

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1502

S.P. 448

In Senate, March 8, 2001

**An Act Regarding Contracts for Energy Conservation and Air Quality
Improvements in School Buildings.**

(EMERGENCY)

Reference to the Committee on Education and Cultural Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MITCHELL of Penobscot.
Cosponsored by Representative RICHARD of Madison and
Senators: CARPENTER of York, FERGUSON of Oxford, NUTTING of Androscoggin,
Representatives: DESMOND of Mapleton, LEDWIN of Holden, STEDMAN of Hartland.

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

4
6 **Whereas,** the Legislature created a school renovation fund to
provide funds for improvements to school buildings, with priority
being given to projects that affect critical health and safety
needs such as air quality; and

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10 **Whereas,** current law is unclear on the competitive bidding
requirements for performance contracts for energy conservation
and air quality improvements in public school buildings; and

12
14 **Whereas,** there are energy conservation and air quality
improvement projects that are awaiting funding but are currently
being delayed due to this lack of clarity in the law; and

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18 **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,

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22
24 **Be it enacted by the People of the State of Maine as follows:**

26 **Sec. 1. 20-A MRSA §15915, sub-§1,** as repealed and replaced by
PL 1987, c. 402, Pt. A, §134, is amended to read:

28
30 **1. Initial agreement.** Any school administrative unit may
enter into an agreement of up to 20 years with a private party,
such as an energy service or 3rd-party financing company, for the
design, installation, operation, maintenance and financing of
energy conservation or air quality improvements at school
administrative unit facilities. Such an agreement is deemed to
be a professional service, which is not subject to the
competitive bidding requirements of Title 5, section 1743-A, if
the agreement:

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38 A. Provides for operation or maintenance of the improvement
for at least 5 years or the entire term of the financing
agreement if longer than 5 years; and

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42 B. Requires a guaranty by the contractor for at least 5
years or for the entire term of the financing agreement if
longer that the improvement will meet performance criteria
set forth in the agreement.

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48 A school administrative unit may select contractors for these
professional services on the basis of qualifications only and it
is not required to use a competitive design-bid-build method set
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2 forth in this chapter and Title 5, section 1743-A and Private and
3 Special Law 1999, chapter 79.

4 **Emergency clause.** In view of the emergency cited in the
5 preamble, this Act takes effect when approved.

8 **SUMMARY**

10 The purpose of this bill is to codify the past policy and
11 practice of the State Government and bond counsel with regard to
12 performance contracts for energy conservation or air quality
13 improvements at school administrative unit facilities. This bill
14 clarifies that a performance contract for energy conservation or
15 air quality improvements at school administrative unit facilities
16 is not subject to the specific statutory competitive bidding
requirements if the contract meets certain criteria.