

Maine School Business Officials 10th Annual Law Seminar

Friday, November 3, 2023

9:00 AM - 2:30 PM | Augusta Civic Center

Panel:

Greg Im

gim@dwmlaw.com

Clíodhna O'Malley

comalley@dwmlaw.com

Christopher G. Stevenson

cstevenson@dwmlaw.com

E. William Stockmeyer

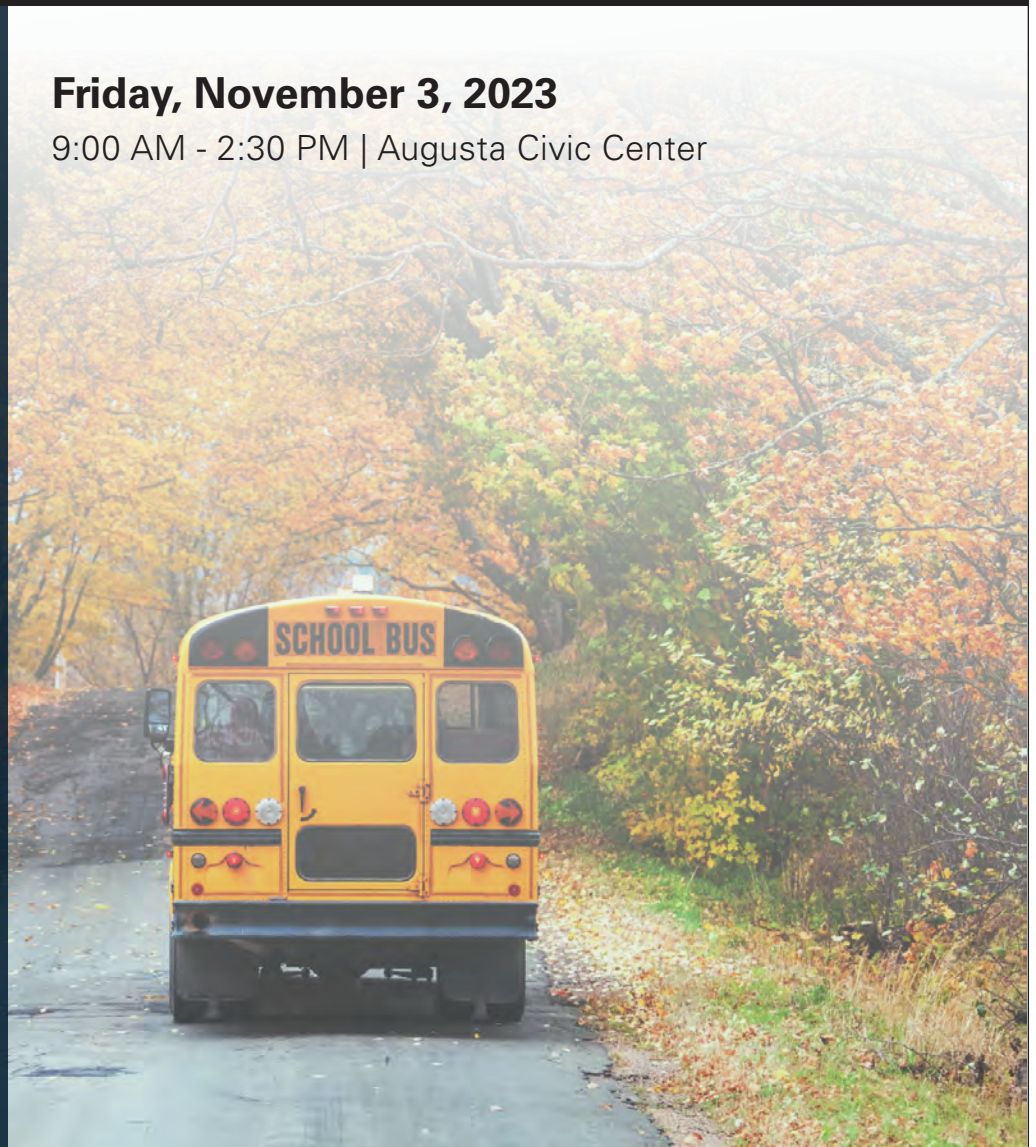
billstockmeyer@dwmlaw.com

Joanna B. Tourangeau

jtourangeau@dwmlaw.com

Kathleen E. Wade

kwade@dwmlaw.com



CERTIFICATE OF ATTENDANCE

This is to certify that _____ attended a School Law Program entitled “**Maine School Business Officials 10th Annual Law Seminar**” presented by Drummond Woodsum, held on November 3, 2023, at the Augusta Civic Center, and has successfully completed:

- 1. 3.75 continuing education contact hours; and
- 2. 3.75 MeASBO Professional Development Certification Hours, as follows:

Session	Contact Hours/ Prof. Dev. Cert. Hours
Preparing for the next State-Subsidized School Construction Project Rating Cycle	1.00 / 1.00
Maine’s Paid Family Medical Leave: What we know, what you can expect, and what you need to be on the lookout for	0.75 / 0.75
Current Environmental Issues Impacting School Business	0.75 / 0.75
ACA Reporting Review – the IRS now requires employers’ Form 1095-C, ACA Reports, to be mistake free or else face significant penalties	0.75 / 0.75
Managing Fund Balance Carryforward/Reserve Funds	0.50 / 0.50

This form denotes attendance at entire program. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust hours accordingly.

Thank you for attending!



E. William Stockmeyer
207.253.0585 Direct
billstockmeyer@dwmlaw.com

Adriana Grimes, Events Coordinator
Drummond Woodsum
207.771.9232 Direct
agrimes@dwmlaw.com

AGENDA

Welcome and Introductions	Bill Stockmeyer
Welcoming Remarks by MeASBO	Colin Walsh
Preparing for the next State-Subsidized School Construction Project Rating Cycle	Bill/Greg/Clíodhna
Maine's Paid Family Medical Leave: What we know, what you can expect, and what you need to be on the lookout for	Kathleen Wade
Break	
Current Environmental Issues Impacting School Business	Joanna Tourangeau
Q & A Session 1	Panel
Lunch	Remarks by: John Simko, Androscoggin Bank
ACA Reporting Review – the IRS now requires employers' Form 1095-C, ACA Reports, to be mistake free or else face significant penalties	Chris Stevenson
Managing Fund Balance Carryforward/Reserve Funds	Bill/Greg/Clíodhna
Q & A Session 2	Panel

CONTENTS

- 1. Preparing for the next State-Subsidized School Construction Project Rating Cycle 1
- 2. Maine’s Paid Family Medical Leave: What we know, what you can expect, and what you need to be on the lookout for..... 89
- 3. Current Environmental Issues Impacting School Business 109
- 4. ACA Reporting Review – the IRS now requires employers’ Form 1095-C, ACA Reports, to be mistake free or else face significant penalties 119
- 5. Managing Fund Balance Carryforward/Reserve Funds 145

SECTION 1.

**Preparing for the next State-Subsidized School
Construction Project Rating Cycle**

CONTENTS

Preparing for the Next State Subsidized School Construction Rating Cycle

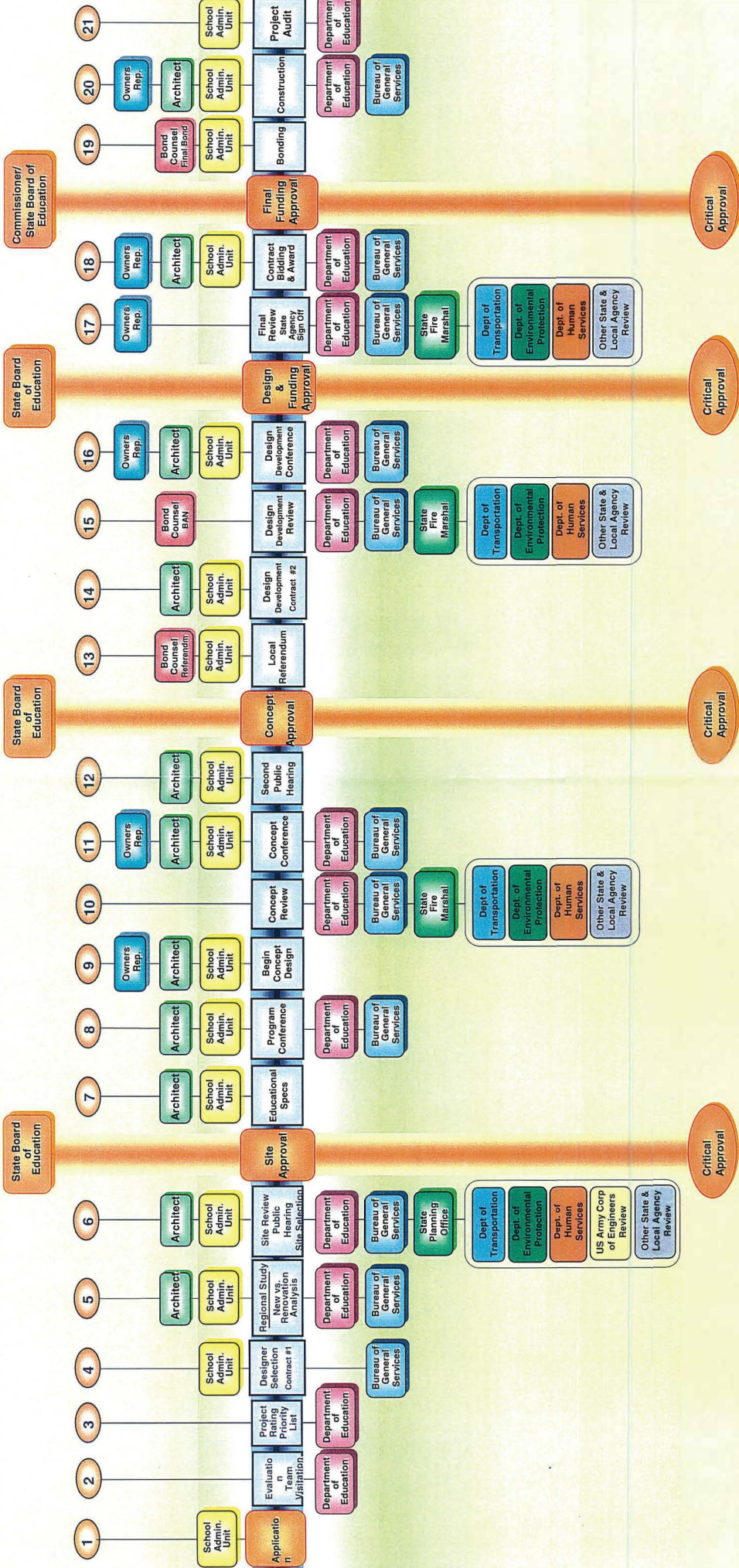
*Bill Stockmeyer, Greg Im & Clíodhna O’Malley
Drummond Woodsum*

- 1. School Construction Timeline 3**
- 2. History of Prior Rating Cycles**
 - a. 2010-2011 Final Priority List 5
 - b. 2010-2011 Approved Projects List 6
 - c. 2017-2018 Final Priority List 7
 - d. 2017-2018 Approved Projects List..... 9
 - e. 2017-2018 Integrated Consolidated 9-16 Final Priority List..... 10
 - f. 2017-2018 Integrated Consolidated 9-16 Approved Projects List 11
 - g. Data from Recent State Subsidized School Construction Projects..... 12
- 3. State Approvals for Subsidized School Construction**
 - a. RSU 2 Site Approval – State Board of Education meeting minutes..... 13
 - b. RSU 2 Concept Approval 15
 - c. RSU 2 Design and Funding Approval..... 17
 - d. RSU 2 Final Funding Approval 19
- 4. Recent Legislation (LD 1415) 23**
- 5. DOE School Construction Webpage... 27**
- 6. DOE Regulations**
 - a. Chapter 60 – New School Siting Approval 29
 - b. Chapter 61 – Rules for Major Capital School Construction Projects 33
- 7. 2022 School Construction Guide for State Subsidized and Locally Funded Projects**
 - From 2022 Maine School Business Officials 9th Annual Law Seminary
(Exhibits not reproduced) 65

MAJOR CAPITAL IMPROVEMENT PROGRAM

School Construction Review and Approval Process

○ Design-Bid-Build Project Delivery Method



This guideline provides an overview for project planning purposes. Please refer to the School Construction Project Workbook & the State Board of Education Rules for School Construction for additional information on the school construction process.

Note: Timing and requirements for Owners Representative may vary.

State of Maine

Department of Education
School Facilities Services



Final Priority List

Major Capital Improvement Program
Rating Cycle 2010-2011

The Commissioner of the Department of Education recommends the following list of School Facilities Priorities to the State Board of Education. This list is based on a rating of the overall needs of those evaluated school facilities as defined in State Board of Education Chapter 61, Rules for Major Capital School Construction Projects.

<u>Priority</u>	<u>School Unit</u>	<u>Project Name</u>	<u>Total Points</u>
1	RSU 64 - Corinth	Morison Memorial School	144.67
2	Sanford School Department	Sanford High School & Regional Technical Center	142.57
3	RSU 19 - Newport	Newport Elementary School	141.74
4	Sanford School Department	Emerson School	141.17
5	RSU 72 - Fryeburg	Charles A. Snow School	140.40
6	RSU 19 - Newport	Nokomis Regional High School	140.24
7	RSU 75 - Topsham	Mt. Ararat High School	139.46
8	Lewiston School Department	Martel School	137.99
9	RSU 02 - Monmouth	Monmouth Middle School	135.60
10	RSU 39 - Caribou	Teague Park School	132.83
11	RSU 01 - Bath	Morse High School	132.68
12	Portland Public Schools	Fred P. Hall School	128.73
13	Sanford School Department	Lafayette School	128.54
14	South Portland School Department	Daniel F. Mahoney Middle School	125.50
15	RSU 24 - Sullivan	Sumner Memorial High School	125.09
16	Auburn School Department	Edward Little High School	125.02
17	Augusta Public Schools	Lillian Parks Hussey School	124.10
18	Portland Public Schools	Longfellow School	124.06
19	RSU 39 - Caribou	Caribou Middle School	123.52
20	Lewiston School Department	Gov. James B. Longley Elementary School	123.45
21	Portland Public Schools	Howard C. Reiche Community School	123.39
22	RSU 37 - Cherryfield	Cherryfield Elementary School	123.28
23	RSU 24 - Hancock	Hancock Grammar School	122.27
24	RSU 24 - Steuben	Ella Lewis School	122.18
25	RSU 20 - Morrill	Gladys Weymouth Elementary School	122.03
26	RSU 17 - So. Paris	Oxford Hills Middle School	121.64
27	Lisbon School Department	Lisbon High School	119.26
28	RSU 21 - Kennebunk	Kennebunk High School	119.21
29	RSU 64 - Corinth	Central High School	119.09
30	Lewiston School Department	Lewiston Middle School	118.66
31	RSU 64 - Kenduskeag	Kenduskeag Elementary School	118.31
32	RSU 06 - Standish	Bonny Eagle High School	118.15
33	Portland Public Schools	Presumpscot School	117.50
34	RSU 06 - Hollis	Hollis School	116.70
35	RSU 37 - Milbridge	Milbridge Elementary School	114.77
36	Sanford School Department	Willard School	113.56
37	RSU 53 - Pittsfield	Vickery School	112.57
38	RSU 55 - Hiram	Sacopee Valley High School	111.68
39	RSU 13 - Rockland	Rockland District High School	108.60



2010 - 2011 Rating Cycle
Major Capital School Construction
Approved Projects List
September 14, 2016

The Maine Commissioner of Education recommended and the State Board of Education designated the following projects from the Final Priority List that it intends to fund for the 2010-11 rating cycle.

Priority	School District	School Name	Date
1	RSU 64 - Corinth	Morrison Memorial School	1/11/12
2	Sanford School Department	Sanford High School & Regional Technical Center	1/11/12
3	RSU 19 - Newport	Newport Elementary School	1/11/12
4	Sanford School Department	Emerson School	1/11/12
5	RSU 72 - Fryeburg	Charles A. Snow School	1/11/12
6	RSU 19 - Newport	Nokomis Regional High School	1/11/12
7	RSU 75 - Topsham	Mt. Ararat High School	4/9/14
8	Lewiston School Department	Martel School	4/9/14
9	RSU 02 - Monmouth	Monmouth Middle School	4/9/14
10	RSU 39 - Caribou	Teague Park School	4/9/14
11	RSU 01 - Bath	Morse High School	4/9/14
12	Portland Public Schools	Fred P. Hall School	4/9/14
13	Sanford School Department	Lafayette School	8/8/16
14	South Portland School Department	Daniel F. Mahoney Middle School	8/8/16
15	RSU 24 - Sullivan	Sumner Memorial High School	9/14/16
16	Auburn School Department	Edward Little High School	9/14/16

The Department of Education recommends the following list of School Facilities Priorities to the State Board of Education. This list is based on a rating of the overall needs of evaluated school facilities as defined in State Board of Education Chapter 61, Rules for Major Capital School Construction Projects.

<u>Priority</u>	<u>School District</u>	<u>School Name</u>	<u>Total Points</u>
1	RSU 49/MSAD 49	Fairfield Primary School	137.69
2	RSU 54/MSAD 54	North Elementary School	124.60
3	RSU 10	Rumford Elementary School	115.19
4	Saco Public Schools	Young School	114.65
5	RSU 14	Windham Middle School	111.27
6	RSU 17/MSAD 17	Agnes Gray School	110.33
7	RSU 17/MSAD 17	Oxford Hills Middle School	109.73
8	RSU 53/MSAD 53	Manson Park School	108.73
9	Augusta Public Schools	Lillian Parks Hussey School	108.01
10	RSU 03/MSAD 03	Walker Memorial School	107.89
11	RSU 53/MSAD 53	Vickery School	107.79
12	RSU 23	Loranger Memorial School	106.71
13	Hancock Public Schools	Hancock Grammar School	106.08
14	RSU 29/MSAD 29	Houlton Elementary School	105.43
15	Portland Public Schools	Portland High School	105.24
16	RSU 03/MSAD 03	Morse Memorial School	105.05
17	RSU 12	Palermo Consolidated School	102.98
18	Ellsworth Public Schools	Hancock County Technical Center	102.85
19	Dayton Public Schools	Dayton Consolidated School	101.90
20	RSU 22	Earl C McGraw School	101.13
21	RSU 79/MSAD 1	Presque Isle High School	98.97
22	RSU 01 - LKRSU	Fisher Mitchell School	98.73
23	RSU 54/MSAD 54	Bloomfield Elementary School	97.03
24	RSU 54/MSAD 54	Canaan Elementary School	96.64
25	Portland Public Schools	Portland Arts & Technology High School	96.31
26	RSU 57/MSAD 57	Massabesic High School	96.08
27	RSU 10	Mountain Valley Middle School	95.85
28	RSU 41/MSAD 41	Penquis Valley Middle/High School	95.76
29	Cherryfield Public Schools	Cherryfield Elementary School	95.60
30	RSU 64/MSAD 64	Central High School	95.32
31	RSU 54/MSAD 54	Skowhegan Area High School and Somerset Tech Ctr	95.19
32	Saco Public Schools	C K Burns School	95.08
33	RSU 18	China Middle School	94.32
34	Scarborough Public Schools	Eight Corners Elementary School	92.31
35	Lamoine Public Schools	Lamoine Consolidated School	92.10

<u>Priority</u>	<u>School District</u>	<u>School Name</u>	<u>Total Points</u>
36	Scarborough Public Schools	Pleasant Hill School	91.68
37	RSU 16	Minot Consolidated School	91.34
38	RSU 10	Meroby Elementary School	91.10
39	RSU 49/MSAD 49	Clinton Elementary School	90.75
40	Baileyville Public Schools	Woodland Jr-Sr High School	87.22
41	Biddeford Public Schools	Biddeford Regional Center of Technology	86.73
42	RSU 11/MSAD 11	Pittston Consolidated School	86.57
43	RSU 79/MSAD 1	Eva Hoyt Zippel School	86.49
44	Brunswick Public Schools	Brunswick Jr High School	86.38
45	RSU 54/MSAD 54	Margaret Chase Smith School	86.01
46	RSU 79/MSAD 1	Pine Street Elementary School	85.68
47	Lisbon Public Schools	Lisbon High School	85.22
48	Baileyville Public Schools	Woodland Elementary School	85.15
49	Scarborough Public Schools	Blue Point School	83.81
50	RSU 01 - LKRSU	Dike Newell School	80.42
51	RSU 75/MSAD 75	Harpwell Community School	80.06
52	RSU 41/MSAD 41	Milo Elementary School	79.94
53	RSU 40/MSAD 40	Medomak Valley High School	79.39
54	RSU 53/MSAD 53	Warsaw Middle School	79.11
55	RSU 18	Ralph M Atwood Primary School	78.26
56	RSU 12	Whitefield Elementary School	77.30
57	RSU 23	Jameson Elementary School	72.99
58	RSU 49/MSAD 49	Albion Elementary School	72.87
59	Scarborough Public Schools	Scarborough Middle School	72.37
60	Brunswick - Region 10	Maine Region Ten Technical High School	72.28
61	RSU 63/MSAD 63	Holbrook School	72.21
62	RSU 22	George B Weatherbee School	70.79
63	RSU 18	Belgrade Central School	68.76
64	RSU 63/MSAD 63	Eddington School	66.79
65	Biddeford Public Schools	John F Kennedy Memorial School	66.18
66	RSU 63/MSAD 63	Holden School	65.56
67	RSU 10	Mountain Valley High School	65.03
68	Saco Public Schools	Saco Middle School	61.75
69	RSU 18	Williams Elementary School	59.90
70	RSU 18	James H Bean School	58.49
71	RSU 23	Old Orchard Beach High School	57.95
72	Saco Public Schools	Governor John Fairfield School	52.69
73	Medway Public Schools	Medway Middle School	44.91
74	RSU 64/MSAD 64	Central Middle School	43.35



2017 - 2018 Rating Cycle
Major Capital School Construction Program
Approved Projects List
9.14.2022

The Maine Commissioner of Education recommends and the State Board of Education designates the following projects from the Final Priority List that it intends to fund for the 2017-18 rating cycle.

<u>Priority</u>	<u>School District</u>	<u>School Name</u>	<u>Date</u>
1	RSU 49/MSAD 49	Fairfield Primary School	10.9.19
2	RSU 54/MSAD 54	North Elementary School	10.9.19
3	RSU 10	Rumford Elementary School	10.9.19
4	Saco Public Schools	Young School	11.4.20
5	RSU 14	Windham Middle School	11.4.20
6	RSU 17	Agnes Gray School	9.14.22
7	RSU 17	Oxford Hills Middle School	9.14.22



2017 - 2018 Rating Cycle
Integrated, Consolidated 9-16 Educational Facility
Final Priority List
August 14, 2018

The Department of Education recommends the following list of School Facilities Priorities to the State Board of Education. This list is based on the scoring of Part 1 and Part 2 applications as defined in State Board of Education Chapter 61, Rules for Major Capital School Construction Projects.

