approved if, in the judgment of the commissioner, it is economically in the best interests of the State or there is no other practical way to complete the project. All school construction projects are subject to approval by the State Board of Education. Equipment approved in conjunction with a school construction project shall be defined as a major capital cost.

2. **Approval authority.** The State Board of Education shall have authority to approve school construction projects.

A. State funded projects shall not be approved by the State Board of Education if the State's share would be in excess of the amount appropriated by the Legislature for school construction projects plus any funds appropriated from the nonlapsing major capital construction fund.

B. Nonstate funded projects, such as school construction projects or portions of projects financed by proceeds from insured losses, money from federal sources, other noneducation funds, or local funds which shall not be reimbursed by the State, shall be considered as being outside the total cost limitations set by the Legislature.

C. The State Board of Education shall have authority to establish reasonable rules and regulations relating to the approval of school construction projects.

D. Concept approval shall be defined as the initial approval of a school construction project by the State Board of Education which indicates:

- (1) Acknowledgment of the local need;
- (2) Approval of the preliminary design;
- (3) Approval of estimated costs; and
- (4) The board's intent to issue final approval subject to a favorable local vote and approval of final cost estimates.

E. Each school construction project shall receive a favorable vote from the legislative body of the administrative unit prior to final approval by the State Board of Education.

F. A certificate of approval shall be issued for each project approved by the board and shall bear the amount of state aid and any other stipulations or conditions as may be reasonably required by the board. Such certificate shall be signed by the commissioner and shall be conclusive evidence of the facts stated thereon.

§ 3472. School construction financing

1. Rate of construction aid; per pupil valuation; municipal variable; rates.

The commissioner shall establish school construction rates each March 1st for the following fiscal year. The percentage of aid which the unit receives shall be rounded to the nearest hundredth of 1% and shall be frozen at the rate in effect at the time of the project's concept approval by the State Board of Education. The rate of aid for each administrative unit shall be determined as follows:

A. The per pupil valuation for a municipality shall be computed by dividing each municipality's state valuation in effect on March 1st by the average number of resident pupils in that municipality on April 1st and October 1st of the calendar year immediately prior to the fiscal year for which the rate is established. For purposes of establishing per pupil valuations, each municipality shall be considered to have at least one pupil. This quotient shall be rounded at the nearest \$1,000 and shall be known as the per pupil valuation.

B. The variable to be applied to a municipality's rate shall be computed as follows:

- (1) Divide \$1,000 by the median state per pupil valuation; and
- (2) Multiply the resulting quotient by 50% to determine the variable for each \$1,000 change in per pupil valuation from the state median.

C. The rate for a municipality shall be determined as follows:

- (1) The school construction aid rate shall be 50% for the municipalities with the median state per pupil valuation;
- (2) The rate shall be increased by the municipality's variable as the per pupil valuation decreases and shall be decreased by the municipality's

variable as the per pupil valuation increases. No unit shall be required to pay moneys to the State as a result of this computation.

D. A school district or vocational region's rate shall be determined as follows:

(1) The total cost of construction projects shall be apportioned among the member municipalities of each district or vocational region in the same ratio as the average number of resident pupils of the member municipalities bears to the total average number of resident pupils in the district or vocational region and each member municipality shall have its portion of the total construction cost subsidized based upon its per pupil valuation; and

(2) The aid thus computed for the member municipalities shall be added together and shall be paid to the district or vocational region according to procedures outlined in this section. The commissioner shall compute the rate for each district or vocational region in accordance with this paragraph.

2. Deductions—cost of project. Proceeds from insured losses, money from federal sources, and any other noneducation funds shall be deducted from the total cost of the project in order to determine the amount on which the state share shall be calculated, except that proceeds from gifts or moneys from federal revenue sharing sources shall be treated as local appropriations.

3. Total cost defined. Total costs of school construction projects shall be defined as all costs related to or incidental to the project except local financing costs.

4. Unit's authority to raise funds. Administrative units shall have authority to sell bonds to raise the local share of project costs.

5. Payment of state's share. The State shall pay its share of project costs to the units according to the following:

A. The first 2 payments shall be made in the following manner:

(1) An amount equal to 5% of the estimated state aid shall be paid immediately following project approval by the State Board of Education as defined by section 3471, subsection 2, paragraph F; and

(2) An amount equal to 5% of the estimated state aid shall be paid immediately upon evidence that a contract for the construction of the project has been executed.

