

# MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 892, L.D. 2311, Bill, "An Act to Authorize School Administrative Units to Utilize Alternative Delivery Methods for a Limited Range and Number of School Construction Projects"

Amend the bill by striking out the title and substituting the following:

'An Act to Authorize School Administrative Units to Utilize Alternative Delivery Methods for a Limited Range and Number of School Construction Projects, Including the use of an Owner's Representative for Certain School Construction Projects'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. Resolve 1999, c. 14, §1 is amended to read:

Sec. 1. Adoption. Resolved: That, notwithstanding the deadlines for adoption set forth in the Maine Revised Statutes, Title 5, section 8072, subsection 8 and section 8073, final adoption of Chapter 64: Maine School Facilities Finance Program

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and School Revolving Renovation Fund, a provisionally adopted major substantive rule of the Department of Education, and submitted to the Legislature for review pursuant to the Maine Administrative Procedure Act, is authorized with the following amendments.

In order to reaffirm the intent of the Legislature expressed in Public Law 1997, chapter 787, sections 12 and 13, in establishing the Maine School Facilities Finance Program and the School Revolving Renovation Fund, the department shall amend the provisionally adopted rule in the part designated Section 2, subsection C, paragraph 8 (p. 3 of the rules) to read as follows:

8) evidence of consultation with the local planning board and with the State Planning Office for projects with potential site impact

The department shall also amend the provisionally adopted rule in the part designated Section 4, subsection D, paragraph 3, subparagraph e (p. 9 of the rules) to read as follows:

e) State Planning Office analyses for new--construction projects with potential site impact; and

; and be it further

**Sec. 2. Resolve 1999, c. 14, §2 is enacted to read:**

**Sec. 2. Effective date of rule; retroactivity. Resolved:** That notwithstanding the Maine Revised Statutes, Title 5, section 8072, subsection 8, upon final adoption by the Department of Education of Chapter 64: Maine School Facilities Finance Program and School Revolving Renovation Fund, that rule takes effect immediately and applies retroactively to April 16, 1999.

**Sec. 3. Alternative delivery methods authorized.** A school administrative unit may use design-build, construction-manager-advisor and construction-manager-at-risk methods of construction and the services of an owner's representative under the terms and conditions of this Act.

**Sec. 4. Design-build method.** The design-build method must generally follow those guidelines developed by the Design-Build Institute of America or by the American Institute of Architects / Association of General Contractors or a combined or modified version of one or both of those entities with the final design-build procedures and documents to be determined at the sole discretion of the Department of Administrative and Financial Services, Bureau of General Services.

2           **Sec. 5. Construction-manager-at-risk method.**           The  
3 construction-manager-at-risk method must generally follow the  
4 format of "Standard Form of Agreement Between Owner and  
5 Construction Manager where the Construction Manager is also the  
6 Constructor," American Institute of Architects Document A121/CMC  
7 and Association of General Contractors Document 565(1991 Edition).

8           **Sec. 6. Construction-manager-advisor method.**           The  
9 construction-manager-advisor method, sometimes referred to as the  
10 "agent-construction-manager method," must generally follow the  
11 standard scope of services employed by the Department of  
12 Administrative and Financial Services, Bureau of General Services.

13           **Sec. 7. Owner's representative.**           Owner's representative  
14 services must generally follow the standard scope of services  
15 employed by the Department of Administrative and Financial  
16 Services, Bureau of General Services. During the 5-year pilot  
17 program created by this Act, all design-bid-build projects that  
18 have qualified pursuant to the Maine Revised Statutes, Title  
19 20-A, chapter 609 and that have total project costs of  
20 \$10,000,000 or more require an owner's representative, who must  
21 be funded through the state-supported line of the project  
22 budget. The owner's representative must be selected in  
23 accordance with Title 5, section 1753.  
24