<u>Priority</u>	<u>Applicants</u>	<u>Total Points</u>
1	MSAD 27, RSU 33/MSAD 33, Madawaska Public Schools, St. John Valley Technology Center	181
2	RSU 29/MSAD 29, RSU 50, RSU 70/MSAD 70, RSU 84/MSAD 14, Region Two School of Applied Technology	167
3	MSAD 46/AOS 94, RSU 80/MSAD 4, RSU 41/MSAD 41, RSU 82/MSAD 12, Greenville Public Schools, Tri-County Technical Center	141
4	RSU 79/MSAD 1, RSU 45/MSAD 45, Presque Isle Regional Career and Technical Center	14
5	RSU 17/MSAD 17, RSU 10, Region 11 Oxford Hills Technical School	13
6	Region 10 Cooperative School Board Representatives for Brunswick, RSU 75/MSAD 75, RSU 5, Region 10 Technical High School	9
7	RSU 67, RSU 31/MSAD 31, RSU 50, East Millinocket Public Schools	4



2017 - 2018 Rating Cycle
Integrated, Consolidated 9-16 Educational Facility
Approved Projects List
 February 10, 2021

Priority	School District	School Name	Date
1	Valley Unified Education Service Center	Valley Unified Education Service Center	9/12/2018 Revised 2/10/21
2	RSU 29/MSAD 29, RSU 50, RSU 70/MSAD 70, Region Two School of Applied Technology	RSU 29/MSAD 29, RSU 50, RSU 70/MSAD 70, Region Two School of Applied Technology	8/13/19 Revised 12/11/19 Revised 8/11/20
3	MSAD 46/AOS 94, RSU 80/MSAD 4, RSU 41/MSAD 41, RSU 82/MSAD 12, Greenville Public Schools, Tri-County Technical Center	MSAD 46/AOS 94, RSU 80/MSAD 4, RSU 41/MSAD 41, RSU 82/MSAD 12, Greenville Public Schools, Tri-County Technical Center	8/11/20

DATA FROM RECENT STATE SUBSIDIZED SCHOOL CONSTRUCTION PROJECTS									
	RSU 64	Sanford	RSU 19	RSU 2	RSU 39	RSU 1	RSU 24		
	Morrison Memorial School	Sanford HS & Tech Ctr	Nokomis Regional HS	Monmouth MS	Teague Park School	Morse HS	Summer Memorial HS		
State Subsidized Amount	\$ 25,639,308.00	\$ 89,790,633.00	\$ 61,433,620.00	\$ 26,460,720.00	\$ 50,480,834.00	\$ 67,428,411.00	\$ 41,700,387.00		
Grant Funding	\$ -	\$ 321,288.00	\$ 250,000.00	\$ -	\$ 25,000.00	\$ 700,000.00	\$ 325,000.00		
Local Funding	\$ 492,488.00	\$ 10,949,738.00	\$ 250,000.00	\$ 71,995.00	\$ 2,527,423.00	\$ 7,900,000.00	\$ 1,055,797.00		
Total Approved Project Cost	\$ 26,131,796.00	\$ 100,740,371.00	\$ 61,683,620.00	\$ 26,532,715.00	\$ 53,008,257.00	\$ 75,328,411.00	\$ 42,756,184.00		
Moved to Approved Projects List	1/11/2012	1/11/2012	1/11/2012	4/9/2014	4/9/2014	4/9/2014	9/14/2016		
Site Approval	3/13/2013	8/13/2014	1/13/2016	11/9/2016	10/13/2016	May-17	Dec-18		
Concept Approval	11/14/2013	10/15/2014	1/13/2016	9/13/2017	12/14/2016	9/13/2017	4/10/2019		
Referendum	12/17/2013	1/13/2015	3/29/2016	11/7/2017	2/7/2017	11/7/2017	6/11/2019		
Design and Funding Approval	9/10/2014	2/10/2016	2/1/2017	5/9/2018	2/14/2018	12/12/2018	7/15/2020		
Revised Design and Funding Approval					9/12/2018				
Supplemental Referendum					9/6/2018				
Final Funding Approval	2/6/2015	10/7/2016	9/8/2017	8/24/2018	9/12/2018	4/11/2019	2/8/2021		
Revised Final Funding Approval			3/15/2019						
Final Permanent Bonds	\$25,931,796 5/28/2015	\$100,419,083 1/19/2017	\$52,349,530 11/2/2017	\$26,532,715 11/1/2018	\$38,500,000 11/1/2018	\$65,430,000 5/30/2019	\$38,431,184 5/20/2021		
		\$10,881,507 5/21/2020	\$9,084,090 5/23/2019		\$14,238,000 5/23/19		\$4,000,000 5/19/2022		
			\$1,000,000 10/29/2020						

RSU 2 Site Approval



MAINE STATE BOARD OF EDUCATION

23 State House Station
AUGUSTA, MAINE 04333

STATE OF MAINE

The State Board of Education held a regular monthly meeting on November 9, 2016 at Oxford Hills Comprehensive High School, South Paris, Maine. The following members were present: Vice Chair Jana Lapoint; John Bird; Nichi Farnham; Peter Geiger; Wilson Hess; Heidi Sampson; Jane Sexton; Ande Smith; and Elise McKendry.

Excused: Chair, Martha Harris and Noa Sreden

Note: The Board learned this week of the passing of Noa Sreden's grandfather. Thoughts are with Noa and the Board extends their deepest sympathy for her loss.

Also present were: Scott Brown, Director of School Construction Programs; and Mary Becker, Secretary Associate, State Board of Education.

CALLED TO ORDER:

Vice Chair, Jana Lapoint called the meeting to order at 1:08 PM.

VISION STATEMENT:

Read by student member, Elise McKendry: The Vision of the State Board is to ensure Maine public school students graduate with the skills, knowledge, and principles to be responsible American citizens; self-directed and dedicated to making contributions to society by pursuing further education and employment.

APPROVAL OF MINUTES:

MOVED by Peter Geiger, seconded by Wilson Hess, and unanimously voted by those present to approve the October 12, 2016 minutes as written.

CONGRATULATIONS:

Vice Chair, Jana Lapoint, congratulated Board Member, Heidi Sampson on her election to the Maine House of Representatives. Best wishes from the Board to Heidi as she begins her term in office.

COMMITTEE REPORTS:

Construction Committee (Peter Geiger):

The Construction Committee met on October 28, 2016 as scheduled. He and Ande Smith were in attendance.

NEW BUSINESS:

MAJOR CAPITAL SCHOOL CONSTRUCTION PROGRAM; *SITE APPROVAL CONSIDERATION*; RSU #02 – NEW PREK-8 CONSTRUCTION PROJECT

STATEMENT OF FACT: Superintendent of Schools, William Zima, requests that the State Board of Education grant site approval for RSU #02 in Monmouth, Maine for a PreK-8 school construction project.

The proposed site is made up of three parcels equaling a total of 45.8 acres of which the state will support the funding of 29 acres. The proposed property is former farmland and is adjacent to the high school property. This site is currently located in the community and benefits from good access and is well served by utility and transportation infrastructures.

In addition to the selected site there were three properties that were identified. One parcel was not large enough to support the program and the other two were not considered due to the distance from Monmouth Academy which shares many programs with the middle school.

Site investigations and environmental analysis studies have been conducted and have not revealed anything of significance. A completed site application is on file with the Department of Education and meets all the criteria of the State Board of Education’s Chapter 61, Rules for Major Capital School Construction Projects. The architects and engineers have met with all the required local and state agencies and they have responded positively to the proposed project.

In a public meeting on October 20, 2016 a “straw poll” was held on this proposed site for the new PreK-8 school and this vote was 60 in favor and 0 against.

Project Information:

Project: RSU #02 PreK-8 Construction Project
Superintendent: William Zima
Architect: Oak Point Associates – Rob Tillotson
Total number of acres: 45.8 (new school site)
Total number of eligible acres for State support: 29
Total State share of Purchase Cost: \$95,005.

COMMISSIONER’S RECOMMENDATION: The Deputy Commissioner of the Department of Education recommends that the State Board of Education grant Site Approval for the site as presented in this exhibit to RSU #02 for a new PreK-8 elementary school according to the provisions of Chapter 61, Rules for Major Capital School Construction Projects.

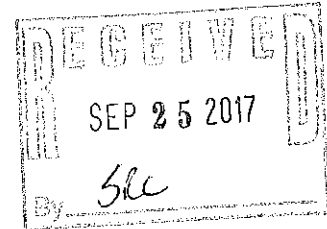
CONSTRUCTION COMMITTEE RECOMMENDATION: On October 28, 2016, the Construction Committee voted unanimously to recommend that the State Board of Education grant Site Approval to RSU #02 for a PreK-8 school construction project according to the provisions of Chapter 61, Rules for Major Capital School Construction Projects.

MOVED by Peter Geiger, seconded by Ande Smith, and unanimously voted by those present to grant Site Approval to RSU #02 for a PreK-8 school construction project according to the provisions of Chapter 61, Rules for Major Capital School Construction Projects.



STATE BOARD OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, ME 04333-0023
TEL: (207) 624-6616

September 14, 2017



William Zima
Superintendent of Schools
RSU 2
7 Reed Street
Hallowell, ME 04347

RE: Letter of Concept Approval for a New PreK-8 School in Monmouth

Dear Superintendent Zima:

The State Board of Education has granted Concept Approval to RSU 2 for a New PreK-8 School construction project. Preliminary plans and cost estimates based on long range planning for the project have been submitted and the concept reflected therein is approved by the State Board of Education. The project is consistent with policies and priorities as adopted by the State Board of Education. Concept Approval grants authorization to proceed with further development of the PreK-8 School consistent with State Board of Education general policies in anticipation of submission for Design and Funding Approval.

Enclosed you will find a copy of the Project Concept Budget.

- The total cost of the project is estimated to be \$26,665,896
- The total bonded amount will not exceed \$26,665,896
- The maximum amount approved for inclusion for debt service is \$26,593,901
- The local only share of the budget is projected to be \$71,995

The Commissioner of Education will establish the bond sale date which is currently projected to be Fall 2018.

I wish you continued success as you proceed with your project.

Sincerely,

Robert G. Hasson, Jr., Ed.D.
Secretary

Enc.

cc: Scott Brown, Director of School Facilities
Paula Gravelle, School Finance Supervisor
Denise Towers, Fiscal Compliance Coordinator



RSU 2

Oak Point Associates

Monmouth Elementary/Middle School
 Pre-K thru 8, 484 Students

Concept Approval
 September 13, 2017

	State/Local	Local Only & Other Funding	Total
A CONSTRUCTION			
1 Construction Estimate	<u>\$20,711,910</u>	<u>\$0</u>	<u>\$20,711,910</u>
Subtotal	\$20,711,910	\$0	\$20,711,910
B ADMINISTRATIVE COST & RESERVES			
2 Land Purchase and Related Costs	\$113,061	\$71,995	\$185,056
3 Moveable Equipment	\$1,278,352	\$0	\$1,278,352
4 Advertising and Legal	\$64,110	\$0	\$64,110
5 Percent for Art	\$50,000	\$0	\$50,000
6 Project Reserves	\$0	\$0	\$0
7 Project Contingency	<u>\$2,071,192</u>	<u>\$0</u>	<u>\$2,071,192</u>
Subtotal	\$3,576,715	\$71,995	\$3,648,710
C FEES AND SERVICES			
8 Architect / Engineer Basic Services	\$1,408,410	\$0	\$1,408,410
9 Architect / Engineer Additional Services	\$134,381	\$0	\$134,381
10 Architect / Engineer Reimbursables	\$32,300	\$0	\$32,300
11 Site Selection	\$0	\$0	\$0
12 Permitting & Approvals	\$250,015	\$0	\$250,015
13 Survey and Soils	\$46,700	\$0	\$46,700
14 Construction Testing	\$100,000	\$0	\$100,000
15 Project Coordination	\$85,800	\$0	\$85,800
16 Clerk of the Works	\$175,200	\$0	\$175,200
17 Commissioning	\$69,970	\$0	\$69,970
18 Other Professional Services	<u>\$2,500</u>	<u>\$0</u>	<u>\$2,500</u>
Subtotal	\$2,305,276	\$0	\$2,305,276
D TOTAL PROJECT COST	\$26,593,901	\$71,995	\$26,665,896
E OTHER FUNDING SOURCES	\$0	\$0	\$0
F MAXIMUM BOND AMOUNT	\$26,593,901	\$71,995	\$26,665,896

RSU 2 Design and Funding Approval



STATE BOARD OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, ME 04333-0023
TEL: (207) 624-6616

May 10, 2018

William Zima
Superintendent of Schools
RSU 2
7 Reed Street
Hallowell, ME 04347

RE: Letter of Design and Funding Approval for RSU 2's New PreK-8 Elementary/Middle School

Dear Superintendent Zima:

The State Board of Education granted Design and Funding Approval to RSU 2 for the New PreK-8 Elementary/Middle School construction project on May 9, 2018. RSU 2 is eligible for construction aid for the proposed project pursuant to Title 20-A MRS, Chapter 609. RSU 2 is authorized to seek bids for the work.

Enclosed you will find a copy of the Design and Funding Budget.

- The total cost of the project is estimated to be \$26,665,896.
- The total bonded amount will not exceed \$26,665,896.
- The maximum amount approved for inclusion in debt service is \$26,593,901.
- The local only share of the budget is projected to be \$71,995.

The Commissioner of Education will establish the bond sale date which is currently projected to be Fall 2018. Bonding will be for a period of 20 years.

I wish you continued success as you proceed with your project.

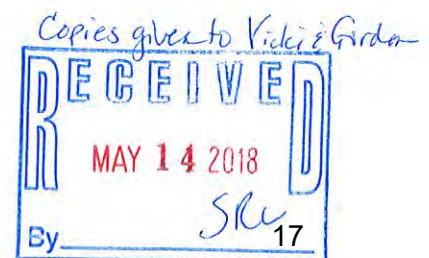
Sincerely,

Deputy Commissioner as designee for

Robert G. Hasson, Jr., Ed.D.
Secretary

Enc.

cc: Scott Brown, Director of School Facilities
Ann Pinnette, School Facilities Coordinator
Paula Gravelle, School Finance Coordinator
Denise Towers, Fiscal Compliance Consultant
Toni Reed, Program Officer, MMBB





RSU 2
Monmouth Elementary/Middle School
 Pre-K thru 8, 484 Students

Oak Point Associates
Design and Funding Approval
 May 9, 2018

	State/ Local	Local Only & Other Funding	Total
A CONSTRUCTION			
1 GC Construction Contract	\$20,711,900	\$0	\$20,711,900
Subtotal	\$20,711,900	\$0	\$20,711,900
B ADMINISTRATIVE COST & RESERVES			
2 Land Purchase and Related Costs	\$150,556	\$71,995	\$222,551
3 Moveable Equipment	\$1,337,919	\$0	\$1,337,919
4 Advertising and Legal	\$41,641	\$0	\$41,641
5 Percent for Art	\$50,000	\$0	\$50,000
6 Project Reserves	\$24,823	\$0	\$24,823
7 Project Contingency	\$2,071,190	\$0	\$2,071,190
Subtotal	\$3,676,129	\$71,995	\$3,748,124
C FEES AND SERVICES			
8 Architect / Engineer Basic Services	\$1,408,410	\$0	\$1,408,410
9 Architect / Engineer Additional Services	\$134,381	\$0	\$134,381
10 Architect / Engineer Reimbursables	\$39,796	\$0	\$39,796
11 Site Selection	\$0	\$0	\$0
12 Permitting & Approvals	\$128,115	\$0	\$128,115
13 Survey and Soils	\$46,700	\$0	\$46,700
14 Construction Testing	\$115,000	\$0	\$115,000
15 Project Coordination	\$85,800	\$0	\$85,800
16 Clerk of the Works	\$175,200	\$0	\$175,200
17 Commissioning	\$69,970	\$0	\$69,970
18 Other Professional Services	\$2,500	\$0	\$2,500
Subtotal	\$2,205,872	\$0	\$2,205,872
D TOTAL PROJECT COST	\$26,593,901	\$71,995	\$26,665,896
E OTHER FUNDING SOURCES	\$0	\$0	\$0
F MAXIMUM BOND AMOUNTS	\$26,593,901	\$71,995	\$26,665,896

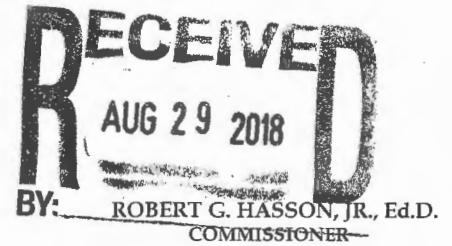


RSU 2 Final Funding Approval



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, ME 04333-0023



August 24, 2018

William Zima
Superintendent of Schools
RSU 2
7 Reed Street
Hallowell, ME 04347

RE: Certificate of Final Funding Approval for School Construction

Dear Superintendent Zima:

Congratulations on receiving Final Funding Approval for the New PreK-8 Elementary/Middle School construction project. A copy of the *Certificate of Final Funding Approval for School Construction* is attached along with a copy of the *Final Funding Approval Budget*.

As a reminder, approved budget amounts are only estimates until the project has been completed and line item amounts have been finalized.

If you have any questions, please contact me at 624-6883 or scott.brown@maine.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Brown".

Scott Brown
Director of School Facilities

Enclosures: 2

cc: Joanne Allen, Director of Finance and Operations
Paula Gravelle, School Finance Coordinator
Denise Towers, Fiscal Compliance Consultant
Toni Reed, Program Officer, MMBB



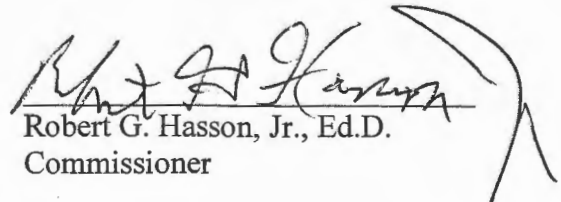
CERTIFICATE OF FINAL FUNDING APPROVAL FOR SCHOOL CONSTRUCTION

This Certificate of Final Funding Approval for School Construction is issued to RSU 2 for the New PreK-8 Elementary/Middle School construction project subject to rules of the State Board of Education governing school construction.

1. RSU 2 is eligible for construction aid for the proposed project pursuant to Title 20-A M.R.S., Chapter 609;
2. The total approved cost for this project will not exceed \$26,532,715;
3. The total bonded amount for this project will not exceed \$26,532,715;
4. An amount not to exceed \$26,460,720 will be included in subsidized debt service;
5. The local only share of the budget will not exceed \$71,995;
6. The amount of other funding including grants and gifts will not exceed \$0;
7. Bonding for this project will be for a period of 20 years; and
8. The bond sale date for this project is Fall 2018.

The sale of bonds may be secured through the Maine Municipal Bond Bank or other banking institution equipped to sell bonds. Sale of these bonds must be in accordance with all applicable statutes and regulations.

Dated this 24th day of August, 2018


Robert G. Hasson, Jr., Ed.D.
Commissioner



RSU 2
Monmouth Elementary/Middle School
 Pre-K thru 8, 484 Students

Oak Point Associates
Final Funding Approval
 August 24, 2018

	State/ Local	Local Only & Other Funding	Total
A CONSTRUCTION			
1 GC Construction Contract	\$21,742,500	\$0	\$21,742,500
Subtotal	\$21,742,500	\$0	\$21,742,500
B ADMINISTRATIVE COST & RESERVES			
2 Land Purchase and Related Costs	\$151,289	\$71,995	\$223,284
3 Moveable Equipment	\$1,337,919	\$0	\$1,337,919
4 Advertising and Legal	\$38,236	\$0	\$38,236
5 Percent for Art	\$50,000	\$0	\$50,000
6 Project Reserves	\$0	\$0	\$0
7 Project Contingency	\$1,035,595	\$0	\$1,035,595
Subtotal	\$2,613,039	\$71,995	\$2,685,034
C FEES AND SERVICES			
8 Architect / Engineer Basic Services	\$1,408,410	\$0	\$1,408,410
9 Architect / Engineer Additional Services	\$134,381	\$0	\$134,381
10 Architect / Engineer Reimbursables	\$19,121	\$0	\$19,121
11 Site Selection	\$0	\$0	\$0
12 Permitting & Approvals	\$123,323	\$0	\$123,323
13 Survey and Soils	\$41,360	\$0	\$41,360
14 Construction Testing	\$83,580	\$0	\$83,580
15 Project Coordination	\$52,000	\$0	\$52,000
16 Clerk of the Works	\$175,200	\$0	\$175,200
17 Commissioning	\$65,306	\$0	\$65,306
18 Other Professional Services	\$2,500	\$0	\$2,500
Subtotal	\$2,105,181	\$0	\$2,105,181
D TOTAL PROJECT COST	\$26,460,720	\$71,995	\$26,532,715
E OTHER FUNDING SOURCES	\$0	\$0	\$0
F MAXIMUM BOND AMOUNTS	\$26,460,720	\$71,995	\$26,532,715
G SBE DESIGN & FUNDING APPROVAL 5/10/18	\$26,593,901	\$71,995	\$26,665,896
H PROJECT COST REDUCTIONS	-\$133,181	\$0	-\$133,181



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

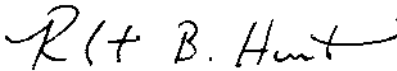
No. 1415

H.P. 911

House of Representatives, March 30, 2023

An Act to Expand Access to School Construction Funding

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


ROBERT B. HUNT
Clerk

Presented by Representative BRENNAN of Portland.
Cosponsored by Senator CHIPMAN of Cumberland and
Representatives: COLLINGS of Portland, CROCKETT of Portland, DODGE of Belfast,
MALON of Biddeford, SALISBURY of Westbrook, SHAGOURY of Hallowell, ZAGER of
Portland, Senator: PIERCE of Cumberland.

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

2 **Sec. 1. 20-A MRSA §15905, sub-§1, ¶A,** as amended by PL 2019, c. 616, Pt. C,
 3 §9, is further amended to read:

4 A. The state board may approve projects as long as no project approval will cause debt
 5 service costs, as defined in section 15672, subsection 2-A, paragraph A and pursuant
 6 to rules adopted in accordance with Resolve 2007, chapter 223, section 4, to exceed
 7 the maximum limits specified in Table 1 and Table 2 in subsequent fiscal years.

8 Table 1

9	Major Capital	Integrated, Consolidated
10		Secondary and Postsecondary
11		Project
12	Fiscal year	Maximum Debt Service Limit
13		Maximum Debt Service Limit
14	1990	\$ 48,000,000
15	1991	\$ 57,000,000
16	1992	\$ 65,000,000
17	1993	\$ 67,000,000
18	1994	\$ 67,000,000
19	1995	\$ 67,000,000
20	1996	\$ 67,000,000
21	1997	\$ 67,000,000
22	1998	\$ 67,000,000
23	1999	\$ 69,000,000
24	2000	\$ 72,000,000
25	2001	\$ 74,000,000
26	2002	\$ 74,000,000
27	2003	\$ 80,000,000
28	2004	\$ 80,000,000
29	2005	\$ 84,000,000
30	2006	\$ 90,000,000
31	2007	\$ 96,000,000
32	2008	\$100,000,000
33	2009	\$104,000,000
34	2010	\$108,000,000
35	2011	\$126,000,000
36	2012	\$116,000,000
37	2013	\$116,000,000
38	2014	\$126,000,000
39	2015	\$126,000,000
40	2016	\$126,000,000
41	2017	\$126,000,000
42	2018	\$126,000,000
43	2019	\$126,000,000
44	2020	\$126,000,000
45	2021	\$126,000,000
46	2022	\$126,000,000
	2023	\$126,000,000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

1
2

23
24
25
26
27
28

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

Table 2

Fiscal year	Maximum Debt Service Limit
2024	\$150,000,000
2025	\$150,000,000
2026	\$150,000,000
2027	\$150,000,000

Sec. 2. School construction projects. The State Board of Education shall amend its rule Chapter 61: Rules for Major Capital School Construction Projects, Section 15 regarding administering funding for integrated, consolidated 9-16 educational facilities to allow the governing body of one high school or a regional high school together with a career and technical high school to apply for funding for a proposed school. Rules adopted to comply with this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 3. Calendar year 2024 funding. In calendar year 2024, a school administrative unit is eligible to apply for funding for both a major capital school construction project under State Board of Education rule Chapter 61: Rules for Major Capital School Construction Projects and an integrated, consolidated 9-16 educational

Committee on Education and Cultural Affairs, which may report out legislation related to the report to the Second Regular Session of the 131st Legislature.

finance the Maine Public School Construction Authority, the purpose of which would be to finance elementary and secondary public school construction projects. The commissioner shall report the recommendations of the stakeholder group, including any necessary implementing legislation, to the Joint Standing Committee on Education and Cultural Affairs no later than December 6, 2023. The joint standing committee may report out legislation related to the report to the Second Regular Session of the 131st Legislature.

SUMMARY

This bill:

1. Requires the State Board of Education, in administering funding for integrated, consolidated 9-16 educational facilities, to allow the governing body of one high school or a regional high school to apply for funding for a proposed school. Current state board rules require 2 high schools or a regional high school to apply. The bill directs the board to amend its rules to be consistent with this change;
2. Allows, in calendar year 2024, a school administrative unit to be eligible to apply for funding for both a major capital school construction project and an integrated, consolidated 9-16 educational facility project; and
3. Requires the Commissioner of Education to convene a stakeholder group to develop recommendations for the establishment and financing of the Maine Public School Construction Authority. The purpose of the new authority would be to finance elementary and secondary public school construction projects. The commissioner is required to submit a report regarding the recommendations of the stakeholder group to the Joint Standing

Page 3:

Committee on Education and Cultural Affairs, which may report out legislation related to the report to the Second Regular Session of the 131st Legislature.

