

MAINE STATE LEGISLATURE

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**FINANCING HIGHER EDUCATION FACILITIES THROUGH THE
MAINE SCHOOL BUILDING AUTHORITY**

A Report Prepared for the 106th Maine Legislature

February 1, 1973

by the

MAINE EDUCATION COUNCIL

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 MAINE EDUCATION COUNCIL

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February 1, 1973

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Honorable Members of the 106th Legislature:

This report is presented to you by the Maine Education Council as its response to HP 1294, an Order of the 105th Legislature directing the Council to study L.D. 622, "AN ACT Relating to Financing Maine Education Buildings," introduced by Representative William R. Lawry of Fairfield.

The content of the report was developed by an ad-hoc committee of Maine citizens working without compensation through ten meetings over an eighteen month span of time. Bond counsels were consulted frequently by letter and telephone and were present at one meeting.

The Maine Education Council is pleased with the report and hopes that you will consider the recommendations and implementing legislation carefully.

For the Maine Education Council,

Lincoln T. Fish, Chairman

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STATE OF MAINE

In House April 28, 1971

Ordered, the Senate concurring, that the Maine Education Council, established under chapter 452 of the public laws of 1967 is authorized and directed to conduct a comprehensive study of the Bill, "An Act Relating to Financing Maine Education Buildings," H. P. 481, L. D. 622, as introduced at the regular session of the 105th Legislature; and be it further

ORDERED, that the Maine Education Council submit a written report of their findings, together with any necessary recommendations and implementing legislation, to the next regular or special session of the Legislature; and be it further

ORDERED, upon joint passage, that a copy of this Order be immediately transmitted to said Council as notice of this proposed study.

HOUSE OF REPRESENTATIVES
READ AND PASSED

IN SENATE CHAMBER

APR 28 1971

APR 29 1971

SENT UP FOR CONCURRENCE

HP1294

READ AND PASSED

Bert W. Johnson
CLERK

IN CONCURRENCE

HARRY N. STARR, JR., Secretary

Name:

William R. Lawry

Town: Fairfield

Background

The intent of Legislative Document 622 was to create the Maine Educational Buildings Financing Agency which would be empowered to acquire, construct, finance and otherwise provide buildings for eligible educational institutions without incurring any debt of the State of Maine.

Under this bill, a private college, the University, or a vocational school could contract with the new agency for the issuance of bonds to finance new construction or renovation of existing buildings. For the public institutions this procedure could provide new buildings without requiring legislative approval or submission of a bond question to the citizens through a referendum. For the private colleges an alternate procedure would be provided for the financing of buildings other than through the regular bond market.

After studying L. D. 622, the representatives of the private institutions decided that no advantage would accrue to them from contracting with the new agency. They decided to support L. D. 622 as a friendly gesture to the public institutions.

At this point, the bill was sent to the Maine Education Council for study. An ad-hoc committee was assembled to conduct the study. The first decision of the committee was to explore the use of an existing state agency rather than, as many other states have done, creating a new state agency. After meeting with bond counsels, the committee decided that the Maine School Building

Authority, an agency with an unblemished record in the financing of public school buildings since 1952, could handle the financing of buildings for post secondary educational institutions at small additional cost to the state.

The following recommendations of the ad-hoc committee were accepted by the Maine Education Council and approved for submission to the 106th Legislature.

Recommendation 1

The Constitution of the State of Maine should be amended by adding a new section, 14-D, to Article IX to permit the Legislature by proper enactment to insure the payment of revenue bonds for the construction of buildings at public and private institutions of higher education and at public post secondary business, trade, vocational and technical schools.

Argument for Recommendation 1.

At the present time Maine School Building Authority bonds are insured under Section 3508-A of Title 20 as a result of a constitutional amendment adopted in 1969. The Council believes that the record established by the Maine School Building Authority over the past twenty years when considered in conjunction with the financial stability of the higher education clients with whom the Authority would be doing business justifies extension of the insuring power of the Legislature to bonds issued for higher education buildings.