B. Monthly estimates by the unit, state payments and adjustments by the commissioner are authorized as follows:

(1) The eligible unit shall submit to the Commissioner of Educational and Cultural Services a schedule showing estimates of monthly cash disbursements to be made by the unit for project expenditures;

(2) Based upon the estimate of cash requirements, the commissioner, on or about the first of each month, shall pay an amount equal to the

State's participation in the estimated project expenditures for that month, which monthly payments shall be continued until the total of all assistance paid equals 95% of the estimated state aid on the project; and

(3) Notwithstanding the above, the commissioner is authorized to adjust monthly payments when changes in local conditions warrant such adjustment.

C. Upon completion of the project and the submission to the commissioner of a full report of the expenditures on the project, together with proof that the project was completed in accordance with plans approved by the commissioner and the Bureau of Public Improvements, and upon issuance by the Bureau of Public Improvements of its certificate of acceptance of the completed project, the eligible unit shall be paid the difference between the total amount of aid finally determined to be due under the project and the accumulated amount of all prior payments.

D. Regulations adopted by the State Board of Education may prescribe the minimum total state aid on a project which will be subject to monthly payment. On projects in which the estimated state aid is less than such minimum amount, the board may specify that all state assistance shall be paid only upon the completion of the projects and the filing of reports as herein provided. In such case, the certificate issued by the board shall so state.

E. Financing costs incurred by the local administrative unit for the local share of any project shall not be included as part of the expenditures of the project. Financing costs incurred by the local administrative unit for borrowing in anticipation of the state's first payment as defined in paragraph A, shall not be included as part of the expenditures of the project, but shall be reimbursable as an added portion to the State's 2nd payment as defined in paragraph A.

6. Legislative intent; review and adjustments by commissioner. It is the intent of the Legislature that the advance payments by the State on school construction aid shall be expended by the local unit for necessary project costs concurrently with the funds of the local unit in the ratio of participation of the State and local unit to the project costs, and that the estimated state aid shall not be used to defer the date on which the local unit shall contribute or disburse its portion of the project funds.

A. In the determination of the final payment of state aid to which the local unit is entitled under this section, the commissioner is directed to ensure that funds of the local unit have been made available and used concurrently with funds advanced by the State and shall make appropriate adjustments in the determination of the balance of state aid whenever he finds that the local unit has used funds advanced by the State to defer the provision of local financing of the project costs, has failed to invest amounts advanced by the State which are in excess of the immediate need for the State's portion of project expenditures, or in any way has used the funds advanced for purposes other than meeting the State's proportion of project costs as they become payable.

7. Local funds nonreimbursable. Notwithstanding any other statute to the contrary, the local share of school construction projects shall not be considered education costs for purposes of reimbursement in any way under chapter 512-A. Expenditures for the state and local share of school construction projects, including gifts, shall be considered as outside any limit on expenditures by local units under sections of chapter 512-A.

§ 3473. Construction projects, reports and applications; withholding aid

Applications for approval of a project shall include such information as may be required by the State Board of Education. Each administrative unit shall file a copy of the debt retirement schedule, if any, with the commissioner as soon as bonds are sold. Units shall file a final report on each project to include such information as the commissioner may determine. The report shall be made within the time specified by the commissioner.

No unit shall sign a contract for construction or begin construction until the final plans and specifications have been approved by the commissioner, the Bureau of Public Improvements, the Department of Human Services, the State Fire Marshal and the Department of Environmental Protection. Failure to submit accurate reports within specified times shall be deemed sufficient cause for withholding school construction aid until the unit complies.

§ 3474. Tuition students; 2-year notice; withholding aid

Any unit which receives tuition students must render at least 2 years' notice to sending units before discontinuing such acceptance. Whenever a unit gives a 2-year notice to other units that it will discontinue the acceptance of tuition students, the unit shall file a copy of the notice with the commissioner. If the school committee or board of directors of a unit refuses to accept tuition students without having given a proper 2-year notice, the commissioner is authorized to withhold school construction aid until the unit complies.

§ 3475. Community services; conditions of approval

The State Board of Education is authorized to approve construction of certain school buildings without obligating the State to pay a share of the costs of such buildings, whenever, if in the judgment of the board those certain portions are to be constructed to fulfill a community service need. If construction of facilities to meet a community service need occurs in conjunction with a school construction project, the board shall require a breakdown of all costs for the entire project and shall approve a plan as to how operating costs, including repairs, shall be shared by agreement between the municipal officers and the school committee or board of directors. The board's findings shall become a part of the certificate of approval issued by the board and shall be the basis on which all costs shall be apportioned between the community and the school unit for as long as that portion of the project shall continue to serve that community need and shall remain under the control of other than the appropriate school authorities.