Major Capital School Construction Programs

The Maine Department of Education is committed to assisting school districts in improving the quality and condition of learning environments for Maine students. [More of the state-subsidized process](#)

For complete information, refer to State Board of Education Chapter 61, [Rules for Major Capital School Construction Projects](#).

Rating Cycle

The next rating cycle is anticipated to be initiated in 2024.

- [2017-2018 Final Priority List](#) (XLSX, 56KB)
- [2017-2018 Approved Projects List](#) (PDF, 52KB)
- [2010-11 Rating Cycle Priority List](#) (PDF, 181KB) View the Final Priority List from the 2010-2011 rating cycle in Maine.
- [2010-11 Rating Cycle Approved Projects List](#). (XLS, 16KB) View the Approved Projects List from the 2010-11 rating cycle.

Planning Documents

1. [Educational Specifications](#)
2. [Space Allocation Guidelines](#)
3. [Standards & Guidelines for New School Construction & Major Renovation Projects](#)

Integrated, Consolidated 9-16 Educational Facility

Under the provisions of 20-A MRS §15905 and Chapter 61 State Board of Education Rules for Major Capital School Construction Projects Section 15 the Commissioner and the State Board have initiated an application process which will identify an Integrated, Consolidated 9-16 Facility pilot project. The intent of Section 15 is to create a new regional high school integrated with a career and technical school, the University of Maine System, the Maine Community College System and that supports industry training programs.

Final Priority List 2017-18

- [2017-18 Final Priority List](#) (XLSX, 53KB)
- [2017-18 Rating Cycle Approved Projects List](#) (XLSX, 80KB)

Summary: This rule governs State Board of Education action in the siting of new school construction projects, not including additions to existing schools, that receive state funding.

1. Applicability

This rule applies to the siting of all new school construction projects that receive state funding, including major capital improvement projects as defined in Maine Department of Education Reg. 61 (April 4, 2000) if the major capital improvement projects are not additions to existing schools and are projects that receive state funding.

2. Request for Site Approval

School administrative units requesting site approval must submit the application materials described in Maine Department of Education Reg. 61, Rules for School Construction Projects, Section 4 no later than one month prior to the meeting of the State Board of Education at which the request is scheduled to be considered.

3. Considerations

When reviewing a request for site approval, the State Board of Education must consider the following:

- A. the adequacy of the site to provide for the long-term educational program space needs and playfield requirements of the school administrative unit;
- B. the comprehensive enrollment analysis for the school administrative unit;
- C. a comprehensive and complete “Renovation-vs.-New-Analysis” of the existing building and site;
- D. community involvement in the selection process;
- E. site development costs, both on and off the primary location of the project;
- F. the impact on student transportation, vehicular traffic and student safety;
- G. the allowance for future expansion;
- H. the proximity to power, water, and sewerage facilities;
- I. subsurface analyses of soils and ledge;

- J. the survey of the site for wetlands; and
- K. the environmental issues related to the site.

4. Additional Considerations Required for Requests for New Schools on New Sites

- A. When a school administrative unit's request for site approval specifies that a new school on a new site is the school administrative unit's preference, the State Board of Education must consider the preferred areas for school siting defined below in addition to the considerations listed in (3), above:
 - i. a locally designated growth area identified in the municipality's comprehensive plan adopted pursuant to the Maine Revised Statutes, 30-A, chapter 187, subchapter II; and
 - ii. in the absence of a comprehensive plan:
 - a. an area that, if served by a public sewer system, has the capacity for the school construction project;
 - b. an area identified by the latest Federal Decennial Census as a census-designated place; or
 - c. a compact area of an urban compact municipality.
- B. When a site is requested that is not a preferred area as defined in (4)(A)(i) or (4)(A)(ii), above, the school administrative unit must provide a written explanation of its site selection for State Board of Education consideration prior to the meeting scheduled by the State Board of Education for review of the school administrative unit's request for site approval.

5. Review and Decision

- A. The Construction Subcommittee of the State Board of Education must consider all the factors listed in (3) and (4), above, before forwarding its recommendation regarding the request for site approval to the State Board of Education.
- B. When site approval for a new school on a new site that is not a preferred area as defined in (4)(A)(i) or (4)(A)(ii), above, is recommended by the Construction Subcommittee of the State Board of Education, the Sub-committee must provide written justification for its recommendation to the State Board of Education. The written justification must include any and all considerations that provide the basis for recommending a location that is not in a preferred area as defined in (4)(A)(i) or (4)(A)(ii) and must be made a part of the written record of the State Board of Education.
- C. The State Board of Education must consider requests for site approval no later than two (2) regularly scheduled State Board of Education meetings prior to the State Board of Education's consideration of concept approval for the same project as defined in Maine Department of Education Reg. 61, Rules for School Construction Projects, Section 1(A)(1).

- D. When considering a request for site approval, the State Board of Education will involve all appropriate federal, state and local agencies. However, the decision regarding final site approval rests entirely with the State Board of Education.

6. Other Considerations

The school administrative unit will utilize the best-available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

STATUTORY AUTHORITY:

P.L. 1999 c. 776 §21

EFFECTIVE DATE:

August 12, 2001 - 2001-256 filed July 13, 2001 (Final adoption, major substantive)r

NON-SUBSTANTIVE CORRECTIONS:

February 1, 2007

AMENDED (EFFECTIVE DATE):

June 10, 2022 – 2022-089 filed May 11, 2022 (Final adoption, major substantive)

05 STATE BOARD OF EDUCATION

071 SCHOOL FACILITIES SERVICES TEAM

Chapter 61: STATE BOARD OF EDUCATION RULES FOR MAJOR CAPITAL SCHOOL CONSTRUCTION PROJECTS

Summary: This Chapter defines the conditions under which the State will subsidize Major Capital School Construction projects.

SECTION 1. DEFINITIONS

For the purposes of this Chapter, the following terms have the following meanings:

1. “Approved Projects List” – Projects from the Final Priority List that have been designated by the State Board of Education for funding.
2. “Arbitrage” – In the municipal market, the difference in interest earned on funds borrowed at a lower tax-exempt rate and interest on funds that are invested at a higher-yielding taxable rate. Under the 1986 Tax Act, with very few exceptions, arbitrage earnings must be rebated back to the federal government.
3. “Bond” – The written evidence of debt, bearing a stated rate or stated rates of interest, or stating a formula for determining that rate, that matures on a date certain on which date and upon presentation a fixed sum of money plus interest is payable to the holder or owner.
4. “Bond Anticipation Note (BAN)” – A note issued in anticipation of a later issuance of bonds, usually payable from the proceeds of the sale of the bonds or of renewal notes. BANs can also be general obligations of the issuer. A general obligation bond is a bond secured by the pledge of the issuer’s full faith, credit, and taxing power.
5. “Bond Bank” – The Maine Municipal Bond Bank created by 30-A M.R.S.A. §5951. The Bond Bank may make loans to an SAU to promote efficient capital financing activities for the construction, renovation and maintenance of school facilities.
6. “Career and Technical Education” - A course or program of education designed to create or improve job-related skills that is part of a secondary school curriculum and approved by the commissioner according to 20-A M.R.S.A. §8301-A(2-A).
7. “Career and Technical Education Center “– An administrative entity established pursuant to this chapter that provides career and technical education to secondary students. Unless otherwise specifically provided for by 20-A M.R.S.A. §8301-A(3). For purposes of this chapter, a center is governed, operated and administered by a single SAU. A center shall make its programs available to serve secondary students from SAUs with which it is affiliated. A center may include within its administrative structure career and technical education satellite programs operated by SAUs with which it is affiliated.

8. "Career and Technical Region" – A quasi-municipal corporation established by the Legislature to provide career and technical education to secondary students that is comprised of all the SAUs within the geographical boundaries set forth for each career and technical education region in 20-A M.R.S.A. §8451. A region is governed by a cooperative board formed and operating in accordance with 20-A M.R.S.A. Chapter 313.
9. "Commissioning" – A systematic documented process by an independent entity which shall include visual examination and functional performance testing to demonstrate that installed components or systems meet the intent of the original design.
10. "Completed Building Project" – The project is considered completed when all punch list items are completed; all invoices have been paid; all existing litigation/arbitration issues have been resolved; all applicable arbitrage computations have been prepared by bond counsel, the SAU auditor, or other authorized person; and no further financial transactions are anticipated. Where required, certificates of occupancy shall have been obtained.
11. "Compliance Review" - An examination of the SAU's school construction project. For purposes of 20-A M.R.S.A. §15909(6) audit is referred to herein as compliance review.
12. "Compliance Review Staff" - Staff within the Department of Education having the responsibility of reviewing an SAU's records relating to a school construction project.
13. "Concept Approval" – The initial approval of a school construction project by the State Board which indicates:
 - A. Acknowledgement of the local need;
 - B. Approval of the preliminary design;
 - C. Approval of estimated costs; and
 - D. The State Board's intent to issue Design and Funding Approval subject to a favorable local vote and approval of final cost estimates.
14. "Contingency Funds" – Bid contingencies are project funds that have been set aside or reserved to cover bidding overruns. Construction contingencies are used to cover project errors and omissions and miscellaneous project expenditures not part of the initial project budget but necessary to complete the project.
15. "Debt Service Costs" – Defined in 20-A M.R.S.A. §15672(2)(A) as principal and interest on approved school construction costs excluding payments made with funds from State and local government accounts established under the Federal Internal Revenue Code and regulations for disposition of excess, unneeded proceeds of bonds issued for a school project.
16. "Debt Service Principal" –The face amount of a bond exclusive of accrued interest and payable at maturity.
17. "Department" - The State of Maine Department of Education.
18. "Design and Funding Approval" - An approval by the State Board indicating that a Major Capital School Construction project's drawings and specifications have been developed to 100%

completion, the project has gained the recommendations of the Department and the SAU is authorized to seek bids for the work.

19. “Educational Specifications” – An SAU’s written description of its educational goals and activities, and the interrelationships between those educational goals and activities and their associated facilities, that need to be provided in a proposed new or renovated school facility.
20. “Emergency Project” - Any school construction project requiring the replacement of all or a significant portion of a school facility, resulting from an unanticipated and sudden natural or human disaster, and which is declared uninhabitable by an authorized local, state or federal government agency or individual (e.g., the State Fire Marshal’s Office).
21. “Facilities Team” – Staff within the Department having the responsibility for administration of all programs relating to school facilities, including but not limited to Major Capital School Construction, Leased Space, Revolving Renovation Fund, and Federal School Construction/Renovation Grants.
22. “Final Compliance Review” – A review of the school construction project that is conducted after the completion of the project.
23. “Final Funding Approval” – Approval granted to a Major Capital School Construction project that has gone through the bid process, and the Commissioner has adjusted the state/local budget based upon the low bid and the Facilities Team’s recommendation.
24. “Final Priority List” – A list of projects that has been approved by the State Board after all opportunities for appeal have been exhausted.
25. “Industry Training Center” – A facility which has the potential to be available 24/7 to provide workforce training to meet industry standards and exposure to a variety of career pathways.
26. “Initial Priority List” – A needs-based priority list developed by the Facilities Team and recommended to the Commissioner.
27. “Integrated , Consolidated 9-16 Educational Facility” – A facility that includes: a regional high school fully integrated with a career and technical high school (center/region); a higher education center offering courses and degrees from the University of Maine System and the Community College System; and a center providing industry-specific training.
28. “Interest Expense” – Interest paid on loans, BANs, and other project revenue.
29. “Interest Income” – Interest earned on loans, BANs, bonds, and other project revenue.
30. “Interim Compliance Review” – A review of the school construction project accounts prior to the completion of the project.
31. “Life Cycle Costs Analysis” – An analysis of alternatives with the objective of selecting the most cost-effective building systems for the project.
32. “Local Only” – The portion of the project budget that is 100% locally funded.
33. “Long-Term Tuition Contract” – Ten years or maximum permitted by law.

34. “Maintenance” – Those activities having to do with scheduled and unscheduled repairs, upkeep, minor alterations and enhancements of buildings. Maintenance is also defined as preventive maintenance work necessary to achieve the design life expectancy of building systems and components.
35. “Major Capital School Construction Project” – New construction and major renovation projects that meet the educational program needs of the school.
36. “Moveable Equipment” – Equipment, including technology, for a school construction project that supports the educational program. Moveable equipment has an expected life of at least five years and is not attached to the building.
37. “Non-Allowable Expenditures” – Expenditures that are not included in the approved project budget.
38. “Notes” – Short-term promises to pay specified amounts of money. Notes may be secured by specific sources of future revenues, such as taxes, federal and state aid payments, and bond proceeds.
39. “One Campus” – The campus contains the elements of an integrated, consolidated 9-16 educational facility promoting the development of a design where all facilities are located on one site and provide a streamlined and integrated learning experience for eligible students.
40. “Project Budget” – The listing of line item costs allocated to complete a school construction project that is finalized at the time of Final Funding Approval by the Commissioner.
41. “Proposed Priority List” – A needs-based list recommended by the Commissioner and received by the State Board and continuing through the Administrative Review (appeals) process.
42. “Project Funds” - BAN proceeds, bond proceeds, note proceeds, loan proceeds for initial start-up costs, local appropriations, gifts, grants, and all other project resources.
43. “Punch List” – A list of unfinished or incorrect building items identified at project end that must be completed or corrected to complete the project.
44. “Rating Cycle” – A period of time, established by the State Board, during which the Facilities Team accepts applications from SAUs for Major Capital School Construction projects, visits each facility, rates each facility, and develops a priority list to be recommended to the Commissioner.
45. “Regional High School” – Two or more high schools that have combined (at the time of or since the Sinclair Act) or that are combining in the new innovative, consolidated 9-16 educational facility, (or a high school organized to serve two or more communities).
46. “School Administrative Unit (SAU)” – Defined in 20-A M.R.S.A. Chapter 609, §15901(6).
47. “State Board” – The State Board of Education.
48. “State/Local” – The portion of the project budget that has been approved for State subsidy.
49. “Substantially Renovated” – Any renovation for which the cost exceeds 50% of the building’s current value prior to renovation.

SECTION 2. MAJOR CAPITAL SCHOOL CONSTRUCTION PROJECT FLOW CHART, APPLICATION FORM AND SUBMISSION DEADLINES

1. Categories of School Construction Projects

- A. Major Capital School Construction Projects – Major Capital School Construction projects are new construction and major renovation projects that meet the educational program needs of the school. Costs necessary to bring a building into conformance with current state recognized building and safety codes shall be included in the project budget.
- B. Emergency projects will be dealt with on a case-by-case basis as deemed appropriate-by the State Board.

2. Major Capital School Construction Project Flow Chart

Each SAU developing a school construction project shall follow the steps in the order in which they are outlined on the Major Capital School Construction Project Flow Chart.

3. Application Form

Each SAU seeking state funding for a proposed school construction project shall submit a completed application form to the Department. Application forms are available from the Department. All parts of the application must be completed.

4. Submission Deadlines

If a Major Capital School Construction project is to be considered for a given rating cycle, a completed application must be received by the Department by the date established by the Department.

5. Waivers

One or more of the requirements of any provision of this Chapter may be waived under any of the following conditions:

- A. The SAU has filed a request for a waiver with the Department at least 30 days prior to the meeting of the State Board, at which the waiver is to be considered.
- B. The Commissioner submits a request to the State Board for a waiver.
- C. The State Board finds reasons for pursuing a waiver.
- D. Waivers of time deadlines shall be to a time specific.

The State Board will provide in writing its reasons for granting or denying a waiver request.

SECTION 3. RATING SYSTEM

1. The rating system set forth in subsections 5 and 6 of this section and the “hold harmless” provision shall be used to rate each Major Capital School Construction project application when it is applicable. “Hold harmless” means the rating points assigned to a project application that relate directly to health, safety and energy efficiency as outlined in Priority A may not be reduced by health and safety, and energy efficiency improvements made to existing buildings. This “hold harmless” provision will only apply if the project received a rating on the previous school facilities Proposed Priority List.
2. In order to be visited and rated by the Facilities Team, the application must be complete and for a public school that is currently housing students or has been officially condemned pursuant to Title 20-A M.R.S.A. §4102(2) within the last school year.
3. The Facilities Team will score each eligible project following submission of the application by the SAU and an on-site visit by the evaluators. Once all visits have been completed, a proposed priority list will be developed based upon the scores assigned to each school. The assigned scores will change only if required by a review committee’s decision pursuant to Section 4, subsection 3 of this Chapter.

The SAU is responsible for notifying the Facilities Team of any changes in local conditions prior to the release of the Department’s final recommended Priority List.

4. The rating system is based on a total of 200 points for State Board priorities as follows:

PRIORITY A: Buildings and Grounds – 90 points total

PRIORITY B: School Population – 45 points total

PRIORITY C: Program and Planning - 65 points total

5. **The Rating System: Criteria and Point Assignment**

PRIORITY A: Buildings and Grounds (Total 90 Points)

Criteria - Unsafe Conditions (Total of 55 Points)

Group 1: Building (maximum 40 points)

1. Building classification
2. Structure
3. Combustible
4. Access and egress
5. Boiler room
6. Electrical
7. Storage
8. Stairwells
9. Environmental hazards
10. Security

Group 2: Site (maximum 15 points)

11. Traffic/Circulation
12. Sewerage system

13. Environmental conditions
14. Water quality and quantity
15. Physical education and play areas

Criteria – Obsolete, Inefficient and/or Unsuitable (Total 35 Points)

Group 1: Program Related Facility Deficiencies and Inefficiencies (maximum 20 points)

16. Special areas - non-instructional
17. Special areas - instructional
18. Room size and arrangement
19. Effective program
20. Site size and location
21. Handicapped accessibility

Group 2: Mechanical and Building Systems Deficiencies (maximum 15 points)

22. Building Envelope
23. Heating
24. Ventilation
25. Plumbing
26. Electrical

PRIORITY B: School Population (Total of 45 Points)

Criteria - Overcrowding (Total of 27 points)

Group 1: Instructional Areas (maximum 14 points)

27. General classroom areas
28. Special areas

Group 2: Program Scheduling (maximum 13 points)

29. Extended school day
30. Student release: overcrowding
31. Classes scheduled in unsuitable areas
32. Scheduling in temporary facilities due to overcrowding

Criteria - Enrollment Estimates and Population Shifts (Total of 18 points)

Group 1: Enrollment Estimates (maximum 10 points)

33. Estimates based on enrollment projections

Group 2: Population Shifts and Other (maximum 8 points)

34. Unusual changes

PRIORITY C: Program and Planning (Total of 65 Points)

35. Career Preparation/Guidance
36. English/Language Arts
37. Health and Physical Education
38. Mathematics
39. World Languages
40. Science
41. Technology/Distance Learning
42. Social Studies
43. Visual and Performing Arts
44. Library/Media
45. Special Ed/Gifted & Talented/Alternative Education
46. Early Childhood

For both CTE Regions and Centers an individual rating will be done based upon CTE programs offered by the Region or Center. The individual ratings will also take account of programs the Region or Center seeks to offer but is unable to offer because of facility restraints.

6. The following steps shall be used by the Facilities Team to break ties that occur during the rating process for the purpose of placing the projects on the Priority List:
 - A. The project with more points in Priority A: Buildings and Grounds shall be placed first.
 - B. If a tie still exists, the project benefiting the larger number of students shall be placed first.

SECTION 4. PRIORITY LISTS, EVALUATION REPORT AND ADMINISTRATIVE REVIEW

1. Priority Lists

- A. The Facilities Team shall develop a needs-based Initial Priority List for the Commissioner of those applicants for a given rating cycle based on the Rating System outlined in Section 3 of this Chapter. The Commissioner shall recommend a Proposed Priority List to the State Board. The Board will receive a Proposed Priority List.

If there are extremely hazardous conditions, the evaluators shall report the matter to the Commissioner who may refer it to the State Fire Marshal or other appropriate authority.

- B. The Facilities Team will develop a priority list for the Commissioner of those applicants for an integrated, consolidated 9-16 educational facility.

Funds used for the integrated, consolidated 9-16 educational facilities selected may not impact the funds that would normally be used for new school construction projects that are prioritized and selected under the current guidelines set forth in this chapter. Implementation of this innovative model would occur only with a specific increase in debt service to create a pool of available funds for the model based on the criteria set forth in Section 15 of this rule.

2. Evaluation Report

After receipt of the Proposed Priority List by the Board, the Department will ensure the delivery of an individualized Evaluation Report to the office of the superintendent of schools of each evaluated facility. This report shall include the scores for each category and sub-category used by the Department to rate that facility.

3. Administrative Review

- A. An SAU may appeal its point rating. The unit must demonstrate by clear and convincing evidence that an error was made in the evaluation rating of the project application based solely on the information included in its project application and presented during the site visit. If an SAU wishes to appeal its point rating a written request for administrative review along with a written demonstration of the alleged error shall be made to the Commissioner within 30 days of receipt of the SAU's individualized Evaluation Report described in subsection 2 of this section. Forms to request administrative review may be obtained from the Department. A Review Committee consisting of the Commissioner or the Commissioner's designee and two members of the Department staff appointed by the Commissioner other than members of the Facilities Team will review the written demonstration submitted by the SAU and presented by the SAU at an informal hearing. The Review Committee may call upon others to provide relevant information.
- B. Notification of the Review Committee's findings of fact and decision shall be made in writing within sixty (60) days of receipt of the request for administrative review.
- C. The Review Committee's findings of fact and decision will constitute final agency action.

4. Final Priority List

- A. Following either the close of the period in which appeals are permitted, or the completion of the Administrative Review process, the Proposed Priority List as recommended by the Commissioner and approved by the State Board becomes the Final Priority List.

- B. For the Integrated, Consolidated 9-16 Educational Facility projects following either the close of the period in which appeals are permitted, or the completion of the Administrative Review process, as appropriate, the Proposed Priority List as recommended by the Commissioner is submitted to the State Board. The State Board will select from the recommended Proposed Priority List a qualified applicant to implement the innovative model.

SECTION 5. APPROVED PROJECTS LIST

After the Final Priority List is established, the Commissioner shall recommend and the State Board shall designate projects from that list that it intends to fund for a given Rating Cycle. This will be the Approved Projects List. The number of designated projects for funding will be determined by available resources. Should resources permit, additional projects may be approved by the State Board and they shall be selected from the Final Priority List.

Placement on the Approved Projects List is an acknowledgement that the pupils in the rated facility have a significant need to be housed under improved circumstances. It does not assure replacement of the facility(ies) that received the rating.

If resources do not allow all the projects on the Approved Projects List to be funded, the unfunded projects will be placed at the top of the Approved Projects List of the next Rating Cycle.

SECTION 6. SCHOOL CONSTRUCTION ELIGIBILITY AND APPROVAL PROCESS

1. Adequate Education

In making a determination under 20-A M.R.S.A. §15905(2) as to whether a proposed high school designed for less than 300 pupils will have an “adequate education program,” the State Board shall consider criteria listed below. The Board will obtain information from the Department when available. Other data shall be provided by the applicant SAU. These data shall be submitted to the State Board no later than 60 days after the State Board has designated the project for placement on the Approved Projects List. The State Board may consider such other information as it considers relevant to a given application. Similarly, the applying SAU may submit to the State Board any additional information it deems relevant.

After reviewing these materials, the State Board will determine whether the SAU will have the capacity to provide an adequate education program. The State Board will have 60 days from the receipt of the following data to issue, in writing, its decision and the rationale for that decision.

- A. **Faculty Quality** - The percentage of faculty holding provisional or professional certification shall be no more than one standard deviation below the State average for schools of 300 or less.
- B. **Graduation Rate** - Starting with data for the 2008-2009 school year, the State Board shall review the graduation rates for each of the most recent five years; however, the data considered shall not include years prior to the school year 2005-2006. The average for those years shall be no more than one standard deviation below the State average for secondary schools of 300 or fewer students for the same period.
- C. **Maine State Evaluation System** - For the preceding five years, the percentage of students who fall within the “Does Not Meet the Standard” category shall be no more than one standard deviation greater than the State average for this category for schools of 300 or less.
- D. **Fiscal Sustainability** - The applicant SAU must demonstrate fiscal capacity to maintain both its facilities and an adequate education program based on data in the following areas:
 - (1) **Enrollment Data** - History for the last ten years (Department data) and a projection for the next ten years.
 - (2) **Budget History** - Revenues and expenditures for the last five years and projected budgets for the next five years based on EPS, mill rate, number of students, etc.
 - (3) **Income Data and Trends** - Household income data for the most recent five-year period for which they are available for all communities to be served.
 - (4) **Valuation** - Current and previous five-year valuation for the communities involved and any expected changes in the near future (e.g., new industrial complex planned, etc.).
 - (5) **Operational Costs** - Projected operational costs for the proposed facility for each of the next five years using the Department model.