RESOLVE, Proposing an Amendment to the Constitution pledging credit of State for revenue bonds to be issued by the Maine School Building Authority for public and private institutions of higher education and for public post-secondary business, trade, vocational, and technical schools.

Constitutional amendments. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendments to the Constitution of this State be proposed:

Constitution, Article IX, Section 14, amended. The first sentence of Section 14 of Article IX of the Constitution, as amended, is further amended to read as follows:

The credit of the State shall not be directly or indirectly loaned in any case, except as provided in sections 14-A, 14-B and, 14-C and 14-D.

Constitution, Article IX, Section 14-D, additional. Article IX of the Constitution is amended by adding a new section 14-D, to read as follows:

Section 14-D. Insuring payment of revenue bonds for public and private institutions of higher education and for public post-secondary business, trade, vocational and technical schools. In order to encourage and assist in the provision and construction of buildings in the State at public and private institutions of higher education and at public post secondary business, trade, vocational and technical schools, the Legislature by proper enactment may insure the payment of revenue bonds for such institutions and schools of public instrumentalities of the State issued for such buildings not exceeding in the aggregate \$25,000,000 million dollars in amount at any one time and may also appropriate moneys and authorize the issuance of bonds on behalf of the State at such times and in such amounts as it may determine to make payments insured as aforesaid.

Form of question and date when amendments shall be voted upon.

Resolved: That the aldermen of cities, the selectmen of towns and the assessors of the several plantations of this State are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet in the manner prescribed by law for calling and holding biennial meetings of said inhabitants for the election of Senators and Representatives at the next general election in the month of November or special

state-wide election on the Tuesday following the first Monday of November following the passage of this resolve to give in their votes upon the amendments proposed in the foregoing resolution, and the question shall be:

"Shall the Constitution be amended as proposed by a resolution of the Legislature pledging credit of State for revenue bonds for public and private institutions of higher education and for public post secondary business, trade, vocational and technical schools?"

The inhabitants of said cities, towns and plantations shall vote by ballot on said questions, and shall indicate by a cross or check mark placed against the word "Yes" or "No" their opinion of the same. The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the office of the Secretary of State in the same manner as votes for Governor and Members of the Legislature, and the Governor and Council shall review the same, and if it shall appear that a majority of the inhabitants voting on the question are in favor of the amendments, the Governor shall forthwith make known the fact by his proclamation, and the amendments shall thereupon, as of the date of said proclamation, become a part of the Constitution.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to the several cities, towns and plantations ballots and blank returns in conformity with the foregoing resolve, accompanied by a copy thereof.

Recommendation 2.

Chapter 503 of Title 20 of the Revised Statutes should be amended by the legislature to authorize the Maine School Building Authority to finance through the issuance of revenue bonds and provide buildings for public and private institutions of higher education and public post-secondary business, trade, vocational and technical schools and to provide for insuring by the State, pursuant to Article IX, Section 14-D, of the payment of revenue bonds issued for such buildings.

Argument for Recommendation 2.

If the above amendment to Article IX of the Constitution is approved by the Legislature and the citizens of Maine, then the present language of Chapter 503 of Title 20 will have to be amended to authorize the Authority to do business with the post secondary educational institutions. In that event, the Council believes that the amendments to Chapter 503 prepared by Mr. Joseph Guandolo, of Mitchell, Petty, and Shetterly, New York, should be submitted to a special session of the 106th Legislature in the regular session of the 107th Legislature.

As a careful reading of the implementing legislation below and a letter from Mr. Guandolo found in Appendix I will show, refinancing in the usual sense of the word is not permitted by the language of the proposed constitutional amendment.

Implementing Legislation for Recommendation 2.