Applications from local units for approval of a school construction project shall include evidence that approval of the project as submitted will result in meeting or helping to meet the total construction and program needs of the area to be served to the satisfaction of the board.

§ 3476. Insurance

Administrative units shall carry fire and allied coverages in the amount of the replacement cost of the project, except that the commissioner may, at his discretion, approve an alternate amount of insurance coverage, if the replacement insurance coverage cannot be acquired at a reasonable cost.

§ 3477. Maintenance of plant

1. **Definition.** Maintenance of plant shall be defined as those activities concerned with keeping the grounds, buildings and equipment at their original condition of completeness or efficiency either through repairs or by replacement of property.

2. **Financing.** Maintenance of plant and minor remodeling shall be the responsibility of administrative units with state financial participation in such activities determined under operating costs of chapter 512-A.

Sec. 6. 20 MRSA § 3743, sub-§ 11, as enacted by PL 1975, c. 660, § 2, is repealed and the following enacted in its place:

11. **Major capital costs.** "Major capital costs" shall be approved by the State Board of Education and shall be defined as all costs related to or incidental to additions to existing schools, new schools, the cost of land acquisition, the building of or acquisition of other facilities related to the operation of administrative units and major renovations to existing schools which, in the judgment of the commissioner, are more feasible than new construction. Equipment approved in conjunction with a school construction project shall be defined as a major capital cost. Major capital costs approved by the State Board of Education during any single year shall not exceed the limitation established by the Legislature in section 3747.

Sec. 7. 20 MRSA § 3743, sub-§ 12, as enacted by PL 1975, c. 660, § 2, is repealed and the following enacted in its place:

12. **Minor capital costs.** "Minor capital costs" shall include all costs which are related to maintenance of plant and minor remodeling. Minor capital costs shall not include construction of new buildings or the purchase of land. All minor capital costs shall be a part of operating costs. Units are authorized, with approval of the legislative body, to arrange financing for maintenance of plant and minor remodeling. Funds expended to repay funds borrowed for maintenance of plant and minor remodeling shall be considered minor capital costs in the year in which those funds are repaid. Units are authorized to establish a capital reserve fund for maintenance of plant and minor remodeling.

Sec. 8. 20 MRSA § 3747, sub-§ 3, 1st sentence, as repealed and replaced by PL 1975, c. 754, § 1, is amended to read:

Establish the basic education allocation for paragraphs A through G and subsection 5 and the appropriations for paragraphs ~~H through I~~ I and J and subsections 4 and 7.

Sec. 9. 20 MRSA § 3748, sub-§ 6, as enacted by PL 1975, c. 660, § 2, is repealed and the following enacted in its place:

6. **Construction aid payments.** Construction aid payments by the State to administrative units on projects approved subsequent to June 30, 1977, shall be made in accordance with section 3471. Such payments shall be made from a major capital construction fund as authorized by the Legislature under section 3747, subsection 3, paragraph H.

Sec. 10. 20 MRSA § 3750, as enacted by PL 1975, c. 660, § 2 and as repealed and replaced by PL 1975, c. 746, § 24-X, is repealed and the following enacted in its place:

§ 3750. Construction project approval limit; lease approval

1. **Approval limit.** The State Board of Education shall not approve state funded projects if the state's share would be in excess of the amount appropriated by the Legislature for school construction projects plus any funds appropriated from the nonlapsing major capital construction fund.

2. **Lease approval.** The commissioner is authorized to approve the leasing of space to keep schools open until such time as appropriate school facilities can be constructed.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect July 1, 1977.

STATEMENT OF FACT

1. Require all school construction projects to be approved by the State Board of Education.

2. Allow resumption of school construction approvals subsequent to July 1, 1977, utilizing a sliding scale based on state valuation.

3. Establish an approval limit of \$25 million annually, provided the Legislature appropriates sufficient funds for the state's share.

4. Require the State to reinstitute the alternate method (payment of state's share during period of construction).

5. Establish the state's share of projects at 50% for units with the median state valuation per pupil. Poorer units will receive greater aid while wealthier units will receive less than 50% state aid.

6. Authorize units to raise the local share in any way they wish.

7. Eliminate the possibility of double interest cost.

8. Allow local units to know the exact amount of the local commitment when the project is approved by the voters.

9. Disallow the local share of projects to be counted as education costs for purposes of reimbursement under the School Finance Act of 1976.

10. Eliminate the need for the State Board of Education to approve emergency major capital outlay projects because local units would be given authority to finance those projects by either establishing a capital reserve fund or by borrowing on a short-term basis or any combination of the 2 methods.

11. Require the State to set aside its share of each project when it is approved.