- (6) **Financial Obligations** – A report of any projected increase/decrease in major financial obligations and the capacity of the communities to absorb them as anticipated for the next five years.
- E. **Comprehensive Education Plan** - The applicant unit must demonstrate that it has a Comprehensive Education Plan that meets the criteria and standards established by the Department and the State Board as set forth in Chapter 125 and also relevant sections of Chapter 127, with particular attention to the current and future education programs and recent results in the following aspects of the Comprehensive Education Plan:
- (1) Access for all students to a curriculum that is fully aligned with the Maine Learning Results.
 - (2) A comprehensive program with adequate resources and a component that assists all students in planning for post-secondary education.
 - (3) A comprehensive student support program designed to assist all students in meeting the Maine Learning Results.
 - (4) A technology program that is fully integrated into the curriculum and provides all students with access to computing and other relevant technologies as they emerge.

Any denial of approval by the State Board under these provisions requires a determination that alternative solutions are available. Such alternative solutions must respect distances, time on the bus, and health and safety concerns. In addition, an alternative solution, if it will include major capital school construction, must respect the considerations specified in Section 6, subsection 1, paragraph D, “Fiscal Sustainability,” with particular attention to item (5), “Operational Costs.”

2. **Eligibility for State Funding**

An analysis of the availability and accessibility of solutions, utilizing space at existing or new facilities in the region, shall be conducted prior to any decision on eligibility for state funding.

- A. **Site Approval** – All projects must receive Site Approval by the State Board. In order to be considered for Site Approval, each SAU must, at a minimum, have successfully completed a site application. In considering new sites, schools should first refer to the requirements of Chapter 60, which deals specifically with school siting. In instances where additional property is to be acquired, each SAU must have secured an option on said site and have obtained appraisals as outlined in Section 7 subsection 4 of this Chapter. Prior to Site Approval the SAU shall hold the first of two required public meetings to present the site to the public and to take and record a straw vote. If the State Board approves the recommendation for Site Approval, the State Board will issue a Letter of Site Approval to the SAU. In considering applications for Site Approval the State Board shall be guided by Chapter 60 of its rules. Consideration should be given to new facilities in service centers and in-town locations that offer such advantages as fewer students requiring bussing and the easy availability of utilities.
- B. **Concept Approval** – The State Board will consider Concept Approvals at any of its regularly scheduled meetings based on the recommendations of the Commissioner. Concept Approval will be considered following Site Approval. Prior to consideration by the State Board for Concept Approval, the SAU shall provide to the Department a conceptual presentation of a proposed solution and conduct a second public meeting, prior to the State Board Concept

Approval meeting, to present the same information to its public as it will to the State Board. There shall be a straw vote and the results must be reported to the State Board. The proposal shall include a projected preliminary budget that shall be the maximum total allowable budget for the project. The state/local share approved for inclusion for debt service at Concept Approval may not be exceeded without State Board approval and a subsequent local favorable referendum. If the State Board approves the recommendation for Concept Approval, the State Board will issue a Letter of Concept Approval to the SAU.

- C. **Approval of Local Voters** - Prior to requesting State Board Design and Funding Approval each school construction project must gain a favorable vote in a local referendum pursuant to 20-A M.R.S.A. §15904.
- D. **Design and Funding Approval** – After drawings are 100% complete the State Board will consider Design and Funding Approval at any of its regularly scheduled meetings based on the recommendation of the Commissioner. If the State Board approves the recommendation for Design and Funding Approval, the State Board will issue a Letter of Design and Funding Approval to the school administrative unit.
- E. **Final Funding Approval** – Final Funding Approval by the Commissioner will occur after contract bidding. All SAUs shall comply with Section 11 of this Chapter. The Commissioner or the Commissioner’s designee will establish a Final Project Budget at the time of Final Funding Approval. The Commissioner will issue a Certificate of Final Funding Approval.
- F. **Time Limitations** - The following time limitations apply to all Major Capital School Construction projects.
- (1) Every project placed on the Approved Projects List will be assigned a calendar year within which Concept Approval shall be obtained. Failure to obtain Concept Approval within the designated year shall result in removal from the Approved Projects List unless a waiver is obtained from the State Board at least 30 days prior to the expiration of the SAU’s assigned year. To be considered for a waiver, the SAU must present to the State Board a proposed timetable and plan for obtaining Concept Approval. Approval by the State Board of the proposed timetable shall constitute a waiver.
 - (2) Within six months after the date of State Board Concept Approval, a project must secure a favorable local referendum vote. Projects not receiving a favorable local referendum vote within six months of Concept Approval will be removed from the Approved Projects List.
 - (3) Within nine months of a favorable local referendum vote, a project shall be presented to the State Board for Design and Funding Approval.
 - (4) Within nine months of State Board Design and Funding Approval, a construction contract shall be signed.
 - (5) In cases when the SAU’s referendum includes the provision for Interest-Only Local Interim Financing and the referendum fails, the SAU shall return to the State Board for Concept Approval on the schedule originally assigned to it, and the provisions of paragraph F(1) thru (4) of this subsection shall apply.

- G. **Building Standards** - All school construction projects involving state funds in the construction of new facilities, additions to existing buildings, or major alterations of existing buildings shall be designed and constructed with materials that provide long-term durability, meet energy efficiency standards as defined in 5 M.R.S.A. §§ 1762-1769, and Bureau of General Services Rule Chapter 60, and go through the stages of State Board approval outlined in this section.

All construction shall conform to conservation standards as specified by the Facilities Team.

- H. **Construction Change Order Requests** – Owner-initiated change orders require prior approval from the Bureau of General Services and the Facilities Team and will be at local cost. When an owner initiated change is considered necessary by the Facilities Team, the change order may be at state/local expense. The Facilities Team shall determine the funding source of all change orders. Errors and omissions changes require approval from the Bureau of General Services and the Facilities Team.
- I. **Ventilation Requirements** – The school administrative unit will utilize the best-available practice national standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) for inspection, maintenance, ventilation and filtration.

SECTION 7. SITE SELECTION

To receive Site Approval by the State Board a site must conform to the following requirements:

1. Site Requirements

School building sites shall have sufficient usable land to provide for the following:

- A. Such structures as are needed for the education program and any necessary adjunct services such as a well or septic system,
- B. Safe access for vehicles and pedestrians including appropriate separation of private vehicles, school buses and service and delivery vehicles,
- C. Reasonable future additions to the project,
- D. Appropriate recreation areas and playing fields, and
- E. Sufficient parking for staff, visitors and reasonable community use.

Site requirements may be met by adding together non-contiguous parcels of land when those parcels safely support the educational programs of the school.

2. Maximum State-Subsidized Site Size

- A. Maximum reimbursable site size for elementary schools is defined as 20 acres plus one (1) acre for each 100 students.
- B. Maximum reimbursable site size for middle schools (any combination of two (2) or more grades (5 through 8)) is 25 acres plus one (1) acre for each 100 students.
- C. Maximum reimbursable site size for secondary schools is defined as 30 acres plus one (1) acre for each 100 students.
- D. Maximum site size for other grade configurations shall be based on the highest grade level included in the project.

3. Location

- A. The selection of sites for new school facilities shall be in compliance with the provision of 30-A M.R.S.A. Chapter 187, subchapter II, and any local ordinances governing the location of school buildings. 30-A M.R.S.A. Chapter 187, subchapter II, also known as the Municipal Growth Management Law, includes provisions for municipal development and administration of local comprehensive plans. Applications for school construction projects shall include reference to and assurance of compliance with local comprehensive plans when they exist.
- B. **Site Investigation** - An SAU shall conduct a Department of Environmental Protection Phase I Environmental Assessment of the prior uses of the proposed site.
- C. Consideration should be given to providing the minimum travel distance for the maximum number of students.

4. **School Site Appraisal**

A. **Appraised Value –**

- (1) Application for approval of a new school building site must be accompanied by an option to purchase the land and two certified appraisals based on similar recent purchases. The average of the two appraisals is defined by the State Board as the "appraised value." If the lower of the two appraisals varies from the higher by more than 25 percent of the lower appraisal, a third appraisal must be secured and the average of the three appraisals will become the appraised value.
- (2) When information on similar recent purchases is not available, other methods of determining value may be used with the approval of the Commissioner.

B. **Cost Limitation** – The maximum amount eligible to be included in the state funding of school construction projects shall be the appraised value of each school site, limited to the maximum approved site size.

C. **Title** – An SAU must demonstrate to the State that the unit can obtain a clear title to the property without encumbrances.

5. **Funding Restrictions**

A. The cost of land acquired for a Major Capital School Construction project to the extent that it exceeds the maximum site size shall be entirely at the SAU's expense and shall not be eligible for state subsidy. State subsidy will only apply to the acreage approved by the State Board and shall be at the rate of the average cost per acre for the entire site.

B. Sites acquired prior to receiving State Board Site Approval must meet all of the following requirements :

- (1) the SAU is placed on the Approved Projects List; and
- (2) the site receives State Board Site Approval; and
- (3) the cost that is eligible for subsidy shall be either the purchase price of the site, or the current appraised value as determined by the procedure detailed in subsection 4 paragraph A of this section, whichever is less.

6. **Approval by State Board**

The final decision on school Site Approval rests solely with the State Board, which shall be guided by the requirements of State Board Rules Chapter 60, New School Siting Approval.

SECTION 8. CONCEPT APPROVAL

Each SAU developing a construction or renovation project shall complete the work required by the Education Specifications: Designing Maine's Schools for Tomorrow's Students.

1. Educational Specifications

The Educational Specifications are to be used by the SAU, the Bureau of General Services, designers, and the Department in developing the plans and specifications for the proposed project.

2. Space Allocation Workbook

Each SAU shall submit a Space Allocation Workbook in a format acceptable to the Department. This workbook shall be based on the guidelines provided by the Department and periodically reviewed by the State Board. The Space Allocation Workbook shall guide the SAU, the designer, and the Department in determining the appropriate size of the new or renovated facility. For purposes of determining square footage of a facility, tuition students shall be considered as resident students provided that a long-term tuition contract exists.

3. Community Use of School Facilities and Percent for Art

A. Consistent with the provisions of 20-A M.R.S.A. §15911, the State Board encourages the public use of school facilities insofar as that use is compatible with regular school use.

B. The State Board encourages the inclusion of works of art as provided in the Percent For Art statute. Up to one percent of the construction cost or the maximum as defined in 27 M.R.S.A. §§ 451-459, whichever is less, may be included in the project budget. All costs of building modifications, structural support or blocking, electrical power and installation are to be borne by the Percent for Art budget.

4. In accordance with 20-A M.R.S.A. §15908-A, all planning for the construction of a new school or for a substantially renovated school that is built, in whole or in part, with State funds including schools funded through State bonds or the Bond Bank must demonstrate consideration of the most energy efficient and environmentally efficient design suitable for the project by:

A. Considering architectural designs and energy systems that show the greatest net benefit over the life of the building by minimizing long-term energy and operating costs;

B. Including a life-cycle cost analysis that explicitly considers costs and benefits over a minimum of 30 years and that explicitly includes the public health and environmental benefits associated with energy-efficient building design and construction to the extent these benefits can be reasonably quantified.

The life-cycle cost analysis should be combined with the Life Cycle Analysis required by Section 9, subsection 3 of these rules.

5. A school unit proposing to renovate a school that is on the Register of Historic Places or is eligible for nomination to the Register as defined in 20-A M.R.S.A. §15908-A(4)(A) may receive a waiver of the energy requirements of this section if the school unit can demonstrate that it can meet two of the three provisions in 20-A M.R.S.A. §15908-A(4)(A). Waivers are granted by the State Board in consultation with the Public Utilities Commission and the Director of the State Historic Preservation Commission. The local school authority must demonstrate that the renovation of the historic school building would not compromise the public health and safety requirements of this chapter.

SECTION 9. DESIGN AND FUNDING APPROVAL

Each SAU developing a construction or renovation project shall provide the following information to the Department.

1. Proposed Building Technology Plan

An SAU shall provide a written Technology Plan for the building to the Department prior to design development review.

2. Facility Maintenance Plan

The State Board requires an SAU applying for state funds for a school construction project to establish a facility maintenance plan for the projected life cycle of the proposed school building. Facility Maintenance Plans shall comply with:

20-A M.R.S.A. Chapter 201, §4001(1)(7);
20-A M.R.S.A. Chapter 609, §15901(2);
20-A M.R.S.A. Chapter 609, §15905(6); and
20-A M.R.S.A. Chapter 609, §15918.

3. Life Cycle Analysis is an analysis of energy related alternatives with the objective of selecting the most cost-effective building systems for the project relating to initial cost, maintenance cost, and the expected life of the system.

4. Construction Estimates

Prior to Concept Approval, the architect shall prepare and provide to the Department and the Bureau of General Services an estimate of the cost of the proposed facility. A second estimate, prepared by a party satisfactory to the Facilities Team, shall be submitted to the Department and the Bureau of General Services prior to Design and Funding Approval. The estimates will guide the owner, the architect, and the Department in the decision to go forward or to reconsider elements of the design.

5. Commissioning

Commissioning may be supported with state/local monies.

6. Facilities Team Review

A review with the Facilities Team is required when the plans and specifications are at 100% completion.

SECTION 10. FINAL FUNDING APPROVAL

1. Final Funding Approval

Final Funding Approval by the Commissioner establishes the Project Budget and takes place after construction bids have been received. At that time the Commissioner may reduce the budget to finance the project, thus providing additional funds for other projects. Expenditures from each line item shall not exceed the amount of that line item except as approved by the Facilities Team and the Bureau of General Services. The Commissioner's Certificate of Final Funding Approval will also specify the date of the bond sale for the project and the length of the bonding period.

2. Approval of Contingency Usage

The bid and project contingency funds of each project budget will only be expended with the approval of the Facilities Team following a recommendation from the Bureau of General Services.

3. Line Item Surplus

When a line item of the Project Budget has surplus funds after all obligations have been met, the SAU shall not expend the surplus without the approval of the Facilities Team.

4. Moveable Equipment

- A. Budget Requirements: Moveable equipment costs will generally constitute 9% of the building construction costs in a project budget. This percentage may be modified by the State Board upon recommendation of the Facilities Team. This budget may be adjusted by the Commissioner at the time of Final Funding Approval.
- B. Submission of Moveable Equipment List: A Moveable Equipment List for the project shall be developed by the SAU and submitted to the Facilities Team within twelve (12) months of the signing of the construction contract. Items on the SAU's Moveable Equipment List must be approved by the Facilities Team and a copy of the approved list must be maintained by the Department.
- C. Should the SAU wish to purchase an item or items not on its approved Moveable Equipment List maintained by the Facilities Team, the SAU shall submit a written request for permission to purchase the item or items. The Facilities Team shall approve or deny the request in a timely manner and notify the SAU of its decision.
- D. Moveable equipment will be purchased with state/local funds when it has received prior approval by the Facilities Team.

5. Monthly Budget Tracking

The SAU shall track the monthly expenditures and revenues of the project using the format provided by the Facilities Team. This information shall be submitted to the Facilities Team and compliance review staff for periodic review.

6. Project Management

The Department shall have a representative for each project whose responsibility will include but not be limited to the following: attending monthly requisition meetings, monitoring construction progress, reviewing proposed change orders, conducting monthly reviews of financial statements and acting as a conduit to the Department's Director of School Facilities and the SAU. The Commissioner may expand the authority of the representative to protect the interests of the State and the SAU. The representative may be funded by the project budget.

SECTION 11. FINANCING SCHOOL CONSTRUCTION

1. All school construction project funds (both State and Local) shall be deposited in a newly established school construction interest-bearing account with unused proceeds remaining invested at all times. School construction project funds maintained in bank and investment accounts shall not be commingled with non-project funds of the SAU.
2. Accurate financial records shall be maintained, in the SAU's accounting system, of all fiscal transactions and activities relative to the construction project, including:
 - A. cash receipts;
 - B. all expenditures including all expenditures from proceeds of notes and bonds issued for the project by date, payee and amount;
 - C. all investment earnings on notes and bonds issued for the project by date, source and amount;
 - D. short-term borrowing and investments of bond proceeds (particularly the dates and rate of interest);
 - E. bank statements; and
 - F. other related project documents.

Parties must maintain all records for which they are responsible. Parties that may be directly involved with maintaining records are municipal officials, the municipal finance director or town treasurer, the superintendent of schools, or the SAU's financial staff. Prior to the final compliance review conducted by the compliance review staff, all project-related records shall remain in a secure and accessible on-site location. After the final compliance review is conducted by the compliance review staff, all project-related records shall be retained for seven years. These records shall remain in a secure and accessible location for two years and then may be transferred to a secure location for the remaining five years. Department personnel may meet regularly with SAU staff during the project to provide guidance on record-keeping.

Parties should retain records in accordance with the requirements certified by the SAU to its lender for tax exempt bond financing and in anticipation of possible audits by the Internal Revenue Service.

School construction revenues and expenditures must be included in quarterly financial reporting to the Department's financial reporting system.

3. State Funds

The Department shall include the appropriate amount of debt service principal and interest in an SAU's debt service allocation.

4. Investment of Project Funds

- A. Unused portions of note proceeds, bond proceeds, and any interest earned thereon, shall be kept invested at all times with:
 - (1) adequate consideration to safety of principal;

- (2) sufficient liquidity for project needs and subject to those paramount considerations; and
 - (3) the highest available interest rate.
 - (4) Such investments shall also be in accordance with 30-A M.R.S.A. §5706 and §5711.
- B. If the compliance review reveals that project funds were not deposited in an interest-bearing account(s) and unused proceeds did not remain invested, the compliance review staff will prepare a cash flow analysis at the time of the final compliance review to determine the estimated amount of interest that would have been earned had funds been invested. The SAU will be required to pay the amount of estimated net interest that would have been earned had project funds been appropriately invested.
 - C. SAUs are required to have calculated the amount of arbitrage rebate attributed to the investment of project funds that is currently due or estimated to be due to the Internal Revenue Service prior to the final compliance review. Amounts due or payable to the Internal Revenue Service may be deducted from amounts required to be returned in accordance with Section 13. When an SAU selects the two-year spending exception to rebate option pursuant to Section 1.148-7 of the U.S. Treasury regulations, the amount of interest reinvested in the construction project will be deducted from the amount of project costs to be subsidized. At the time the bond has been issued an SAU must notify the Department that it has selected the two-year spending exception to rebate option and shall provide documentation that proceeds have been allocated to expenditures in accordance with the schedule pursuant to Section 1.148-7 of the U.S. Treasury regulations.
 - D. Interest earned from investment of project funds shall be determined at the time of the final compliance review of the project by the compliance review staff.
 - E. Interest earned as a result of the investment of insurance proceeds, gifts or federal funds available to the project may be retained by the SAU and used for school purposes.
 - F. Subject to a deduction allowed for the interest expense of State / Local BANs, net interest earned on the project funds, including those held in an SAU's investment account(s), shall be returned upon completion of the final compliance review and be applied as school construction audit recoveries in accordance with 30-A M.R.S.A. §6006-F(2)(F) except when the two-year spending exception to rebate option has been selected pursuant to paragraph C above. The deduction allowed for the interest expense of State/Local BANs shall not exceed the income earned on State / Local BANs and bonds except as otherwise allowed by this Rule.
 - G. Net interest earned on the local-only share determined at the time of the final compliance review may be retained by the SAU but used for school purposes.
 - H. Interest earned between the time of the final compliance review and payment of the final settlement may be retained by the SAU but used for school purposes.

5. Temporary Borrowing or Bond Anticipation Notes (BAN)

- A. Temporary borrowing prior to the issuance of bonds shall be accomplished as follows:

- (1) On a written, competitive basis at the lowest interest rate available, or by a method approved in writing by the Commissioner.
 - (2) An SAU may borrow up to the estimated amount necessary to finance start-up costs until bonds are sold in accordance with the bond sale date provided in the Certificate of Final Funding Approval issued by the Commissioner, with the understanding that unused note proceeds shall be kept invested in accordance with subsection 4 paragraph A of this Section.
- B. An SAU shall include in the Concept Approval budget, as a local expense, any anticipated interest cost of temporary borrowing that exceeds anticipated interest income.
- C. In the event the interest cost of temporary borrowing exceeds the interest income:
- (1) a detailed accounting of investments and costs shall be prepared by the compliance review staff at the time of the final compliance review;
 - (2) any interest cost of temporary borrowing that exceeds interest income shall be the responsibility of the SAU;
 - (3) in exceptional circumstances and upon approval of the Commissioner, the net interest cost of temporary borrowing may be included in the SAU's
 - a. state/local allocation as a debt service cost, or
 - b. as an audit adjustment to the SAU's subsidy calculation.
- D. Interest costs of temporary borrowing shall be determined at the time of the final compliance review of the project by the compliance review staff.
- E. Documentation of principal and interest payments on loans and BANs shall be submitted to the Facilities Team with the monthly report required by Section 10, subsection 5 of these rules.

6. Interest Lost

- A. Estimated interest lost because of the use of non-project local funds for incidental start-up costs, following placement of the project on the Approved Projects List and prior to receipt of temporary borrowing proceeds, will be determined by the compliance review staff at the time of the final compliance review of the project.
- B. The amount of interest lost will be deducted from interest earned on the investment of project funds and may be retained by the SAU and used for school purposes only.
- C. This does not apply to projects during the period of interest-only interim local financing as defined in 20-A M.R.S.A. §15905(7).

7. Disposition of Unused Bond Proceeds

- A. Within thirty (30) days of the date of the final compliance review letter, and upon agreement to the final compliance review, the balance of the unused bond proceeds identified after final close out of the SAU's project shall be deposited in a segregated, interest-bearing escrow account.

- B. After the final compliance review an SAU shall use all of the unused bond proceeds, and any accrued interest earned that is not subject to arbitrage rebate under the Internal Revenue Code, to pay down the debt service costs on subsidized school construction bonds.
- C. An SAU shall inform the compliance review staff of the amount deposited in a segregated account, the date that net proceeds from the account can first be used to pay down debt service costs, and an estimate of the amount of funds (principal and interest) in the account that is expected on that date.
- D. Unused bond proceeds of \$5,000 (five thousand dollars) or less are considered *de minimis* amounts and will not result in a reduction of the debt service subsidy.

8. Non-Allowable Expenditures

Non-allowable expenditures shall be the financial responsibility of the SAU and will be determined at the time of the final compliance review by the Facilities Team and compliance review staff.

9. Interest-Only Interim Local Financing

- A. The State Board may accelerate the dates on which it grants Concept Approval and Design and Funding Approval for a school construction project that has been placed on the Approved Projects List of the State Board, on the condition that the SAU provides interest-only interim local financing for the project.
- B. The period of interest-only interim local financing must be determined by the State Board at the time Concept Approval is granted for a project and must be based on the time difference between the date that Final Funding Approval is expected to be granted on an accelerated basis and the date that Final Funding Approval would have been expected to be granted in the normal course.
- C. Interest-only interim local financing shall be in accordance with 20-A M.R.S.A. §15905(7).

SECTION 12. BONDING OF MAJOR CAPITAL SCHOOL CONSTRUCTION PROJECTS

Bonds for Major Capital School Construction projects shall be sold after favorable local referendum vote on a schedule approved by the State Board that accommodates the approved debt service limit as established by the Legislature.