AN ACT

TO AMEND THE MAINE SCHOOL BUILDING AUTHORITY ACT, BEING SECTIONS 3501 to 3517, INCLUSIVE OF THE REVISED STATUTES FOR THE PURPOSE OF ADDITIONALLY AUTHORIZING THE MAINE SCHOOL BUILDING AUTHORITY TO FINANCE THROUGH THE ISSUANCE OF REVENUE BONDS AND PROVIDE BUILDINGS FOR PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION AND PUBLIC POST SECONDARY BUSINESS, TRADE, VOCATIONAL AND TECHNICAL SCHOOLS AND TO PROVIDE FOR INSURING BY THE STATE, PURSUANT TO ARTICLE IX, SECTION 14-D, OF THE PAYMENT OF REVENUE BONDS ISSUED FOR SUCH BUILDINGS.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MAINE that the Maine School Building Authority Act, being Sections 3501 to 3517, inclusive, of the Maine Revised Statutes, is amended as follows:

Section 1. Section 3502 is revised to read as follows:

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people, to aid in the provision of school buildings in the State, the "Maine School Building Authority," as heretofore created, is authorized and empowered to construct, acquire, alter or improve public school buildings and to provide and construct buildings in the State at public and private institutions of higher education and

at public post-secondary business, trade, vocational and technical schools and to issue revenue bonds of the authority, payable from rentals to finance such buildings and when paid for by said rentals to convey them to the lessee towns, other administrative units or eligible institutions as herein provided.

Section 2. Section 3505 is amended by adding at the end of paragraph 2 thereof the following sentence:

Any obligation or expense otherwise being within the purview of the foregoing definition of costs incurred in connection with the construction or acquisition of a post-secondary educational building by either the authority or, with the prior approval of the authority, any eligible institution not earlier than three years before the initial issuance by the authority of revenue bonds for such project may be regarded by the authority as a part of the cost of such project.

Section 3505 is further amended by excising paragraphs 3,4 and 5 and substituting therefor the following paragraphs to be numbered as follows:

3. Eligible Institution. "Eligible institution" shall mean any public or private non-profit in character institution of higher education or any public post secondary business, trade, vocational or technical school in the state. The prior approval by the Legislature shall be required for projects undertaken by the Authority to assist either the University of Maine or any other state post secondary educational institution.

4. Post-Secondary Educational Building. "Post-secondary educational building" shall mean any structure in the State used by or useful to any eligible institution for educational purposes, including any addition or enlargement of such structure, that shall be financed under the provisions of Sections 3501 to 3517.

5. Project. "Project" shall mean either a school building, or a post-secondary educational building, as the case may be, including land, furniture, equipment and all other property, rights, easements and interest which the Authority determines to be necessary or desirable for the construction, operation or maintenance of the project.

6. School Building. "School building" shall mean, but shall not be limited to, any structure used or useful for public schools and playgrounds, including facilities for physical education, or any addition or enlargement of any such structure or facilities.

7. Towns; Administrative Units. "Town" or "towns" include cities and plantations; "administrative unit" or "administrative units" shall mean a town or towns as herein defined or a school administrative district or districts;

Paragraph 5 thereof is amended by adding a new paragraph at the end thereof reading as follows:

to provide and construct post-secondary educational buildings of such type, at such locations within the state

and in such manner as may be determined by the Authority for the use of eligible institutions, provided the need for each such building shall be certified to the Authority by the eligible institution for which the building shall be provided;

Paragraph 12 thereof is amended by adding at the end thereof the following sentence:

To utilize the services of any eligible institution in connection with the provision or the construction of any post-secondary educational building and to agree with any such eligible institution for the performance by such eligible institution or its agents of such other services and functions in connection with the provision, construction, operation, repair or maintenance of any post-secondary educational buildings as the authority shall determine to be desirable and in the public interest and to reimburse any such eligible institution for its costs and expenses incurred in the performance of such services or functions.

Paragraph 8 thereof is amended by adding at the end thereof a new paragraph reading as follows:

to fix, alter, charge and collect rentals and other charges for the use of each post-secondary educational building at reasonable rates determined by it for the purpose of providing for the payment, with respect to such building, of the expenses of the authority and the principal of and the interest on the revenue bonds issued for such building then outstanding and for otherwise fulfilling the duties,

obligations and liabilities of the authority pursuant to any agreement made with the purchasers or holders of any such bonds.