25           **Sec. 8. Design-bid-build method.**           The Maine Revised Statutes,  
26 Title 5, section 1743-A and Title 20-A, chapter 609 set forth the  
27 traditional competitive design-bid-build method and may not be  
28 interpreted to permit alternative delivery methods except as  
29 provided in this Act.  
30

31           **Sec. 9. Eligible projects.**           Subject to approval under section 11  
32 of this Act, 3 design-build methods and 3  
33 construction-manager-advisor methods or  
34 construction-manager-at-risk methods may be employed for school  
35 construction projects that do not exceed \$2,500,000 in total  
36 project cost. Two projects in a school administrative unit that  
37 exceed \$2,500,000 in total project cost but do not exceed  
38 \$10,000,000 in total project cost may utilize the design-build  
39 method. Two projects in a school administrative unit that exceed  
40 \$2,500,000 in total project cost but do not exceed \$10,000,000 in  
41 total project cost may employ the construction-manager-advisor  
42 method or the construction-manager-at-risk method. The 10  
43 projects described in this section must be scheduled for  
44 completion by 2005, the intent of this law being creation of a  
45 5-year pilot or study program.  
46

47           **Sec. 10. Procurement.**           Except as provided in this Act, all  
48 state-funded and locally funded school construction projects must



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2 cost and the timing of completion of these eligible projects and  
3 school construction costs reimbursed through the General Purpose  
4 Aid for Local Schools program can not be determined at this time.

6 This bill also requires local school units that implement  
7 school construction projects with total costs over \$10,000,000  
8 during the 5-year pilot program to employ an owner's  
9 representative for the project. The additional costs of this  
10 state mandate can not be determined at this time. Pursuant to  
11 the Mandate Preamble, the two-thirds vote of all members elected  
12 to each House exempts the State from the constitutional  
13 requirement to fund 90% of the additional local costs.

14 The Department of Education and the Department of  
15 Administrative and Financial Services will incur some minor  
16 additional costs to adopt policies and procedures. These costs  
17 can be absorbed within the departments' existing budgeted  
18 resources.'

20 **SUMMARY**

22 This amendment replaces the bill and changes the title of  
24 the bill. The amendment accomplishes the following.

- 26 1. It adds a mandate preamble to the bill.
- 28 2. It clarifies that the school construction method set out  
30 in the Maine Revised Statutes, Title 5, section 1743-A and Title  
31 20-A, chapter 609 is the traditional competitive design-bid-build  
32 method.
- 34 3. It provides for a 5-year pilot program for use of  
35 design-build, construction-manager-advisor and  
36 construction-manager-at-risk methods and allows the use of an  
37 owner's representative for certain school construction projects.
- 38 4. It provides that, during the pilot program, 3  
39 design-build and 3 construction-manager-advisor or  
40 construction-manager-at-risk projects with total costs less than  
41 \$2,500,000 may use design-build, construction-manager-advisor or  
42 construction-manager-at-risk methods. Two projects in school  
43 administrative units that exceed \$2,500,000 in total project cost  
44 but do not exceed \$10,000,000 in total cost may use the  
45 design-build method, and 2 projects in school administrative  
46 units that exceed \$2,500,000 in total project cost but do not  
47 exceed \$10,000,000 in total costs may use the  
48 construction-manager-advisor or the construction-manager-at-risk  
49 method.

**COMMITTEE AMENDMENT**

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2 5. It provides during the 5-year pilot program period, that  
all other approved design-bid-build school construction projects  
with total costs of \$10,000,000 or more must employ an owner's  
4 representative; and

6 6. It allows the Department of Education, in accordance to  
the provisions of the Maine Revised Statutes, Title 5, chapter  
8 375, subchapter II-A, to file the substantive rule for Chapter  
64: Maine School Facilities Finance Program and School Revolving  
10 Renovation Fund, as amended by Resolve 1999, chapter 14 (April  
16, 1999) during the First Regular Session of the 119th  
12 Legislature.

14 The amendment also adds a mandate preamble and fiscal note  
to the bill.