1. The Commissioner shall be guided by the following table in determining the length of school construction bonding issues:
 - A. Bond issues of \$2,500,000 and under - 15 years
 - B. Bond issues in excess of \$2,500,000 - 20 years
2. Sale of Bonds
 - A. The sale of bonds shall be consistent with Section 12 of this Chapter and bonds shall be sold by the bond sale date specified in the Certificate of Final Funding Approval issued by the Commissioner.
 - B. Proceeds of the bond sale shall be used immediately or at the earliest possible date, whichever is in the best interest of the project, to pay principal and interest costs due to temporary borrowing or BAN.
3. The Certificate of Final Funding Approval issued by the Commissioner shall specify the length of the bonding period.
4. Bonds may be sold only in accordance with the dates specified in the Certificate of Final Funding Approval issued by the Commissioner. All notices of bond sale must contain the following stipulations:
 - A. Bidders must state the rate or rates of interest per annum that the several maturities of the bonds are to bear.
 - B. The principal pay down of the respective loan shall be structured in a manner that the principal repayments are level to the extent that such structure complies with industry standards. The number of principal payments shall not exceed twenty (20).
 - C. Bonds sold during the fall (Fall Sale) of the first half of the fiscal year beginning July through December (i.e., last six calendar months) have respective first interest payments in the second half of the fiscal period from January through June (i.e., first six calendar months of the next calendar year), with principal and interest payments to commence in the following fiscal year's first half (i.e., the last six calendar months of the next year), and with subsequent interest and principal payments to follow each six months and twelve months respectively, until bonds mature.

Note - **Example of Fall Sale:** bonds are sold in November 2014 – first State debt service payment will be interest only occurring in May 2015 (six months after the sale of bonds), second State debt service payment will be interest plus principal occurring in November 2015 (twelve months after the sale of bonds), with payments of interest occurring each May and principal and interest occurring each November thereafter until bonds mature;
 - D. Bonds sold during the spring (Spring Sale) of the second half of the fiscal year beginning January through June (i.e., first six calendar months), have respective first interest

payments in the first half of the following fiscal period from July through December (i.e., second six calendar months of that calendar year), with the following interest payment to be made in the subsequent second half of the fiscal year from January through June (i.e., the first six calendar months of the following calendar year), with principal and interest payments to commence in the following fiscal year's first half from July through December (i.e., the last six calendar months of the following calendar year), and with subsequent interest and principal payments to follow each six months and twelve months respectively, until bonds mature.

Note - **Example of Spring Sale:** bonds are sold in May 2014— first State debt service payment will be interest only occurring in November 2014 (six months after the sale of bonds), second State debt service payment will be interest only occurring in May 2015 (twelve months after the sale of bonds), and third State debt service payment will be interest plus principal occurring November 2015 (eighteen months after the sale of bonds) with payments of interest occurring each May and principal and interest occurring each November thereafter until bonds mature.

SECTION 13. PROJECT COMPLIANCE REVIEW

1. The compliance review staff may conduct interim compliance reviews of non-completed school construction projects in order to determine compliance as of the date of the compliance review.
2. All school construction projects will be subject to a final compliance review by the compliance review staff before a final settlement is established. The amount of the final settlement, if any, must be submitted to the Department, made payable to the Treasurer of the State of Maine, and indicate that the payment is for final settlement of the school construction project. No further purchases from the construction account will be allowed once the project is determined to be completed. Completion date of the project shall be determined by the Facilities Team. The completion date may be changed upon written approval by the Commissioner. In cases where delayed or staggered payments of final settlement due the State are made beyond the time specified in the final compliance review summary interest will be charged to the SAU. Interest due will be calculated by the compliance review staff.

SECTION 14. NON-STATE FUNDED PROJECTS

Pursuant to 20-A M.R.S.A. §15905-A, SAUs must obtain the approval of the Commissioner for non-state funded projects.

SECTION 15. INTEGRATED, CONSOLIDATED 9-16 EDUCATIONAL FACILITY

Except where language in this section specifies to the contrary, all provisions of Chapter 61, “Rules for Major Capital School Construction Projects,” are applicable to projects authorized under Section 15.

1. A Major Capital School Construction Project for an Integrated, consolidated 9-16 Educational Facility shall articulate the following criteria:
 - A. Facility will consolidate and integrate secondary and post-secondary education for:
 - (1) A regional high school
 - (2) A fully integrated career and technical education high school
 - (3) A higher education center that will provide courses and degrees or licensure and certification from both the University of Maine System and the Maine Community College System; and
 - (4) Industry training leading to recognized licensure and certification.
 - B. Facility will promote ‘one campus’ design and each of the four components listed in subsection 1(A) above, must have a physical presence on the campus and use facilities on that campus to deliver courses; each of the four components must also offer teacher and student interaction that is not separated in space, or space and time as characterizes distance learning, although the Internet, videoconferencing and other technology employed in distance learning may be used to complement or expand offerings. Courses may be provided using the Internet, videoconferencing and other technology employed in distance learning to complement real-time, shared-space learning.
 - C. Administration of the four educational programs will be consolidated whenever possible.
 - D. Long-term sustainability and cost reductions resulting from either consolidation and/or integration of programs over a ten year period will be explained.
 - E. Implementation of an advisory body that is integrated with the local economy, includes students, citizens, business leaders, teachers, parents and organizations to promote both employment opportunities for students and citizens and a skilled workforce optimal for economic development.

2. **Rating Sheet for Consolidated, Integrated 9-16 School**

For schools applying for a major capital construction project under Section 15 of Chapter 61, this rating sheet shall be substituted for Section 3.

- A. **Required elements articulated in Resolve, Chapter 223 (60 points):**
 - (1) Approved minutes and other documents indicating that the governing bodies of at least two high schools or a regional high school together with a CTE school (center/region) have committed to participate in the proposed school.
 - (2) Documentation as to the form of governance for the proposed school, including indication of the fiscally responsible entity.

- (3) Evidence of a commitment by the University of Maine System, or a unit thereof to offer courses and degrees to students attending the proposed facility.
- (4) Evidence of a commitment by the Community College System, or a unit thereof, to offer courses and degrees to students attending the proposed facility.
- (5) Evidence of commitments by appropriate community businesses or business organizations to provide industry-specific training to students attending the proposed facility.
- (6) Names and organization constituency for the Advisory body.

B. A description of the integrated mission and goals and the long range plan for the implementation of an integrated, consolidated 9-16 educational facility (30 Points)

C. Integration of Programs (50 Points)

- (1) Describe the way and extent to which the programs offered to traditional, college-bound students will be integrated with the programs focused on career and technical education. (*Integration requires more than opening courses and programs to cross registration.*)
- (2) Describe and detail the programs to be offered in the regional high school.
- (3) Describe the specific approaches to be used to assure that all students will be able to meet the Maine Learning Results.
- (4) List the strategies and approaches to be used to ensure that the higher education courses and programs are offered in facilities located on one site, providing a streamlined and integrated learning experience for students of all ages.
- (5) Detail the industry-specific training to be offered to students at the proposed facility by business organizations. Describe the organization(s) that will offer the training.

D. Professional Training (20 Points)

Describe approaches and methods to be used to assist all faculty in carrying out the mission and goals of an integrated and consolidated educational facility

E. Administration of Proposed Facility (40 Points)

- (1) Describe the way in which the administrations of the regional high school, career and technical high school, higher education programs, and industry training center will be integrated.
- (2) Detail the cost savings anticipated as a result of the integrated administration.
- (3) Implementation of the innovative models would occur only with a specific increase in the debt service to create a pool of available funds for the innovative model based on the criteria in Section 15 of this rule.

STATUTORY AUTHORITY:

20-A M.R.S.A. §3
20-A M.R.S.A. §405(3)(J)
20-A M.R.S.A. §15905 sub-§4
P.L. 2001 c. 439 Part 0000 §0000-3
P.L. 2007 c. 240 Part MM Chapter 103-A
P.L. 2008 c.223

EFFECTIVE DATE:

October 27, 1978

AMENDED:

November 9, 1979

REPEALED & REPLACED:

September 1, 1981

AMENDED:

January 20, 1984
June 25, 1984
November 30, 1985
September 19, 1986
September 8, 1987
January 25, 1988 – Section I
May 16, 1990
October 2, 1991
February 3, 1993
November 1, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 19, 1996

AMENDED:

April 4, 2000 - including changes in section numbers

NON-SUBSTANTIVE CORRECTION:

November 23, 2000 - page number correction in Table of Contents

REPEALED AND REPLACED:

February 2, 2003 - filing 2003-35

AMENDED:

September 7, 2003 – filing 2003-307, Section 1(15), 11(6)(B)
August 4, 2004
July 11, 2006
June 13, 2008
September 15, 2008 [Emergency 90-day Rule]
April 22, 2009
August 15, 2009
May 25, 2012 – filing 2012-132
August 17, 2013 – filing 2013-169 (Final adoption, major substantive)
June 10, 2022 – filing 2022-090 (Final adoption, major substantive)

CONTENTS

2022 School Construction Guide for State Subsidized and Locally Funded Projects

*E. William Stockmeyer & Greg Im
Drummond Woodsum*

I. School Construction Projects: How Do They Qualify for State Funding Approval?	41
A. How does the rating system work?	41
B. Planning for the next rating cycle; current and past rating cycles; integrated consolidated pathway	42
C. The rating approval system: our observations	44
D. Availability of state funding	44
E. Observations on funding availability for approved projects	46
F. What is the financial impact of project funding approval?	46
1. “State/Local” project costs	46
2. “Local Only” project costs	47
G. Observations on funding approval impacts	47
II. Renovation Projects: How Do They Qualify for State Support?	47
A. How does the SRRF program work, and what is the level of state support?	48
B. Observations on the SRRF program and its benefits:	48
III. Establishing a Building Committee	49
A. Do we need a building committee?	49
B. Observations on building committees	49
IV. Selecting the Project Architect	50
A. What is the process for hiring the architect?	50
B. What is the process to contract with the selected architect?	51
C. Observations about architect selection and architect contracts	51
V. Getting Bond Counsel on Board	52
A. What is a “bond” and what does “bond counsel” do?	52
B. Observations on bonds and the function of bond counsel	53
VI. Acquiring the Real Estate	54
A. What are the steps to acquire the land?	54
B. Observations on real estate matters	55

VII. What is the State Education Approval Process?	56
A. Education approvals for state subsidized school construction	56
B. Observations on the education approval process for school construction	57
VIII. Conducting a Successful Bond Referendum	58
A. General referendum requirement	58
B. Observations about the bond referendum:	58
IX. Selecting the Contractor for the Job	59
A. The Public Bidding Law and selection of the contractor	59
B. Observations on the owner’s limited discretion	60
C. Observations when bids exceed estimates	61

APPENDICES **Exhibits not included**

Exhibit A: 2018 Final Priority List for School Construction Pathway	63
Exhibit B: 2018 Approved Projects List for School Construction Pathway	65
Exhibit C: 2018 Final Priority List for Integrated Consolidated Pathway	67
Exhibit D: 2018 Approved Projects List for Integrated Consolidated Pathway	69
Exhibit E: 2022 Ratings for School Revolving Renovation Fund	71

2022 School Construction Guide for State Subsidized and Locally Funded Projects

E. William Stockmeyer, Esq. and Greg Im, Esq.

This presentation describes the state funding, local funding, and development processes for school construction and renovation projects in Maine and shares our legal observations based upon our experiences as attorneys for many of these projects. Many significant laws impact the funding and development processes, but we will not go into the specific legal details and differences for every type of school unit, for every type of funding and project, and for every factual situation. Understanding the legal details for each particular situation is critical and requires legal advice. For purposes of this presentation, however, we decided it would be much more practical and helpful to describe these things generally, and then to share our observations from a legal perspective.

I. School Construction Projects: How Do They Qualify for State Funding Approval?

The Department of Education provides significant financial assistance for the construction of new schools and additions to existing schools. Without this program, most school units in Maine would be unable to finance, and therefore unable to build, large projects to replace aging schools.

While the competition to qualify for state funding approval is intense, the financial benefits are significant.

A. How does the rating system work?

The program provides state funding approval to a limited number of school construction projects. The program now recognizes and funds separately “integrated consolidated” projects. The integrated consolidated pathway has a different application, scoring matrix, and rating process, and buildings are not currently and rated. For school construction projects, funding approval is based upon:

- Receipt of school administrative unit (“SAU”) application;
- DOE’s project rating system, which operates in periodic cycles, most recently completed in 2018;
- A scoring and ranking of individual schools intended to reflect priority of need; and
- the availability of state funds that the Maine legislature has allocated.

The system is described in State Board of Education Rule 61, a 31-page document called, “State Board of Education Rules for Major Capital School Construction Documents.” Rule 61 also describes the scoring for integrated consolidated projects. In essence, this is the process:

- The Department periodically announces a new rating cycle.
- School units complete and submit an application package for a proposed project, which includes written responses to detailed questions covering eight broader inquiries.
- The Department School Construction team visits each applicant and rates each school relevant to the project application according to a scoring matrix.
- The DOE construction team rates and scores each school relevant to the project application.
- Applicants have a limited opportunity to appeal their scores.
- Based upon these point scores, the Department proposes a Priority List to the State Board of Education.
- The State Board approves the Final Priority List.
- As state funds become available, projects are placed upon the Approved Projects list.
- Eventually, DOE announces a new rating cycle; the current Final Priority List remains active until a new Final Priority List is in place; all previous rankings are then discarded except projects on the Approved Projects List.

B. Planning for the next rating cycle; current and past rating cycles; integrated consolidated pathway

Per the DOE website as of October 2022, “The next rating cycle is anticipated to be initiated in 2024.” We believe this will apply to both school construction and integrated consolidated applications. DOE has not yet established a timeline beyond that announcement.

As attorneys, we are not usually involved at the application and initial rating stages. That said, we have three recommendations.

- Become familiar with the DOE planning documents on the state website at this link, including the questions and other requirements to complete the application:
www.maine.gov/doe/index.php/schools/facilities/mcscp

NOTES

- Hire an architect familiar with the Major Capital Program for assistance in completing an application. At this time, the SAU may hire an architect directly from the DOE’s approved list – the advertise and interview process does not apply to this scope of work.
- If a school unit is interested in applying for an integrated consolidated project, we suggest calling DOE staff to discuss the school unit objective, better understand the intent of the program, and identify the separate application requirements for that pathway.

In considering its interest in the major capital funding program, an SAU may find helpful the following historical perspective.

The DOE completed the last rating cycle in 2018, four years ago, and approximately six years before the 2024 initiation of the upcoming cycle. The DOE completed the rating cycle prior to that in 2008. If this history is any judge, the upcoming rating cycle might have a “shelf life” of 7-10 years before it is discarded in favor of a new next cycle.

In August, 2018, the State Board approved two 2017-2018 Final Priority Lists. The first list, for “Major Capital School Construction,” scored and ranked a total of 74 projects. (see **Exhibit A**). As of September 4, 2022, seven of these projects were placed on the Approved Projects list: MSAD 49; MSAD 54; RSU 10; Saco; RSU 14; and RSU 17 (2 projects) (see **Exhibit B**).

For perspective, in the previous 2010 rating cycle, a total of 16 projects advanced from the Final Priority List to the Approved Projects List.

As noted previously, Maine now recognizes a new, second category of project for funding purposes, called “Integrated, Consolidated 9-16 Educational Facilities.” This project category funds facilities that integrate a regional high school, a career and technical school, some post-secondary education, and industry training programs. This category is separate and apart from major capital school construction, not only for purposes of application and rating, but also funding.

In August, 2018 the State Board approved the first Integrated, Consolidated grade 9-16 Educational Facility Final Priority List for 2017-2018. This list scored and ranked a total of seven projects (see **Exhibit C**). The first two top-rated projects, located in different regions of Aroostook County, were placed on the Approved Projects List, but subsequently removed. The third-ranked project was then placed on the Approved Projects list (see **Exhibit D**). This project comprises three (and potentially four) MSAD/RSUs and a career and technical center in central Maine. To help the project move forward, the legislature has enacted a private law that will allow the school units to transition their communities to a single, grade 9-12 CSD to build and operate the school if the project receives State Board site approval and local referendum approval.

C. The rating approval system: our observations

The following observations about this approval system may be helpful:

- Only new schools and school additions (which may include accompanying renovations) qualify for rating. School renovation projects without new construction, even large renovations, do not qualify for this program.
- Placement on the Final Priority List does not guarantee funding.
- In some cases, a project may replace school “A” with an addition to school “B,” and DOE may agree a necessary renovation at school “B” is sufficiently connected to the “solution” that the renovation will also qualify for subsidy.
- Sometimes DOE will combine separately rated projects into a single project that is moved to the Approved Projects list; the effect is that the lower-rated project essentially gets a boost from the higher-rated one for purposes of becoming an approved project.
- Consolidating schools arguably may be the most cost effective way to advance the SAU’s objectives stated in the application, as well as create operating cost efficiencies benefitting taxpayers. In some cases, local towns have resisted this type of consolidation despite these benefits.
- Many school units elect to hire architects to assist with their applications and believe this can improve their scores and outcomes.
- A low Priority List ranking can actually be helpful politically, or even in some situations necessary, to demonstrate that “no stone has been left unturned,” and a locally funded project is the only viable option.

D. Availability of state funding

The transfer of a project, either a major capital project or an integrated, consolidated 9-16 educational facility, from the Final Priority List to the Approved Projects List is a critical step. In practical effect, this transfer generally means a project is placed “in the pipeline” for development and state funding approval¹. Many, in fact a great majority, of the projects on the

¹A high school placed on the Approved Projects List for less than 300 pupils is not “home free.” Within 60 days, data must be submitted for the State Board to determine whether the project will have an “adequate education program” in accordance with section 15905(2) of Title 20-A and corresponding rules.

NOTES

current Final Priority List never advanced. So it is important to have a basic understanding of the legal and financial constraints that slow the migration of projects onto the Approved Projects List.

Under section 15905 of Title 20-A, the DOE may recommend to the State Board that a project be transferred, and the State Board may approve a project for funding, only if no approved project would cause debt service costs, aggregated for that project and all previously approved projects still being funded, to exceed annual statutory limits. The school construction (major capital) project annual limit is \$126 MM. The integrated consolidated project annual limit is \$20 MM. Unused “cap space” under one limit cannot be used to fund projects under the other pathway. A new project may be added to the Approved Projects List only when sufficient “cap space” exists for that pathway, so that the new debt for that project, when issued, will not cause the total applicable limit to be exceeded.

Obviously, the Legislature could amend section 15905 and create additional “cap space” by increasing the current statutory annual debt service limits to fund additional projects. Subject to the appropriation of state funds, this would allow the State Board to move more projects to the Approved Projects List. The Legislature typically reviews section 15905 in the biennial budget bill. However, the last increase in the major capital project limit, from \$108 MM to the current \$126 MM, occurred in 2011 (ignoring a \$10 MM drop in 2012 that was restored in 2014). The current limits apply through the current, 2023 fiscal year. Beginning in fiscal year 2024 section 15905 provides a single cap limit of \$150 MM. Presumably, the legislature intends the single cap to cover both types of projects, but that is not completely clear, and in any case the legislature may make further amendments to increase, decrease, or bifurcate the limits for 2023 and forward.

A second way “cap space” is created is when school units with approved projects retire their bonds. State supported bonds are issued for a term of 20 years. As bonds on older approved projects are paid off, the aggregate annual debt service payments on all the approved construction projects decreases, creating “room” for a new project to move to the Approved Projects List. This happens over time even if the Legislature does not increase the aggregate debt limits, so long as the Legislature does not lower the limits for future years either. Of course, the dramatic effect of inflation on construction costs means that there is far from a one-to-one correspondence between old approved projects whose debt is retired and new projects being placed on the Approved Projects List.

E. Observations on funding availability for approved projects

- From 1990 through 2011, the Legislature increased the funding “cap” from \$48 MM to \$126 MM. Since 2011, a period of twelve years, the cap amount has essentially remained “stuck” at \$126 MM (with a small dip one year), with the exception of the new \$20 MM separate pathway for integrated consolidated projects.
- As the cost of construction goes up, fewer projects may be approved for funding, unless inflation is offset by cap increases and/or by retirement of old, approved project debt. For example, in the 2017 cycle, 16 projects received funding whereas in the 2017 cycle only seven projects have received funding approval.
- Understanding this statutory cap and its history will help school officials evaluate if state funding has a decent chance, and if not, consider local school construction or renovation funding options.

F. What is the financial impact of project funding approval?

1. “State/Local” project costs

The financial benefits of reaching the Approved Projects List are significant. At Concept Approval, the State Board approves the budget for the project, including “State/Local” costs that qualify for funding, and “Local Only Costs,” if any, that do not qualify for state funding.

Project costs that qualify for funding are referred to as “State/Local” costs. This terminology refers to the “total allocation” recognized for funding purposes under the essential programs and services (“EPS”) funding system. The EPS funding model determines a “total allocation” of costs that qualify for state subsidy, then divides the total allocation between a “state allocation” that is paid by the state and a “local allocation” that is paid by the local school unit. The annual debt service on a project’s “state/local” costs will be approved costs for subsidy purposes, and added to the school unit’s “total allocation” each year. Assuming all project costs qualify as “state/local” costs for funding purposes, all of the project debt service payments on the permanent bonds will be includible in the total allocation.

Importantly, even before a project receives funding approval, the municipalities in the local school unit may already be paying the maximum mill rate required for state education funding. In this common situation, the legally required tax effort to support the total allocation has already been maxed out, before the approved debt service is added to the total allocation. The result will be that the addition of approved debt service into the total allocation recognized by EPS will be matched by additional state subsidy. The local allocation will be unchanged.

In cases where a school unit is a minimum receiver, or is a school district with a minimum receiver member, the inclusion of the “state/local” debt service payments in the total allocation will have some tax impact on the minimum receiver, but this impact will be mitigated by a debt service adjustment under section 15689(2) of Title 20-A.

2. “Local Only” project costs

In many cases, not all project costs of an approved project qualify for funding purposes. For example, the appraised value of a new school site qualifies for funding, but the landowner might insist on a higher price. In many situations, the local school unit might decide to add educational space or community elements to the project that do not qualify for subsidy. Depending on local conditions and decisions, these “local only” project costs commonly range between zero and 10% of project costs. Obviously, the debt service on local only project costs must be funded entirely at local expense. But the financial benefits of the much larger state/local portion of the project can be so great as to favorably impact local willingness to absorb a “local only” portion. And remember that the local only portion is amortized over a typically 20-year period, reducing the budgetary impact.

G. Observations on funding approval impacts

- Approved “State/Local” costs have a huge, beneficial subsidy impact. In practical effect, if the school unit has no minimum receivers, and if all project costs are approved for funding as “state/local” costs, and if there are no after-the-fact project audit adjustments, the state will subsidize the entire project.
- Excess land costs are the most common “local only” costs of an approved project, but the local tax impact of the debt service is small.
- Voters may be willing to approve bonds for “local only” costs, sometimes in a significant amount, as part of a much larger bond including “State/Local” debt service costs.

II. Renovation Projects: How Do They Qualify for State Support?

The major capital construction program and the integrated, consolidated 9-12 education facility program, described above, provide state subsidy support only for school construction projects. DOE maintains a separate program, however, for qualifying renovation projects, called the “School Revolving Renovation Fund” program (“SRRF program”).

A. How does the SRRF program work, and what is the level of state support?

In the SRRF program, projects have five different priority levels. Priority 1 is health, safety, and compliance, including roof repair and replacement, ADA compliance, air quality improvements, hazardous waste abatement/removal, and other health, safety, and compliance repairs. Priority 2 is for improvements, not related to health/safety/compliance, and involving the building structure, building windows and doors, and water or septic system. DOE has generally funded Priority 1 projects and some Priority 2 projects.

The maximum project cost approved for support is \$1 MM “per priority,” per building within a 5 year period. The maximum total SRRF loans for a school building is \$4 MM.

State support is not provided by direct state subsidy of the bond payments. Instead, the approved school unit receives an “eligibility certificate,” allowing the school unit to borrow the approved amount from the Maine Municipal Bond Bank. The DOE and the Bond Bank forgive between 30% and 70% of the loan principal. The school unit must pay back only the unforgiven principal that remains, without any interest. The payback period is five years for up to \$500,000 and ten years for more than \$500,000.

Over the years, the DOE has assisted multiple hundreds of projects through the SRRF program. In the most recent round, on January 31, 2022, the DOE awarded approximately 120 SRRF projects to 30 different SAUs with projects totaling \$31 MM. The 2022 List of approved SRRF projects is attached as **Exhibit E**.

The next SRRF application deadline is October 31, 2022.

More information on the SRRF application and rating process is available at the following link:

www.maine.gov/doe/schools/facilities/srrf.