Section 4. Section 3507 is revised by substituting for the word "project" wherever it appears in such Section the words "school building."

Section 5. Section 3508 is amended by rescinding the first sentence thereof and substituting therefor the following:

The authority is authorized to provide by resolution, at one time or from time to time (i) for the issuance of revenue bonds of the authority, but not to exceed \$25,000,000 outstanding at any one time, for the purpose of paying all or any part of the cost of school projects and for any other authorized purpose in connection with any school project and (ii) for the issuance of revenue bonds of the authority, but not to exceed \$25,000,000 outstanding at any one time, for the purpose of paying all or any part of the cost of post secondary educational buildings.

Section 3508 is further revised by revising the fourth sentence from the end thereof to read:

The proceeds of the bonds shall be used solely for the payment of the cost of the respective project for which such bonds shall have been issued and shall be disbursed in such manner and under such restrictions, if any, as the authority may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same.

Section 6. The first sentence of Section 3508-A is amended by inserting immediately following the words "State Constitution, Article IX, Section 14-C", the words "with respect to bonds issued for school projects and Article IX Section 14-D with respect to bonds issued for post-secondary educational buildings", and the penultimate sentence of Section 3508-A is amended by substituting for the words "as it" the words "or section 14-D, as the case may be, as either of such sections."

Section 7. Section 3509 is amended by adding the following paragraphs at the end thereof:

Any lease to an eligible institution by the authority of a post-secondary educational building authorized by Section 3501 to 3517 shall be a general obligation of the lessee and may contain provisions, which may be a part of the contract with the holders of the bonds of the authority, as to:

(a) pledging all or any part of the moneys, earnings, income and revenues derived by the lessee from such building, or any part or parts thereof, or other real or personal property or revenues or money of the lessee, to secure rent payments by the lessee required under the lease;

(b) the rates, rental fees and other charges to be fixed and collected by the lessee, the amounts to be raised in each year thereby, and the use and disposition of those moneys, earnings, income and revenues;

(c) the setting aside of reserves and the creation of special funds and accounts and the regulation and disposition thereof;

(d) the procedure, if any, by which the lease may be amended or supplemented and the manner in which the consent of the bondholders, if required, may be given;

(e) vesting in a trustee or trustees such property interests, rights, powers and privileges and imposing upon a trustee or trustees such duties, obligations and responsibilities as the authority shall deem necessary or desirable for the security of the holders of the bonds of the authority issued for such building;

(f) the obligations of the lessee with respect to the replacement, reconstruction, maintenance, operation, repair and insurance of such building;

(g) defining the acts or omissions to act constituting a default of the lessee under the lease and providing for the rights, privileges and remedies of the authority, any trustee or the holders of the bonds; and

(h) providing for the conveyance of such building when the bonds issued therefor and other liabilities of the authority incurred in connection with such building have been paid or satisfied or sufficient funds therefor are held in trust;

(i) providing that the eligible institution shall be responsible for payment of the costs of operation, maintenance and repair of such building; and

(j) providing that the covenant of the lessee to pay rent under the lease shall be absolute and unconditional.

Section 8. Section 3512 is amended to read as follows:

When the bonds issued under Sections 3501 to 3517 in connection with any school building and the interest on such bonds shall have been paid or an amount sufficient for the payment of the principal of and the interest on such bonds to the maturity thereof shall be set aside in trust for the benefit of the holders of the bonds, such school building shall be conveyed by the authority to the lessee administrative unit.

When the bonds issued under Sections 3501 to 3517 in connection with any post secondary educational building and the interest on such bonds shall have been paid or an amount sufficient for the payment of such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the holders of such bonds, such post-secondary educational building may be conveyed by the authority to the respective eligible institution pursuant to the provisions of an agreement of lease of such building or other agreement between the authority and such eligible institution.