B. Observations on the SRRF program and its benefits:

- School administrators need to remain alert to DOE announcements about a new cycle of SRRF applications and be prepared to submit applications.
- School units must engage a design professional to provide project budget and technical supporting documentation required for application submittals, and for the design services if approved; because SRRF program rules require that the school units retain the architect/engineer using the advertisement and interview process, school units must allow time for selecting the architect/engineer before the application deadline.

- The school unit must issue a bond, and although the bond terms are extremely favorable, voter referendum requirements will typically apply to authorize the SRRF loan.
- When a renovation project has qualified for the SRRF program, the financial terms are so generous that a favorable referendum outcome is highly likely.
- Some school units “package” SRRF program renovations with other renovations for voter approval.
- An SRRF loan is not a tax exempt financing. An opinion of bond counsel is required, but these loans are not subject to the complexities of federal tax regulation, and the documentation is much simpler.
- There is a “loan forgiveness grant” option if the school unit desires the SRRF grant portion but has other appropriations to fund the project and does not need the SRRF bond portion; this typically makes the referendum unnecessary.

III. Establishing a Building Committee

A. Do we need a building committee?

Particularly with a large project, the Superintendent and School Board may wish to establish a building committee to act as a project subcommittee. This committee typically includes School Board members, the Superintendent and, as applicable, business manager and/or facilities director. On smaller projects, the School Board may wish to delegate building committee powers to the Superintendent, or this role may be played by an ongoing building and facilities committee.

Almost always, a building committee is advisory, reviewing various project matters and reporting and making recommendations to the School Board. This can free up the School Board for its other important work. School Boards should give careful consideration before delegating binding authority over important decisions to a building committee.

B. Observations on building committees

- School boards have full legal authority and duties with respect to school construction, renovation and repair. It is their decision whether to delegate this authority to a building committee.
- It is important to think carefully before placing private citizens on a school building committee.
- In municipal school units, it is important to think very carefully before placing municipal officials on a school building committee.

- We recommend that all significant final project decisions be reserved to the School Board, with a building committee making advisory recommendations.
- Even with a building committee, many project decisions cannot wait for monthly or even weekly meetings; there must be an administrator empowered to make these decisions without delaying the project.
- Building committees are subject to public meeting/records laws.

IV. Selecting the Project Architect

One of the first and most important steps for any school construction or renovation project is selecting the architect or (for some renovation projects) the engineer.

A. What is the process for hiring the architect?

Many times, an architect is selected initially for limited services related to the school unit's application to DOE. For assistance with the application for a state subsidized school construction project, school units may select an architect from the BGS approved list. A school unit approved for funding of a state supported school construction project, and a school unit applying for an SRRF project, are directed to use the advertise/interview process.

Here are the basic steps to select an architect using the advertise/interview process:

- The School Board publishes in newspapers of general circulation, locally and in the Kennebec Journal, a Request for Qualifications ("RFQ") soliciting architectural firms. A sample ad is available on the DOE website.
- Based upon submissions, the building committee selects up to three firms for interviews, and decides upon a recommended firm.
- The architect fee is then negotiated with the firm selected for recommendation. The fee is generally in two phases; generally a fixed fee or fees for initial services and a "full service" fee if the project moves forward after referendum. In almost all cases, a recommended fee schedule, prepared by the former Bureau of General Services, is used for the architect's fee.
- The School Board votes on whether or not to accept the recommended firm.

Once a school construction process is moved to the Approved Projects List for subsidy approval, the school unit must select an architect using the above process, if it has not already done so.

B. What is the process to contract with the selected architect?

Typically, schools contract with architects for three types of services.

- There may be a “limited services agreement,” where an architect performs designated services such as assistance with a long term facilities plan, or assistance with an application for state funding of a school construction project.
- There may be a preliminary design services contract, but only after the required (or recommended) architect selection process. Because a project is almost always subject to an approving referendum vote, the school unit generally enters into a preliminary contract with the architect to develop the project concept and estimate the total project cost, which are essential components of the project bond referendum question.
- The School Board and architect enter into a full services design/construction administration contract, generally after a successful referendum vote.

C. Observations about architect selection and architect contracts

- If an architect has performed well on the school unit’s past projects, there may be benefits if the advertised RFQ process, performed in good faith, results in the same familiar, reliable firm.
- When a new firm is selected, it is important to select an architect that is not only capable and experienced generally, but with demonstrated experience with Maine school projects of a similar size and nature, particularly if a state-funded project is involved. An experienced Maine school architect:
 - Has important familiarity with the programming, space, and safety needs of schools;
 - Understands the significance of the school calendar to minimize disruptions to students and staff;
 - Understands special state approvals and design criteria required for Maine schools; and
 - On state funded projects, will serve as the owner’s advocate in critical project budget/subsidy negotiations with DOE’s construction team.

- On larger projects, it is important to select a design team with sufficient human resources to handle the large volume of work.
- Before any selection decision, it is important to establish that the architect carries adequate insurance for the job. There have been a couple of instances in the past when, belatedly, the owner learned the architect had little or no professional liability coverage.
- Although the fee for the full services design/construction administration contract is generally set by the recommended schedule, the school unit is entitled to a fee credit under this contract for some (not all) services under the preliminary services contract.
- American Institute of Architect (“AIA”) contract forms are in wide use for public and private projects throughout the country, but Maine school projects generally use a special set of contract forms developed by the Bureau of General Services with input from DOE and school owners’ legal counsel. Architects familiar with Maine school projects know this, and will generally prepare contracts on these forms. As with any important contracts, school units should consult with legal counsel about these documents.

V. Getting Bond Counsel on Board

A. What is a “bond” and what does “bond counsel” do?

Early on in a project, it is advisable to engage “bond counsel.” What is a “bond,” and what does a “bond counsel” have to do with it?

The bond is the debt obligation instrument that the local government issuer signs to agree to pay the loan, including principal and interest. The bond is “sold” or “issued” to a “bond purchaser.” Essentially, the bond purchaser is the lender that invests in the project. In a private sale, the bond may be sold to a single bondholder such as the Maine Bond Bank or a private bank. In a public sale, the bonds may be sold to multiple bondholder investors.

Virtually every bond issued by a local government unit, such as a school district, must be supported by an approving opinion of an attorney. “Bond counsel” is the attorney that is engaged to issue this supporting opinion. The bond opinion tells the bondholders that the local government school district bonds are valid and enforceable, and that the interest income they receive is exempt from federal income taxation. Without an approving bond opinion as to these matters, the bonds cannot be sold, the school project cannot be financed.

In order to issue a bond opinion, bond counsel must conduct the necessary due diligence to reach the conclusions in the opinion. Importantly, this includes a review of applicable laws that apply to the issuer of the bonds (in this case, the school unit), as well as the governmental proceedings used to authorize the bond, such as (typically) the referendum vote and school board vote (or in a municipal school unit, the municipal officers' vote). To issue the opinion, bond counsel must form an independent judgment about the law and the proceedings. In other words, bond counsel may not act as an advocate for purposes of a bond opinion.

With that as basic background, it is easy to see why bond counsel should be engaged to draft the necessary votes and referendum documents and related certificates. If bond counsel is engaged after-the-fact, bond counsel will need to review what transpired before, and may find errors in the proceedings. This can lead to the unfortunate situation that the bonds cannot be sold without taking curative steps or even starting the process over again.

In short, the superintendent should contact bond counsel well before the referendum and request a timeline containing the necessary steps, procedures, and legal deadlines to approve the project financing and issue the project bonds.

B. Observations on bonds and the function of bond counsel

- School units may wish to sell bonds to a local bank. If so, discuss this early on with bond counsel, so that bond counsel can make sure the bank understands and agrees with any special legal requirements affecting the financing.
- Most rural schools use the Maine Municipal Bond Bank.
- Some school districts engage in public bond sales with the assistance of a financial advisor.
- Most project bonds are sold over a 20 year term with equal annual principal payments. This is a requirement in some cases. SRRF bonds have 5-year or 10-year terms.
- With locally funded bonds, the initial budget impact of equal principal payments plus interest is greater than the impact of equal blended payments of principal and interest, but the total interest cost is less.
- Bonds may be sold to the Maine Bond Bank twice annually. SRRF bonds may be sold on no particular schedule.
- It is often necessary to issue a temporary short term note, called a bond anticipation note ("BAN"), to fund the project on an interim basis. BANs must also be supported by a bond opinion.

- For state subsidized school construction, BANs generally must be sold by a competitive bid process.
- For various reasons, large projects may require multiple BAN and bond sales.
- Bond counsel fees may be included in the project budget to relieve the operating budget of a significant, non-recurring cost.
- Engage bond counsel sooner rather than later, and certainly before the referendum.
- Read the last item again.

VI. Acquiring the Real Estate

Acquiring real estate for school construction is generally a two-step process. First, before the project referendum, the school unit negotiates an option or real estate purchase agreement with the landowner. Next, following the referendum, the school unit buys the site.

A. What are the steps to acquire the land?

Here are the common steps for real estate acquisition:

- Evaluation of available sites for the project with assistance of an architect. This may include various studies of one or more sites for “developability,” including wetlands, geotechnical, land use and zoning, etc.
- Appraisal (at least two appraisals for state funded school construction projects).
- Negotiation of an Option Agreement with the landowner, including the following “deal terms”:
 - Legal description of the site.
 - Legal name and contact information for the landowner.
 - Option price. Usually a modest fee is paid for the option to allow the school unit holding the option time for its real estate development due diligence and its project approvals; sometimes a higher option fee is paid if the landowner has listed the property for sale and is being asked to “take it off the market” for the period of the option.
 - Typically, the Option price is deductible from the purchase price if the option is exercised and forfeited if no exercised.

- The option term, or deadline, within which the school unit must exercise the option or lose it. This is generally based on the time the school unit needs to get to a referendum vote.
- A right for the school unit to extend option deadline, and if so, the additional option fee, if any, if this extension right is exercised.
- The purchase price (which may or may not depend upon appraisals performed)
- Search the title to the real estate under option.
- Other real estate development due diligence, as necessary, to the extent not performed prior to option agreement.
- For state approved school construction projects, State Board Site Approval.
- Following the referendum, the school unit will exercise the option and close on the real estate purchase.

B. Observations on real estate matters

- Siting a new school can be politically volatile. It may be important to fund a very thorough search of all potential sites to convince different interest groups that the selected site is the best alternative.
- Consolidation of existing school buildings to a new school can have operational and programmatic benefits. It can also be politically volatile, requiring careful treatment.
- Figure out the best person on the team to approach a landowner whose property is not being actively marketed. Many owners are public spirited. A few are not.
- School units have the legal right to condemn land (eminent domain). However, it is almost always preferable to pay more than the appraised value than to try to use this eminent domain right. Even if the landowner will not sell, it is almost always preferable for the school unit to simply move on to a different site.
- Many existing schools need additional adjoining land for existing schools and facilities. Keep this in mind if additional land is potentially available for your new school, even if the extra land will not qualify for state subsidy (discussed below). As the saying goes, “They are not making any more of it.”

- Later in development, you may learn that a governing authority requires enhancements (bus turning lanes, emergency exits) as to which an abutter owns the real estate. To the extent possible, try to identify these in advance to acquire right, title, and interest to those property interests also.
- Search the title early on (before Site Approval on State subsidized projects). A search may reveal a title defect that cannot be “cured.” This allows the school unit to “back out” as a legal matter. But this is little comfort if the project was approved by the local voters or State Board before the defect was discovered.
- Hundreds of potential school sites have been improved with federal grants for parks, conservation, industrial development, or other federal programs. Addressing these grants through a federal “conversion” process is complicated, expensive, and time consuming. These interests must be identified before Concept Approval and referendum approval.
- Other sites have been placed under state conservation easement, which likewise must be identified and addressed for school project development to occur.

VII. What is the State Education Approval Process?

Locally funded construction projects are required to be approved by the local voters and by the commissioner of education. The commissioner’s approval is generally provided on a *pro forma* basis, by having the project architect notify the commissioner of the successful referendum vote and requesting approval pursuant to section 15905-A of title 20-A.

The education approval process for state subsidized school construction is considerably more involved.

A. Education approvals for state subsidized school construction

Here is a summary of the education approval process for projects on the Approved Projects List:

- When placed on the Approved Project List, the project is assigned a calendar year deadline for Concept Approval.² Unless a qualifying waiver of this deadline is obtained, the deadline penalty is that the project will be removed from the Approved Projects List.

² Unless it isn’t. Some schools are not assigned a date.

- All projects require State Board site approval. A school unit with a new site must comply with various siting requirements, must obtain “right, title, and interest” by means of a signed option agreement, must have at least two appraisals performed on the site, and must hold a public meeting to present the site to the public and conduct a straw vote. Critically, site approval establishes the project location.
- The architect will develop the proposed project solution and develop a project budget in consultation with the owner and DOE staff. Following a second public meeting presentation and straw vote, the school unit will apply for State Board Concept Approval. This fixes the project solution, establishes the education needs the project will fulfill, and determines the project budget, including “State/Local” costs that qualify for debt service subsidy and “Local Only” costs.
- Within 6 months after Concept Approval, the project and its financing must be submitted to referendum approval. This is discussed in greater detail below.
- Within 9 months after a successful referendum, the architect completes the design and bidding documents and submits the project for State Board Final Design and Funding Approval.
- Within 9 months after Design and Funding Approval, the project must go out to bid and be awarded to the successful bidder, and a construction contract must be signed.
- After construction contract bidding, the Commissioner will issue Final Funding Approval. This establishes the final project budget.
- All projects are subject to audit by the DOE, including a close-out audit.

B. Observations on the education approval process for school construction

- Until relatively recently, the commissioner’s approval of locally funded projects was often overlooked or ignored. We recommend obtaining this approval for each non-state funded project.
- The local school unit may desire more acreage than the state will fund as a project cost, and if so, the extra acreage becomes a “Local Only” project cost.
- The architect plays a critical role in negotiating the project scope and budget with DOE staff prior to Concept Approval. This budget

- is almost never revised upwards, even if unexpected costs are encountered or bids come in high.
- Generally, the school unit may borrow for project costs only after a successful referendum vote. School units must consider various other funding resources and options to pay for early architect and legal costs and option fees for any real estate.
 - The state has no legal obligation to fund school construction debt until Final Funding Approval.
 - Permanent bonding may occur after Final Funding Approval.

VIII. Conducting a Successful Bond Referendum

A. General referendum requirement

As a general matter, a school construction or renovation project must go out to referendum approval. This may not be the case in a few situations, and bond counsel should be consulted in advance should there be any question about this. The particular referendum process will differ, depending on the type of school unit. As noted, a superintendent is well served to have in hand a timeline prepared by bond counsel for all of the referendum steps and requirements.

B. Observations about the bond referendum:

- A decision must be made whether to hold the referendum on a statewide voting date or on another date. Turnout is much greater on statewide voting dates. This can help build a project consensus. The local political situation may suggest using a statewide voting date, particularly on locally funded projects.
- In establishing the referendum date, the timing needs of the project must be paramount to political considerations. The architect's project timeline may demonstrate that delaying the referendum to a statewide voting date could cause higher project costs, missed construction seasons, missed seasonal bidding opportunities, or missed opportunities to move in during a school break and open on a school start date.
- Generally, whether to use a single question or multiple questions is a matter within the discretion of the School Board. The School Board should seek to reach a consensus on what needs are critical, and then have bond counsel place those needs in a single referendum question. Sometimes the politics makes this impossible, and two or more questions are placed before the voters, representing different project elements.

- In municipal school units, the municipal officers will call the referendum, so coordination between the Superintendent and the municipal officers is required.
- In very general terms, however, a referendum vote may take roughly two months from the date of the governing body vote to call a referendum and the referendum date.
- The referendum requires a public hearing. In multiple town school districts, the School Board may opt to hold a single consolidated public hearing, or to hold a separate hearing in each town.
- Bond counsel must prepare the referendum documents, including board votes, warrants, public hearing notices, ballots, computation and declaration of votes (where applicable), and related election certificates.
- A successful referendum is easier if good relations with town clerks have been maintained.
- In school districts, the warrants must be countersigned by the member town municipal officers. This does not indicate support for the project. They are legally required to countersign.

IX. Selecting the Contractor for the Job

Obviously, every Maine school owner wants to hire an experienced, dedicated construction professional with the financial and technical capacity for the project. That is not what every Maine school owner gets. This is due in part to public bidding laws that generally restrict a school unit's ability to select a contractor other than the lowest bidder. We observe, however, that some flexibility exists if the school owner plans carefully in advance.

A. The Public Bidding Law and selection of the contractor

In general, section 1743-A of Title 5 requires every school construction and renovation project to be competitively bid. Competitive bidding means just that. It does not mean a request for proposals. The statute generally does not permit the use of construction management based upon interviews. Instead, and subject to various exceptions, section 1743-A requires the architect to develop a complete set of plans and specifications, and place those out to bid. The school unit must generally accept the lowest conforming bid of a qualified contractor and make the construction award to that contractor. The statute permits various exceptions, including for projects under \$250,000, and for "energy conservation projects." Despite the exceptions in the statute, in general the school unit cannot award the construction contract to the contractor the school unit feels is best suited for

the job. Discretion in awarding the contract is generally limited by the public bidding law.

B. Observations on the owner's limited discretion

- All public projects that are at least \$125,000 in size require a bonded contractor. The bonding requirement limits the pool of contractors to those who can secure payment and performance bonds from a surety in a sum equal to the cost of the project. This helps because a surety will evaluate a contractor's technical and financial capacity before issuing the bonds.
- Projects may be put out to bid with discretionary "alternates." Using its business judgment in good faith, the school unit has the discretion to select among the bid alternates, even though this might sometimes result in a different low bidder being selected.
- On state subsidized projects, Title 5 provides a statutory process for contractors to provide a qualification statement and letter from a bonding company. This process allows the Director of BGS to disqualify the contractor. In our experience, this process is very weak and is almost never used or useful.
- But Title 5 also provides a local disqualification process, at least on locally funded projects. If your architect is not familiar with this separate process, have him call your legal counsel to discuss. This local disqualification process allows the local official much broader discretion to disqualify than the state disqualification process.
- Prequalification takes time, so it is important to have your architect build this into the project timeline early on.
- As noted, there are a few statutory exceptions to competitive bidding, and a school owner may discuss this with legal counsel to see if one is available.
- Sometimes, a qualified contractor submits a non-conforming bid. This may be grounds for disqualification.
- Bid disputes cannot be resolved without making at least one bidder unhappy with the decision. In general, when a bidding issue arises, it is a good idea to pause and call "time out," and get your architect and your attorney involved with how to handle the problem.

C. Observations when bids exceed estimates

- Extending back as far as 2018, and then through the pandemic, many school construction projects have had low bids that were 25% -50% above budget estimates. It is hoped that the construction market will stabilize.
- Hopefully, your architect included a 5% bid contingency and a 5% construction contingency to help address the bids exceeding the budget estimate.
- “Value engineering” with the lowest bidder is the usual practice when contingencies cannot adequately address the bid overruns. The architect is critical to this negotiation process, which inevitably requires the owner to make painful choices as to which project elements must be removed.
- There may be budgeted project costs that can be shifted to an operating budget or to a reserve fund, subject to applicable appropriation authority.
- For a local project, supplemental voter authorization is a potential solution. For a state supported project, a budget revision is only very rarely supported by DOE, and even then, only after significant “value engineering.” That said, it has been known to happen for dire needs.
- Publicly sold bonds may be sold “with premium.” A bond premium is an offer to purchase the bonds above their face amount, resulting in extra bond proceeds. Usually, bond premium is used for costs of issuance, and then to “buy down” (reduce) the amount of bond principal issued. Proposals to use bond premium to pay for extra project costs should be examined critically by school officials, the financial advisor, and bond counsel.

SECTION 2.

**Maine's Paid Family Medical Leave:
What we know, what you can expect, and
what you need to be on the lookout for**

Maine's Paid Family Medical Leave: What we know, what you can expect, and what you need to be on the lookout for

What we know:

During the last legislative session, Maine passed a *paid* family medical leave benefit. This will significantly shake up the landscape with respect to family medical leave, and Schools may want to begin thinking now about how this law will impact them.

The current language of the law indicates the State will create a fund for paid family medical leave benefits, to be paid by a payroll tax that both employers and employees contribute to, beginning January 1, 2025. The State expects that the contribution, split between the employer and employee, will amount to approximately 1% of employee wages.

The benefit is expected to be twelve paid weeks of leave annually, though there will be a cap on weekly benefits, and the employee's income level prior to leave will determine the percentage of the employee's regular wages they will be eligible to receive. It is expected that all workers (including part-time, seasonal, and temporary) workers will be eligible for the benefit. As currently written, the benefit will be paid when an employee experiences a qualifying event similar to those that permit leave under the federal and state Family Medical Leave Acts, but may also be available in additional scenarios, such as when leave is needed as a result of an incident of family violence.

The full text of the law is attached for your reference.

What you can expect:

As currently written, the good news is that Schools will not be responsible for administering this benefit in any way, similar to unemployment benefits. This means you will not need new paperwork, a new account for benefits, etc. Instead, either the State or a designated third party will receive applications for and determine whether an employee is eligible for the benefit, as well as how much time and pay the employee will receive.

You can expect that you will receive bargaining proposals regarding paid leave, and you will want to be thoughtful about how to answer those.

You can also expect that you need to budget to pay approximately 1% of all wages toward the fund beginning on January 1, 2025, and possibly for increased amounts in future years.

NOTES

Finally, you can expect that employees will become eligible for benefits beginning on May 1, 2026, and that sometime before then you will need to ensure that you have at least one staff member prepared to help employees understand how their paid leave from the School will interact with the paid leave they're receiving from this state fund.

What you need to be on the lookout for:

The Maine Department of Labor is required to adopt rules related to Paid Family Medical Leave, which we hope to see before Schools need to begin making contributions to the fund in January 2025.

You also need to be on the lookout for more information from the State about whether they will revise certain portions of the law before it becomes effective. This may include, for example, more clarity on how this impacts employees who are covered by collective bargaining agreements, since the law as written is not clear.

Finally, be on the lookout for more information from Drummond Woodsum's labor and employment group. We continue to work to understand how this new law will impact bargaining, as well as current paid and unpaid leave programs offered by Schools, and we will share information as we are able to do so.

deem necessary for the information of the Legislature. The director may from time to time cause to be printed and distributed bulletins upon any subject that is of public interest and benefit to the State, including, but not limited to, the paid family and medical leave benefits program established in chapter 7, subchapter 6-C, and may conduct a program of research, education and promotion to reduce industrial accidents. The director may review various data, such as workers' compensation records, as well as other information relating to any public or private employer's safety experience. When any individual public or private employer's safety experience causes the director to question seriously the safe working environment of that employer, the director may offer any safety education and consultation programs to that employer that may be beneficial in providing a safer work environment. If the employer refuses this assistance or is in serious noncompliance which may lead to injuries, or if serious threats to worker safety continue, then the director shall communicate concerns to appropriate agencies, such as the United States Occupational Safety and Health Administration. As used in this section, the term "noncompliance" means a lack of compliance with any applicable health and safety regulations of the United States Occupational Safety and Health Administration or other federal agencies. The bureau is responsible for the enforcement of indoor air quality and ventilation standards with respect to state-owned buildings and buildings leased by the State. The bureau shall enforce air quality standards in a manner to ensure that corrections to problems found in buildings be made over a reasonable period of time, using consent agreements and other approaches as necessary and reasonable.

Sec. AAA-4. 26 MRSA §42-B, sub-§1, ¶F, as amended by PL 2019, c. 156, §1 and affected by §4, is further amended to read:

F. Minimum wage and overtime provisions as described in section 664; ~~and~~

Sec. AAA-5. 26 MRSA §42-B, sub-§1, ¶G, as enacted by PL 2019, c. 156, §2 and affected by §4, is amended to read:

G. Earned paid leave; ~~and~~

Sec. AAA-6. 26 MRSA §42-B, sub-§1, ¶H is enacted to read:

H. Paid family and medical leave as provided in chapter 7, subchapter 6-C.

Sec. AAA-7. 26 MRSA c. 7, sub-c. 6-C is enacted to read:

SUBCHAPTER 6-C

PAID FAMILY AND MEDICAL LEAVE

§850-A. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administrator. "Administrator" means the department administering the program or an authorized 3rd party conducting any functions necessary to implement and operate the program.

2. Authority. "Authority" means the Paid Family and Medical Leave Benefits Authority, under section 850-O.

3. Average weekly wage. "Average weekly wage," as used to establish the maximum weekly benefit amount for purposes of this subchapter, means 1/52 of aggregate total wages paid in the State for a covered individual, as reported on employer contribution reports for the calendar year, divided by the arithmetic mean of midmonth weekly covered employment reported on employer contribution reports for the calendar year in the form and manner determined by the department.

4. Base period. "Base period" means the first 4 calendar quarters immediately preceding the first day of an individual's benefit year.

5. Benefit year. "Benefit year" means the 12-month period beginning on the first day of the calendar week immediately preceding the date on which family leave benefits or medical leave benefits commence.

6. Commissioner. "Commissioner" means the Commissioner of Labor.

7. Contributions. "Contributions" means the payments remitted by an employer or self-employed individual to the fund, as required by this subchapter.

8. Controller. "Controller" means the State Controller.

9. Covered individual. "Covered individual" means a person who:

A. Earned at least 6 times the state average weekly wage in wages subject to premiums under this subchapter during the individual's base period or elects coverage and meets the requirements of section 850-G; and

B. Meets the administrative requirements outlined in this subchapter and any rules adopted pursuant to this subchapter and files an application for family leave benefits or medical leave benefits.

10. Covered service member. "Covered service member" means:

A. A member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is:

(1) Undergoing medical treatment, recuperation or therapy or otherwise receiving outpatient treatment; or

(2) Otherwise on the United States Armed Forces' temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the United States Armed Forces; or

B. A former member of the United States Armed Forces, including the National Guard and the Reserves of the United States Armed Forces, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in the line of duty in the United States Armed Forces or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the United States Armed Forces and manifested before or after the member was discharged or released from service.

11. Department. "Department" means the Department of Labor.

12. Domestic partner. "Domestic partner" has the same meaning as in Title 1, section 72, subsection 2-C.

13. Employee. "Employee" means a person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment in the State but does not include an independent contractor.

14. Employer. "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs employees at a location in this State;

B. The State, including the executive, legislative and judicial branches, and a state department or agency;

C. A county, city, town or municipal agency;

D. An agent of an employer, the State or a political subdivision of the State;

E. A public employer, as defined in section 962, subsection 7; and

F. A tribal government that has elected coverage pursuant to section 850-G.

"Employer" does not include the Federal Government.

15. Employment. "Employment" means a service performed for wages.

16. Employment benefits. "Employment benefits" means all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

17. Family leave. "Family leave" means leave taken pursuant to section 850-B, subsection 2.

18. Family leave benefits. "Family leave benefits" means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on family leave.

19. Family member. "Family member" means, with respect to a covered individual or spouse or domestic partner of a covered individual:

A. Regardless of age, a child, including a child whose parentage has been determined under the Maine Parentage Act or any other biological child, adopted child, foster child or stepchild, or a child to whom the covered individual or spouse or domestic partner of the covered individual stands in loco parentis or a child the covered individual or spouse or domestic partner of the covered individual has under legal guardianship or any individual to whom the covered individual or spouse or domestic partner of the covered individual stood in any of these relationships when the individual was a minor child;

B. A parent, including a legal parent, biological parent, adoptive parent, foster parent, stepparent, de facto parent or legal guardian or a person who stood in loco parentis when the covered individual or spouse or domestic partner of the covered individual was a minor child;

C. A grandparent, including a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, stepgrandparent or de facto grandparent;

D. A grandchild, including a legal grandchild, biological grandchild, adoptive grandchild, foster grandchild, stepgrandchild or de facto grandchild;

E. A sibling, including a legal sibling, biological sibling, adoptive sibling, foster sibling, stepsibling or de facto sibling;

F. A spouse or domestic partner of a covered individual; or

G. As designated by the covered individual in accordance with rule, an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

20. Fund. "Fund" means the Paid Family and Medical Leave Insurance Fund established under section 850-E.

21. Health care provider. "Health care provider" means an individual licensed to practice medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy or any other individual determined by the administrator to be capable of providing health care services.

22. Medical leave. "Medical leave" means leave taken pursuant to section 850-B, subsection 3.

23. Medical leave benefits. "Medical leave benefits" means wage replacement paid pursuant to sections 850-B and 850-C to a covered individual while the covered individual is on medical leave.

24. Program. "Program" means the paid family and medical leave benefits program established in section 850-B.

25. Qualifying exigency. "Qualifying exigency" means an exigency determined pursuant to the federal Family and Medical Leave Act of 1993, 29 United States Code, Section 2612(a)(1)(E).

26. Safe leave. "Safe leave" means any leave taken because the covered individual or the covered individual's family member is a victim of violence, assault, sexual assault under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 103. Safe leave under this subchapter applies if the covered individual is using the leave to protect the covered individual or the covered individual's family member by:

A. Seeking an order for protection under Title 19-A, chapter 103;

B. Obtaining medical care or mental health counseling for the covered individual or for the covered individual's family member to address physical or psychological injuries resulting from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103;

C. Making the covered individual's or the covered individual's family member's home secure from the perpetrator of the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title 19-A, chapter 103 or seeking new housing to escape the perpetrator; or

D. Seeking legal assistance to address issues arising from the act of violence, assault, sexual assault or stalking or act that would support an order for protection under Title

19-A, chapter 103 or attending and preparing for court-related proceedings arising from the act or crime.

27. Self-employed individual. "Self-employed individual" means an independent contractor as described in section 1043, subsection 11, paragraph E, a sole proprietor, a member of a limited liability company or limited liability partnership or an individual whose net profit or loss from a business must be reported to the Department of Administrative and Financial Services, Bureau of Revenue Services and who resides in the State.

28. Serious health condition. "Serious health condition" means an illness, injury, impairment, pregnancy, recovery from childbirth or physical, mental or psychological condition that involves inpatient care in a hospital, hospice or residential medical care center or continuing treatment by a health care provider.

29. Spouse. "Spouse" has the same meaning as in Title 18-C, section 1-201, subsection 54.

30. State average weekly wage. "State average weekly wage" means the average weekly wage as published by the department for the State as a whole for the 12 most recently reported months.

31. Wages. "Wages" includes, but is not limited to, salary, wages, tips, commissions and other compensation as determined by rule. For a self-employed individual who elects coverage under section 850-G, "wages" includes, but is not limited to, self-employment income as defined by 26 United States Code, Section 1402(b).

32. Weekly benefit amount. "Weekly benefit amount" means the amount of wage replacement paid to a covered individual on a weekly basis while the covered individual is on family leave or medical leave as provided in section 850-C.

§850-B. Paid family and medical leave benefits program established

The paid family and medical leave benefits program is established effective January 1, 2026. The program is administered by the department. In accordance with subsection 1, the department may, through contract after a competitive bidding process subject to the requirements of Title 5, section 1816-B, authorize a 3rd party to conduct claims administration.

1. Competitive bidding process. Any competitive bidding process used by the department pursuant to this section is governed by this subsection.

A. The minimum criteria established by the department to evaluate a proposal must include, but are not limited to cost; transparency of business operations; efficiency of business operations; quality of work related to the potential contracts issued; user experience; confidentiality and use of claimant data; software development, information technology and state ownership of software and specialized information technology; accountability; experience with providing education to the public related to claims; and a cost-benefit analysis documenting the direct and indirect costs of such a contract, including qualitative and quantitative benefits that will result from the implementation of such a contract.

B. Any 3rd party that submits a proposal must have a meaningful physical presence in the State; have no adjudicated record of substantial or repeated willful noncompliance

with any relevant federal, state or local law, statute or regulation, including payment of taxes or other payments owed to a public entity; attest to compliance with all applicable local, state and federal laws, regulations and statutes, including health and safety, labor and employment and licensing laws that affect the employees, worksite or performance of the contract; complete a signed pledge of compliance provided by the State to comply with all applicable laws, statutes and regulations; and attest that any projected cost savings may not derive from the 3rd party's failure to provide adequate wages.

C. The requirements of Title 5, section 1825-B, subsection 7 do not apply.

2. Family leave eligibility. A covered individual is eligible for family leave for any of the following reasons:

A. To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;

B. To care for a family member with a serious health condition;

C. To attend to a qualifying exigency;

D. To care for a family member of the covered individual who is a covered service member;

E. To take safe leave; or

F. Any other reason set forth in section 843, subsection 4.

3. Medical leave eligibility. A covered individual with a serious health condition that makes the covered individual unable to work is eligible for medical leave.

4. Maximum leave requirements. The following requirements apply.

A. A covered individual is not eligible for more than 12 weeks of family leave in a benefit year.

B. A covered individual is not eligible for medical leave for more than 12 weeks in a benefit year.

C. A covered individual may not take more than 12 weeks, in the aggregate, of family leave and medical leave under this subchapter in the same benefit year.

This subsection does not prevent a covered individual from taking medical leave that is immediately followed by family leave when the medical leave is taken during pregnancy or recovery from childbirth and is supported by documentation from a health care provider.

5. Intermittent leave requirements. Leave permitted by this section may be taken by an employee intermittently in increments of not less than 8 hours or on a reduced leave schedule otherwise agreed to by the employee and the employer. The taking of leave intermittently or on a reduced leave schedule pursuant to this subsection may not result in a reduction in the total amount of leave to which the covered individual is entitled under this subchapter.

6. Weekly benefit. While on family leave or medical leave pursuant to this subchapter, a covered individual receives a weekly benefit amount as provided in section 850-C.

7. Notice to employer. Absent an emergency, illness or other sudden necessity for taking leave, an employee shall give reasonable notice to the employee's supervisor of the employee's intent to use leave under this subchapter. Use of such leave must be scheduled to prevent undue hardship on the employer as reasonably determined by the employer. If an employer fails to provide notice as required under section 850-I, the employee's obligation to provide notice under this subsection is waived.

8. Right to benefits; accrual. The taking of family leave or medical leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee's family leave or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of leave.

9. Treatment of self-employed individuals. Subsection 8 does not apply to a self-employed individual taking family leave or medical leave under this subchapter or to a person who is no longer an employee who was an employee when that person began taking family leave or medical leave under this subchapter.

10. Collective bargaining; employer policy; greater or additional rights. This subchapter does not:

A. Obviate an employer's obligations to comply with any employer policy, law or collective bargaining agreement that provides for rights to leave greater than or additional to those provided by this subchapter;

B. In any way curtail the rights, privileges or remedies of any employee under any collective bargaining agreement or employment contract;

C. Allow an employer to compel an employee to exhaust rights to any sick, vacation or personal time prior to or while taking leave under this subchapter; or

D. Require a public employer, as defined in section 962, subsection 7, or employee of a public employer that is a party to a collective bargaining agreement in existence on the effective date of this subchapter to apply any of the rights and responsibilities under this subchapter until the existing collective bargaining agreement expires.

11. Concurrent with leave under state and federal law. Leave taken under this subchapter runs concurrently with leave taken under the federal Family and Medical Leave Act of 1993, 29 United States Code, Section 2611, et seq., and under subchapter 6-A. Employees may take leave under this subchapter while ineligible for leave under the federal Family and Medical Leave Act of 1993 in the same benefit year.

12. Employer policy may not waive employee rights. An employer policy adopted or retained on or after the effective date of this subchapter may not diminish an employee's right to benefits under this subchapter. Any agreement by an employee to waive the employee's rights under this subchapter is against public policy and is void and unenforceable.

§850-C. Payment of benefits

1. Waiting period for medical leave. Medical leave benefits are not payable during the first 7 calendar days of the leave, except that an employee may use accrued sick or

vacation pay or other paid leave provided under a collective bargaining agreement or employer policy during the first 7 calendar days of the leave.

2. Determination of weekly benefit amount. The weekly benefit amount paid to employees and self-employed individuals on family leave or medical leave is calculated as follows:

A. The portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage must be replaced at a rate of 90%; and

B. The portion of the covered individual's average weekly wage that is more than 50% of the state average weekly wage must be replaced at a rate of 66% up to the maximum weekly benefit.

3. Maximum benefit amount adjustment. The maximum weekly benefit amount calculated under subsection 2 is the state average weekly wage. By January 1st of the year in which claims begin being processed and annually thereafter, the department shall take into consideration the recommendation of the authority to adjust the maximum weekly benefit amount as necessary, and the adjusted maximum weekly benefit amount takes effect on January 1st of the year following the adjustment. The authority shall recommend adjusting the maximum benefit amount in order to maintain the solvency of the fund at a level of at least the annualized amount described in section 850-E, subsection 3.

4. Prorated benefit. If a covered individual takes family leave or medical leave on an intermittent or reduced leave schedule, the weekly benefit amount must be prorated as determined by the department.

5. Reduction of benefit. The weekly benefit amount must be reduced by the amount of wages or wage replacement that a covered individual receives for that period under any of the following while on family leave or medical leave:

A. A government program or law, including, but not limited to, unemployment insurance under this Title and workers' compensation under Title 39-A other than for compensation received under Title 39-A, section 213 for an injury that occurred prior to the family leave or medical leave claim, or under other state or federal temporary or permanent disability benefits law; or

B. A permanent disability policy or program of an employer.

§850-D. Applications and claims for benefits

1. Procedures and forms. The administrator shall establish reasonable procedures and forms for filing claims for family leave benefits and medical leave benefits under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including any documentation required from a health care provider for proof of a serious health condition and any documentation required by the administrator with regard to a claim for safe leave or qualifying exigency leave.

2. Filing of application. An individual may file an application for family leave benefits or medical leave benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave. The administrator shall waive the 90-day filing deadline for good cause. The administrator shall institute forms and procedures that are not unduly burdensome to an individual claiming benefits.

3. Notification of employer. The administrator shall notify the relevant employer within 5 business days of a claim being filed pursuant to this subchapter.

4. Confidentiality. Any medical or health information required under this section must be treated as confidential and may not be disclosed except with permission from the covered individual who provided it unless disclosure is otherwise required by law. Nothing in this section may be construed to compel a health care provider to provide any information for certification that would be in violation of Section 1177 of the federal Social Security Act, 42 United States Code, Section 1320d-6.

5. Ineligibility. A covered individual is not eligible to receive family leave benefits or medical leave benefits if the administrator finds, through a process established by rule, that the covered individual, for the purpose of obtaining these benefits, has willfully made a false statement or misrepresentation regarding a material fact or has willfully withheld a material fact concerning the facts required to be certified pursuant to this section. The department shall establish a process by rule for the determination of eligibility under this section, including a grievance process for a covered individual determined to be ineligible.

§850-E. Paid Family and Medical Leave Insurance Fund

1. Fund established. The Paid Family and Medical Leave Insurance Fund is established to carry out the purposes of this subchapter. The fund is administered by the Treasurer of State. Any sums received under this section are not considered revenue of the State, but must be held in trust for the exclusive benefit of covered individuals eligible for family leave benefits and medical leave benefits under this subchapter and for the administration of this subchapter by the department. Funds may not be expended, released, appropriated or otherwise disposed of for any other purpose and must be expended by the department as required by this subchapter to pay family leave benefits and medical leave benefits to covered individuals eligible to receive benefits and to pay the administrative costs of the administrator.

2. Deposits in fund. The fund consists of:

A. Contributions collected pursuant to section 850-F together with any interest earned thereon;

B. Property or securities acquired through the use of money belonging to the fund together with any earnings of such property or securities;

C. Fines and penalties collected under this subchapter; and

D. Any other money received from any source, including grants, gifts, bequests or money specifically designated to be credited to the fund.

3. Annualized amount. The fund must maintain an annualized amount as determined by an annual study by a qualified actuary that examines the program's recent and expected future claims experience, administrative expenses and target fund requirements.

4. Administrative costs. The costs of administering the program by the administrator may not exceed 5% of the amount deposited under subsection 2 for each fiscal year following the initial year family leave benefits and medical leave benefits are paid. Money may not be commingled with other state funds and must be maintained in a separate account.

5. Payment of benefits. The administrator shall expend money from the fund to provide weekly family leave benefits and medical leave benefits under section 850-C. Family leave benefits and medical leave benefits must be paid from the fund to covered individuals eligible for benefits. An employer's bankruptcy or noncompliance with this subchapter does not interfere with an employee's ability to collect family leave benefits and medical leave benefits under this subchapter. Family leave benefits and medical leave benefits paid from the fund to such an employee may be recovered through bankruptcy proceedings or from the noncomplying employer. The administrator shall institute administrative and legal action to recover family leave benefits and medical leave benefits paid through the fund.

6. Report. Beginning October 1, 2026 and annually thereafter, the administrator shall publish a report providing the following information concerning the program for the previous fiscal year:

A. The total claims made, the total eligible claims and the percentage of total eligible claims out of total claims made;

B. The percentage of eligible claims attributable to medical leave;

C. The percentage of eligible claims attributable to family leave for the serious health condition of a family member;

D. The percentage of eligible claims attributable to family leave other than for the birth, adoption or fostering of a child;

E. The percentage of eligible claims attributable to family leave for the birth, adoption or fostering of a child;

F. The percentage of eligible claims attributable to family leave for a qualifying exigency;

G. The percentage of eligible claims attributable to family leave for a covered service member;

H. The claimant demographics by age, gender identification, race, ethnicity, average weekly wage, occupation and the type of leave taken;

I. The percentage of claims denied and the reasons for the denials;

J. The average weekly benefit amount paid for all claims and by the type of leave taken;

K. The category of family member for whom family medical leave was taken to care for the family member's serious medical condition;

L. The time for initial claims processing and determination;

M. The average length of time between an application and receipt of benefits;

N. The average leave duration for each purpose of leave; and

O. Any changes in gross benefits paid compared to the previous fiscal year.

The administrator shall submit the annual report required by this subsection to the department, the authority and the joint standing committee of the Legislature having jurisdiction over labor matters.

§850-F. Premiums

1. Authorized. Payroll premiums must be paid in order to finance the payment of family leave benefits and medical leave benefits under this subchapter and administration of the program.

2. Employer to remit employer contribution reports and premiums. Beginning January 1, 2025, for each employee, an employer shall remit employer contribution reports and premiums in the form and manner determined by the administrator. Employer contribution reports and premiums must be remitted quarterly.

3. Premium amount. The following provisions govern the premium amount.

A. Beginning January 1, 2025, the premium amount may not be more than a combined rate of 1.0% of wages.

B. Annually, for the 2028 calendar year and each calendar year thereafter, not later than October 1st, the department shall set the premium for the coming calendar year based on a percentage of employee wages and at the rate necessary to obtain a total amount of premium contributions in order to maintain the solvency of the fund at a level of at least the annualized amount described in section 850-E, subsection 3, plus an amount equal to 100% of the cost of administration of the payment of those benefits during the previous fiscal year, less the amount of net assets remaining in the fund as of June 30th of the current calendar year. If, for the 2028 calendar year or any calendar year thereafter, the premium rate adjustment pursuant to this subsection is an increase and results in the difference between the rate of the upcoming calendar year and the current calendar year equaling more than 0.1% of wages paid, the department shall submit a report regarding fund solvency and factors contributing to rate setting to the joint standing committee of the Legislature having jurisdiction over labor matters.

4. Self-employed individuals. The following provisions govern self-employed individuals.

A. A self-employed individual who elects coverage under section 850-G shall pay up to 50% of the premium required by subsection 3 on that individual's income from self-employment.

B. A self-employed individual who elects coverage under section 850-G shall remit the premium amount required by this subsection directly to the administrator, in the form and manner required by the commissioner by rule.

5. Employers. The following provisions govern employers.

A. An employer with 15 or more employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 100% of the combined premium contribution required by subsection 3 to the fund.

B. An employer with fewer than 15 employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 50% of the premium required by subsection 3 to the fund.

6. Limit on wages to determine premiums. Premiums are required up to the contribution and benefit base limit established annually by the federal Social Security Administration for purposes of the federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 United States Code, Section 430.

7. Use. The premiums collected under this subchapter must be used exclusively for the payment of family leave benefits and medical leave benefits and the costs of administration of the program.

8. Approved private plan. An employer with an approved private plan under section 850-H is not required to remit premiums under this section to the fund.

9. Failure or refusal to make premium contributions. An employer that fails or refuses to make premium contributions as required in this section must be assessed 1.0% of its total annual payroll for each year it so failed to comply in addition to any amounts previously owed, or fraction thereof, in addition to the total amount of family leave benefits and medical leave benefits paid to covered individuals for whom it failed to make premium contributions. The rate of assessment imposed by this subsection must be adjusted annually consistent with subsection 3, paragraph B.

10. Self-employed individual who elects coverage and fails or refuses to make premium contributions. A self-employed individual who elects coverage under section 850-G and who fails or refuses to make premium contributions for at least 2 quarters as required in this section may be disqualified from family leave benefits and medical leave benefits. The self-employed individual's disqualification terminates upon:

A. The self-employed individual's remittance of all previously owed premium contributions as required in this section; and

B. Following remittance as required by paragraph A, the self-employed individual's remittance of premium contributions as required in this section for an additional number of quarters equivalent to the number of quarters for which the self-employed individual failed or refused to make premium contributions.

§850-G. Elective coverage

1. Self-employed individual. A self-employed individual, including an independent contractor, sole proprietor or partner, may elect coverage under this subchapter for an initial period of not less than 3 years. The self-employed individual shall file a notice of election in writing with the commissioner, as required by the department. The election becomes effective on the date of filing the notice. As a condition of election, the self-employed individual must agree to supply any information concerning wages that the department considers necessary.

2. Withdrawal from coverage. A self-employed individual who has elected coverage may withdraw from coverage within 30 days after the end of the 3-year period of coverage, or at such other times as the commissioner may prescribe by rule, by filing written notice with the commissioner. A withdrawal may not take effect sooner than 30 days after filing the notice.

3. Individual no longer self-employed. An individual who has elected coverage under this section and is no longer a self-employed individual must be excused from that individual's obligations under this section, as the department prescribes by rule.

4. Tribal government. A tribal government may elect to be covered under this subchapter, or to terminate coverage, in the same manner as provided in this section, subject to such procedures as the department may require by rule.

§850-H. Substitution of private plans

1. Application for approval of private plan. An employer may apply to the department for approval to meet its obligations under this subchapter through a private plan. In order to be approved, a private plan must confer rights, protections and benefits substantially equivalent to those provided to employees under this subchapter, including, but not limited to:

A. Allowing family leave and medical leave to be taken for all purposes specified in section 850-B, subsections 2 and 3;

B. Providing family leave benefits and medical leave benefits to a covered individual for a maximum number of weeks substantially equivalent to the maximum number of weeks required in section 850-B, subsection 4 in a benefit year;

C. Providing a wage replacement rate for all family leave benefits and medical leave benefits that is substantially equivalent to the amount required by section 850-C, subsection 2;

D. Providing a maximum weekly benefit for all family leave benefits and medical leave benefits that is substantially equivalent to the amount specified in section 850-C, subsection 3;

E. Allowing a covered individual to take intermittent leave as authorized by section 850-B, subsection 5;

F. Imposing no additional conditions or restrictions on family leave benefits and medical leave benefits, or on family leave and medical leave taken in connection with those benefits, beyond those explicitly authorized by this subchapter or rules adopted pursuant to this subchapter;

G. Allowing any employee covered under the private plan who is eligible for family leave benefits and medical leave benefits under this subchapter to receive benefits and take family leave and medical leave under the private plan; and

H. Providing that the cost to employees covered by the private plan may not be greater than the cost charged to employees under section 850-F.

2. Additional requirements. In order to be approved as meeting an employer's obligations under this subchapter, a private plan must also comply with the following provisions:

A. If the private plan is in the form of self-insurance, the employer must furnish a bond to the State with a surety company authorized to transact business in the State, in the form, amount and manner required by the department;

B. The plan must provide coverage for all employees of the employer throughout the employee's period of employment with that employer; and

C. If the plan is in the form of a 3rd party that provides for insurance, the forms of the policy must be issued by an insurer authorized to do business in the State.

3. Withdrawal of approval. The department shall withdraw approval for a private plan granted under subsection 1 when terms or conditions of the plan have been violated. Causes for plan termination include, but are not limited to, the following:

A. Failure to pay family leave benefits or medical leave benefits;

B. Failure to pay family leave benefits or medical leave benefits timely and in a manner consistent with this subchapter;

C. Failure to maintain an adequate surety bond under subsection 2, paragraph A;

D. Misuse of private plan money;

E. Failure to submit reports or comply with other requirements as required by the commissioner by rule; or

F. Failure to comply with this subchapter or the rules adopted pursuant to this subchapter.

4. Rights retained. An employee covered by a private plan approved under this section retains all applicable rights otherwise provided under federal and state law.