Section 9. All actions and proceedings hertofore taken by the authority in connection with the construction of school buildings, the issuance of bonds and the entering into leases are hereby ratified and validated.

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PETER J. MICHEL
A. FRANCIS ROBINSON, JR.
GUNDARS APERANS

December 21, 1972

Mr. Keith L. Crockett
Secretary-Treasurer
Maine School Building Authority
State House
Augusta, Maine 04330

Dear Mr. Crockett:

I regret our delay in replying to your letter of November 28, 1972 with reference to the proposed amendatory regulation.

The first question in your letter pertains to the proposed paragraph 2 of Section 3505. You asked whether such amendment permits the refinancing of buildings constructed prior to any application to the Authority and it was suggested that a five year refinancing clause would be helpful and would be important to private institutions. The type of refinancing suggested would not come within the purview of the proposed constitutional amendment, Section 14-D. If you refer to the draft of Section 14-D, you will find that the legislative guarantee is extended "to encourage and assist in the provision and construction of buildings". It is difficult to conclude that a refinancing occurring five years after the incurring of the initial obligation would actually encourage and assist in the provision and construction of the buildings initially financed. In order to incorporate in the proposed legislation refinancing provisions of the type suggested, Section 14-D would have to be revised to incorporate appropriate language to effectuate such objective. In this connection, consideration would have to be given as to whether the incorporation of such language would or could possibly prejudice the adoption of the constitutional amendment. The draft of paragraph 2 of Section 3505 does permit refinancing but only with the prior approval of the Authority. The language has been drafted upon the theory that the provision and construction of buildings would thereby be encouraged and assisted in the sense that the institution, with the prior approval of the Authority, would undertake the financing and construction of the building only if the Authority had previously assured the institution that refinancing would be extended under the enabling legislation.

With reference to your question 2 pertaining to Article IX, Section 14-C, there is no necessity for specifically designating the Authority in the constitutional amendment. The legislation which is enacted pursuant to the constitutional amendment in question specifically identifies the Authority.

There is no objection to requiring legislative approval of projects undertaken by the Authority to assist either the University of Maine or any other state owned and operated higher educational institution.

I believe it would be advisable to include in the definition of the term "eligible institution" a requirement that the private institutions of higher education be nonprofit in character. As to whether you wish to exclude church affiliated educational institutions, it is really a question of policy. Under a relatively recent opinion of the Supreme Court of the United States, it has been held that federal assistance to church affiliated educational institutions of higher learning is not violative of the federal constitution.

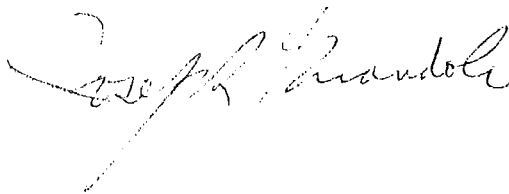
You are correct in assuming that the forms of agreement of lease and trust agreements for financing post-secondary facilities would be different from those legal instruments currently used for public school financing by the Authority.

Whether the membership of the Authority should be increased is a matter of policy that should be determined in the light of the particular facts and circumstances applicable. It is conceivable, however, that the character of the membership could be affected simply by the exercise of the appointive power without changing the number of members.

You are correct in assuming that no local referendum would be involved in the issuance of bonds by the Authority and that the particular educational institution receiving assistance from the Authority would not have to submit to an election. This is true unless a public institution receiving assistance is subject to an election requirement under a statute of which we are not apprised.

Please let us know what you desire to do. We shall prepare any revisions necessary to carry out your objectives.

Sincerely,



Members of the Ad hoc L. D. 622 Committee

Dr. Edward Y. Blewett
Executive Director
Higher Education Council of Maine

Dr. Keith L. Crockett
Secretary-Treasurer
Maine School Building Authority

Mr. Francis S. McGuire
Director of Physical Facilities
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