5. Appeal. A contested determination or denial of family leave benefits or medical leave benefits by a private plan is subject to appeal before the department and a court of competent jurisdiction as provided in section 850-K.

6. Violations. Employers offering private plans that violate this section are subject to a fine of \$100 per violation. The department shall transfer any fines collected pursuant to this subsection to the fund. The department by rule shall establish a process for the assessment and appeal of fines under this subsection.

7. Cost of administration. The department shall annually determine the total amount expended by the department for costs arising out of the administration of private plans. An employer offering a private plan pursuant to this section shall reimburse the department for the costs arising out of the private plan in the amount, form and manner determined by the department by rule. The department shall transfer payments received pursuant to this subsection to the fund.

8. Rules. The department shall adopt rules in accordance with section 850-Q regarding the determination of what constitutes a private plan that may be approved under this section.

§850-I. Notice

1. Posted notice. An employer shall post in a conspicuous place on each of its premises a workplace notice provided or approved by the department providing notice of benefits available under this subchapter. The department shall issue the workplace notice in English, Spanish, French, Somali and Portuguese and any other language that is the primary language of at least 2,000 residents of the State. The employer shall post the workplace notice in English and each language other than English that is the primary language of 3 or more employees of that workplace, if such notice is available from the department.

2. Written notice. An employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment the following written information provided or approved by the department in the employee's primary language:

A. An explanation of the availability of family leave benefits and medical leave benefits provided under this subchapter, including rights to reinstatement of employment and continuation of health insurance;

B. The employee's contribution amount and obligations under this subchapter;

- C. The name and mailing address of the employer;
- D. The identification number assigned to the employer by the administrator;
- E. Instructions on how to file a claim for family leave benefits or medical leave benefits;
- F. The mailing address, e-mail address and telephone number of the administrator; and
- G. Any other information deemed necessary by the administrator.

3. Failure to comply. An employer that fails to comply with this section commits a civil violation for which must be assessed, for a first violation, a civil penalty of \$50 per employee and \$150 per employee for each subsequent violation. The employer has the burden of demonstrating compliance with this section.

§850-J. Employer requirements; return to work from family or medical leave

1. Restoration to position upon return to work. Except for an employee who has not been employed for at least 120 days, an employee who exercises the right to family leave or medical leave under this subchapter is entitled, upon return from that leave, to be restored by the employer to the position held by the employee when the leave commenced or to be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

2. Retaliation prohibited. An employer may not discharge, fire, suspend, expel or discipline, through the application of attendance policies or otherwise, or threaten or in any manner discriminate against an employee for the exercise of any right to which the employee is entitled under this subchapter or with the purpose of interfering with the exercise of any right to which the employee is entitled under this subchapter.

3. Enforcement; violation. The department shall take enforcement action against an employer for a violation of this section.

§850-K. Appeals

1. System for appeals. The department shall establish a system for appeals in the case of a denial of family leave benefits or medical leave benefits. In establishing the system, the department may use any procedures or appeals mechanisms established under chapter 13.

2. Judicial review. Judicial review of any decision with respect to family leave benefits or medical leave benefits must be permitted in a court of competent jurisdiction after a party aggrieved by the decision has exhausted all administrative remedies established by the department.

3. Information related to appeals; confidentiality. The department shall implement procedures to ensure confidentiality, to the maximum extent permitted by applicable laws, of all information related to any claims filed or appeals made under this subchapter.

§850-L. Disqualification of covered individual

1. False statement; misrepresentation. A covered individual is disqualified from family leave benefits and medical leave benefits for one year if the individual is determined by the department to have willfully made a false statement or misrepresentation regarding a material fact, or willfully failed to report a material fact, to obtain benefits under this subchapter.

2. Erroneous payment. If family leave benefits or medical leave benefits are paid erroneously or as the result of willful misrepresentation or a claim for family leave benefits or medical leave benefits is rejected after benefits are paid, the department may seek repayment of benefits from the recipient. The department shall exercise discretion to waive, in whole or in part, the amount of any such payments if the recovery would be against equity and good conscience.

§850-M. Tax treatment

1. Federal tax. If the federal Internal Revenue Service determines that family leave benefits or medical leave benefits under this subchapter are subject to federal income tax, the department shall advise an individual filing a new claim for family leave benefits or medical leave benefits, at the time the individual files the claim, that:

A. The federal Internal Revenue Service has determined that benefits are subject to federal income tax;

B. Requirements exist pertaining to estimated tax payments;

C. The individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits in the amount specified in the United States Internal Revenue Code of 1986; and

D. The individual is permitted to change a previously elected withholding status.

2. Conformity to Internal Revenue Service procedures. The department shall follow all procedures specified by the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

3. Rules. The department, in consultation with the Department of Administrative and Financial Services, Bureau of Revenue Services, shall adopt rules regarding federal and state tax treatment and related procedures regarding family leave benefits and medical leave benefits and the sharing of necessary information between the department and the Bureau of Revenue Services.

§850-N. Data collection and technology

The administrator shall use state data collection procedures and technology to the extent possible to integrate the program with existing state policies.

§850-O. Paid Family and Medical Leave Benefits Authority

The Paid Family and Medical Leave Benefits Authority, established in Title 5, section 12004-I, subsection 54-F, shall advise the administrator on the implementation and administration of the program in accordance with this subchapter.

1. Membership; appointments. The authority consists of the following 15 members:

A. Eleven members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over labor matters and to confirmation by the Senate:

(1) One member with expertise in issues affecting labor and independent contractors;

(2) One employer with more than 50 employees;

(3) One member with expertise in issues related to paid family leave benefits and paid medical leave benefits;

(4) One employer with 50 or fewer employees;

(5) One member who is self-employed;

(6) One member who is an employer in the hospitality industry;

(7) One member with expertise in treating issues affecting maternity and postpartum care;

(8) One member with expertise in agriculture, a seasonal workforce or a heritage industry;

(9) One member with expertise in issues affecting elder care;

(10) One member with expertise in child care and early childhood development; and

(11) One member with expertise in employment law representing employee interests;

B. The commissioner or the commissioner's designee;

C. The controller or the controller's designee;

D. The Commissioner of Professional and Financial Regulation or the commissioner's designee; and

E. One employee of the Department of Health and Human Services with expertise in foster care and adoption designated by the commissioner.

2. Terms. Members of the authority serve 3-year terms. When a vacancy occurs, the Governor shall fill the vacancy by appointing a member from the same category as the member who vacated the authority, and that new member continues to serve for the remainder of the term.

3. Chair; election of board officers. The members of the authority shall annually elect one of its members as chair and one of its members as vice-chair. The chair is responsible for scheduling at least 4 authority meetings a year and for preparing the agenda for each meeting.

4. Quorum. A majority of the authority members constitutes a quorum.

5. Staffing of authority. The department shall provide administrative and staff support to the authority, and staff shall attend all meetings of the authority.

6. Meetings. The authority shall meet at least quarterly each year. Additional meetings may be held as necessary to conduct the business of the authority. At least once per year, the authority and the department shall convene a meeting to solicit public comment on any issues related to paid family leave benefits and paid medical leave benefits and on the experiences of employers and employees with the program.

7. Duties. The authority:

A. Shall monitor the program on an ongoing basis to ensure the program's efficacy and performance, including its fiscal accountability and its financial solvency;

B. Owes a fiduciary duty to the program and shall monitor and issue recommendations regarding the program's financial solvency;

C. Shall propose changes to or advise the administrator on the laws, rules, administrator policies and other significant issues related to paid family leave benefits and paid medical leave benefits;

D. Shall provide policy oversight and recommendations on the administration and structure of the program;

E. Shall review and make recommendations to the commissioner related to the relationship between the administrator and the employers and employees participating in the program and any education and outreach needs of the program;

F. Shall solicit and consider public comment on the administration of the program;

G. Shall consider and make recommendations on how to support employers with implementation of the program and maintain stability of the labor workforce for employers;

H. May review all contracts regarding the program, including its administration and financial solvency; and

I. May recommend suggested legislation to the joint standing committee of the Legislature having jurisdiction over labor matters. The joint standing committee of the Legislature having jurisdiction over labor matters may submit a bill to any regular or special session based on legislation suggested in accordance with this paragraph.

§850-P. Implementation

Contributions must begin January 1, 2025 to provide funds for the fund. The administrator shall begin processing claims on May 1, 2026, except that, by February 1, 2026, the authority shall conduct an actuarial study to ensure the solvency of the fund in order to begin processing claims on May 1st. If additional contributions are required based on the results of the actuarial study, the authority, through a majority vote, may require a one-time suspension of claims payments of no longer than 3 months.

The administrator shall establish reasonable procedures and forms for filing claims for benefits under this subchapter and shall specify what supporting documentation is necessary to support a claim for benefits, including documentation required from a health care provider for proof of a serious health condition.

§850-Q. Rulemaking

The department shall adopt rules as necessary to implement this subchapter. Initial rules necessary for implementation of this subchapter must be adopted by the department by January 1, 2025. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§850-R. Effect of existing employer benefits for family and medical leave

This subchapter may not be construed to prohibit an employee entitled to receive benefits for family leave or medical leave under a collective bargaining agreement or employer policy from also receiving benefits under this subchapter as long as the employee is otherwise eligible for benefits under this subchapter.

SECTION 3.

Current Environmental Issues Impacting School Business

Environmental Liability and School Business

Presented by:
Joanna Tourangeau

Maine School Business Officials 10th Annual Law Seminar
Friday, November 3, 2023

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

1

NOTES:

Environmental Issues Addressed in this Segment

- Property Acquisitions
 - Buying, leasing, controlling
- Construction Projects
 - Greenfields, brownfields, renovations
- Operations
 - Contracts, maintenance, special issues

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

2

NOTES:

Environmental Issues in Property Acquisitions

- Schools own and operate on land just like any other landowner/lessee
- That means you incur liability for contamination just like any other owner/operator
- In a nutshell, federal and state versions of the superfund and waste management statutes impose strict joint and several liability on owners and operators (that's your school) of contaminated property

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

3

NOTES:

Protect Yourself

- Before taking any interest in property, get a proper Phase I Environmental Site Assessment
 - No RECs- go ahead
 - RECs- lets discuss
 - Occasionally makes sense to discuss in advance to see if add-ons like PFAs for former beneficial reuse sites
- If it includes recognized environmental conditions, consider whether to obtain protection via Maine's Voluntary Response Action Program (VRAP)

NOTES:

How to VRAP

- Apply to DEP with form and Phase I ESA
- Fee is 1% of assessed value of property capped at \$15,000
- Protects applicant, successors/assigns, lenders, fiduciaries and financing entities
- If no work required, obtain No Further Action Assurance letter
- If work required, delineate work in No Action Assurance letter and then clear upon Certification of Completion

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

5

NOTES:

Scope of Protection

- Phase I ESA documents what's there for protections as bona fide prospective purchaser/ all appropriate inquiry at federal level (EPA)
 - VRAP protects against liability to the State for RECs
- You need both
 - You need this protection even for greenfields

NOTES:

Construction Projects

- You've protected yourself against liability for existing property contamination and now you're ready to go
- Know your contractors
 - Address disposal issues
 - Know your materials
- Know your permits

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

7

NOTES:

Renovations

- Strict joint and several liability for disposal
 - PCBs
 - PFAs
 - Lead, asbestos, indoor air quality
- Be careful of your contracts here, too

NOTES:

Operational Issues

- Contracts
 - Waste disposal
 - Septage
 - Universal/hazardous waste
 - Solid waste
 - Maintenance
 - Building
 - Grounds
- Community Drinking Water Suppliers
 - Testing/filtration
 - Location, location, location
 - PFAs settlements
- Discharge of wastewater

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

9

NOTES:

Thank You!

Maine School Business Officials 10th Annual Law Seminar
Friday, November 3, 2023

800.727.1941 | dwmlaw.com

Copyright 2023 Drummond Woodsum. All rights expressly reserved.

10

NOTES:

SECTION 4.

ACA Reporting Review –

The IRS now requires employers' Form 1095-C, ACA Reports, to be mistake free or else face significant penalties

ACA Reporting and Other New Developments

Christopher G. Stevenson

I. ACA Update:

- a. IRS Enforcement: ACA Enforcement Continues (1095-C Reporting; Play or Pay Penalties)
- b. Accuracy Penalties: Form 1095-C Must Now Be Prepared Correctly (and Submitted Timely) Or Possible **\$580 per Employee** Penalty
- c. Sledgehammer Penalty: \$247.50 per month (for 2024, indexed in future years for inflation), per full-time employee, in excess of 30 full-time employees.
- d. Affordability Penalty: \$371.67 per month (for 2024, indexed in future years for inflation)
- e. Rate of Pay Safe Harbor 2023: 9.12% Monthly Rate of Pay

II. Brief Recap of the “Play or Pay Rules” and the Look-Back Approach

A. Employer Shared Responsibility Penalties (“Play or Pay Penalties”) Overview:

The employer shared responsibility penalties, sometimes called the “Play or Pay Penalties,” consist of two separate penalties: (1) the so-called “Sledgehammer Penalty” and (2) the so-called “Affordability/Minimum Value Penalty.” The Play or Pay Penalties (and corresponding 1095-C and 1094-C reporting requirements) only apply to school districts that are considered a “large employer” for the year in question. Stated another way, if a school district is not considered a “large employer” for the year in question, it has no Play or Pay obligations nor IRS Form 1095-C reporting obligation for that year. A school district will be considered a “large employer” for a particular calendar year if during the preceding calendar year the school district employed a *monthly average* of 50 or more “full-time equivalent” employees (“FTE”), with those employees regularly working 30 hours a week or more (or 130 hours or more in a given month) counting as 1 FTE and part-time employees counting pro-rata based upon a 120 hour month. For example, for 2023 a district will be considered a “large employer” if during 2022 it had a monthly average of 50 or more FTEs. The details governing these rules are exceedingly complex and school districts that think that they may be close to the cut-off for triggering large employer status should consult with an experienced advisor.

School districts that are large employers and therefore subject to these Play or Pay rules must try to avoid both the Sledgehammer Penalty and the Affordability Penalty. In order to avoid the Sledgehammer Penalty, the a school district that is a large employer will have to offer at least 95% of its “full-time” employees the opportunity to purchase health insurance for themselves and their dependents (dependents include children up to the age of 26 but not spouses) under the employer’s health plan. The employer does not have to contribute anything to the cost of coverage in order to avoid the Sledgehammer Penalty, the employer must simply make sure that each “full-time employee” has the ability to purchase health insurance for himself/herself and his/her dependents under the employer’s health plan. However, if the employer does not offer health insurance to the requisite percentage of full-time employees (95%), the employer is subject to the Sledgehammer Penalty of \$247.50 per month (for 2024, indexed in future years for inflation), per full-time employee, in excess of 30 full-time employees. This means if an employer had 70 full-time employees and fails to offer 6 full-time employees requisite coverage, and one or more of these employees receives subsidized coverage on the Health Insurance Exchange, the penalty on a monthly basis is \$9,900 (\$247.50 x 40 full-time employees in excess of 30).

In order to avoid the Affordability/Minimum Value Penalty, the school district that is a large employer has to make sure that each employee consider full-time is offered coverage that is “affordable” and that provides “minimum value.” If an employer fails to offer affordable health insurance that provides minimum value, the penalty on the employer is \$371.67 per month (for 2024, indexed in future years for inflation), per full-time employee who meets the following: (i) is a full-time employee for the month in question, (ii) was offered unaffordable health insurance or insurance that did not provide minimum value by the employer, (iii) purchases health insurance on Health Insurance Exchange and (iv) qualifies for a federal subsidy to do so (must have income between 100% and 400% of the Federal poverty line).

Health insurance plan will be considered to provide “minimum value” and avoid triggering the penalty if the plan’s share of the “total allowed costs of benefits provided under the plan” is at least 60% of such costs. There are complicated IRS-approved formulas health insurance issuers can use to measure whether or not their plans provide minimum value. The formula looks at the cost sharing required under the health plan (co-pays, co-insurance on hospital stays, etc) in order to perform the calculation. Most insurance plans provide minimum value but employers should verify this with their health coverage providers. MEA in the past has verified that all of their plans provide minimum value.

Regarding “affordability,” under the ACA, health insurance will be considered “unaffordable” if the employee is required to pay more than 9.5%

(adjusted from time-to-time for inflation) of his “household income” for self-only coverage. This creates a problem for employers because most employers have no way of easily determining each employee’s household income, which would include earnings of the employee’s spouse and dependents, as well as other income sources. However, there is a safe harbor in the regulations stating health insurance will be deemed to be affordable, and the employer will not be subject to penalty, if the full-time employee is not made to pay more than 9.12% (for 2023, indexed in future years for inflation) of his/her *monthly rate of pay* for his/her share of cheapest self-only coverage offered to the employee. Monthly rate of pay for a salaried employee is total salary divided by 12. Monthly rate of pay for an hourly employee is hourly rate of pay multiplied by 130 hours. For example, under the safe harbor, health insurance coverage would be deemed “affordable” for a full-time employee earning \$20 per hour if he/she was not made to pay more than \$237.12/ month (\$20 x 130 hours x 9.12%) for his/her share of the cheapest single coverage offered by the employer, with the employer responsible for the remainder of the cost of coverage. There are other permissible safe harbor approaches for measuring affordability listed in the ACA regulations but we find that the rate of pay safe harbor is usually the best choices for most schools.

B. Full-Time Employees and the optional “Look Back Approach”:

To avoid the Play or Pay penalties, a large employer only has to offer health insurance coverage to “full-time employees.” Generally, any employee who provides 30 paid hours of service per week (whether worked or not) for the month in question or provides 130 total paid hours in a given month is considered full-time for ACA purposes for the month. A paid hour of service includes paid leave (paid sick, paid vacation, etc). For example, an hourly employee that had 130 paid hours of service in a given month would generally be considered to be a full-time employee for the month and would have to be offered health insurance that was “affordable” and provided “minimum value” or else risk triggering either the “Sledgehammer Penalty” or “Affordability/Minimum Value” Penalty, as described below. This often creates problems for employers with respect to employees who have variable schedules that cause them to cross the 130 hour mark for a handful of months during the year (such as substitute teachers). We’ll refer to employees in this situation as “Variable Hour Employees”. As a practical matter, employers cannot offer coverage for the employee for only those months that he/she is considered full-time. However, under the Treasury Regulations, the employer has the option of identifying what employees are considered full-time for the entire upcoming health plan year for ACA purposes by looking at the average hours worked during *a prior* 12 month period under the so-called “look-back approach.” For large employers that choose the utilize the optional look-back approach, the employer

generally chooses a period of 12 consecutive months that ends no earlier than 90 days prior to the upcoming year to which it applies and measures each employee's average hours of service during the 12 month look-back period. Also, the school district must remove the summer months from the look-back calculation for employees in positions that do not work during the summer (substitute teachers, Ed Techs, etc).

For example, for the health plan year beginning July 1, 2023, the school district may choose a 12-month look-back period from May 1, 2022 – April 30, 2023. For employees in academic year positions that do not work in the summer, the school district would then remove the summer months. In this example, if we assume the 2022 summer break was 2 months, the school district would remove the months of July and August of 2022 from the look-back calculation for Ed Techs, Substitute Teachers and other academic year employees. Then, the school district would count the total number of paid hours of service each hourly employee had over the 10 month look-back period that runs from May 1, 2022 – April 30, 2023 (with July and August of 2022 excluded) and take the total paid hours of service for the employee and divide by 10 to get the monthly average. If an employee averages 130 hours or more per month during this 12 month look-back period, he/she must be treated as full-time employee for ACA purposes for the entire upcoming health plan year and offered health insurance that is affordable and provides minimum value or else possibly trigger an ACA penalty. Note that even if the employee is considered full-time for ACA purposes, in some cases it may be cheaper to pay the Affordability Penalty of \$371.67 per month rather than extend paid health benefits to the employee. School districts in this situation should consult with experienced advisors. If the employee averages less than 130 hours per month during the look-back period, he/she can be treated as part-time for the entire upcoming health plan year, irrespective of the actual hours worked in upcoming year, and be excluded from health insurance coverage without risking a Play or Pay penalty (of course, the employer could still choose to offer this individual health insurance coverage).

For example, if a substitute teacher had 1,100 paid hours of service from May 1, 2022 – April 30, 2023 based upon the above look-back period, he would average 110 per month during the look-back period (1,100 paid hours/10 months with July and August removed). This means that the substitute teacher could be considered a part-time employee for the entire upcoming school year July 1, 2023 – June 30, 2024 in this example and he would not trigger any ACA Play or Pay penalty in the coming year, even if he/she has 130 hours or more of paid service in one or more months in the upcoming year and is offered no insurance by the employer. He also would not trigger a Form 1095-C reporting obligation for any month from July 1, 2023 – June 30, 2024 because he would be

considered part-time during these months for ACA reporting purpose.

This technique is especially helpful for school districts with large numbers of Variable Hour Employees. However, school districts that use the look-back approach may not use it solely for variable hour employees. Generally, if a school wants to use it for one employee paid on an hourly basis, the employer must use it for all hourly employees (although, there are some limited exceptions to this requirement). Also, the rules for administering the look-back rules are exceedingly compliance and employers utilizing a look-back approach should work closely with experienced advisors.

III. Cash in Lieu of Health Insurance

A. The New General Rule for Cash in Lieu:

The IRS issued proposed regulations that include new requirements under the ACA for school districts that are “large employers” and offer cash in lieu of health insurance. Under the proposed regulations that have yet to become effective, except as provided below, cash in lieu must be included in the employee’s cost of coverage for both the “affordability” calculation and 1095-C reporting. In other words, when measuring the employee’s cost of coverage for purposes of measuring “affordability,” the new regulations will likely require the district to count both: (a) the actual out-of-pocket amount the employee would have to pay for the coverage and (b) the amount of cash in lieu he/she has to forgo in order to elect coverage through the District.

For example, if the teacher’s contract calls for her to pay \$100/month for the cheapest single coverage available to her, but also provides that she can receive \$42.67/month of cash in lieu (or \$500/12) if she waives coverage, the regulations generally provide that the employee’s cost of coverage for ACA compliance purposes would be \$142.67 (the \$100 she would have to pay to get the coverage and the \$42.67 in cash in lieu she would have to give up in order to elect coverage). If this \$142.67/month is not “affordable” under the ACA rules, the district would face a \$371.67/month (indexed in future years for inflation) Affordability Penalty if the employee waives coverage and purchases subsidized coverage on the Exchange (in addition to having to pay the employee cash in lieu). However, the Affordability Penalty is only triggered by a large employer if: (1) the coverage offered to the full-time employee is not “affordable” and (2) the employee is on the Exchange receiving coverage subsidized by the IRS. This means if the district requires the employee to have coverage through a spouse’s employer in order to receive cash in lieu from the District, the employee receiving cash in lieu will not be on the Exchange so no ACA penalty would be triggered, even if the cash in lieu causes the health insurance offered to the employee to

be deemed “unaffordable.” However, the District would generally be required to include the cash in lieu on line 15 of the 1095-C (unless the exception for qualified cash in lieu described below is met) when listing the employee’s cost of coverage. This means, in the previous example, the teacher’s cost of coverage listed on line 15 of the 1095-C would be \$142.67/month, not \$100 per month.

B. The Exception for Qualified, Conditional Cash in Lieu:

Notwithstanding the forgoing general rule, cash in lieu will not have to be included in the Affordability Calculation, nor reported on Form 1095-C, if the employee’s right to receive the cash in lieu is conditioned upon the following:

- 1) The employee declining the district’s coverage,
- 2) The employee providing the district reasonable evidence (which would include an employee’s written attestation provided to the district during open enrollment) that the employee and all other individuals for whom the employee reasonably expects to claim a personal tax exemption for the taxable year(s) (the employee’s tax family) that begin or end in or with the employer’s health plan year to which the cash in lieu payment applies, have or will have minimum essential coverage (other than coverage in the individual market) during the period of coverage to which the cash in lieu payment applies; and
- 3) The arrangement provides that any cash in lieu payment will not be made if the employer knows or has reason to know that the employee or any other member of the employee’s expected tax family does not have (or will not have) the required alternative coverage.

For example, if cash in lieu was offered under a collective bargaining agreement subject provided the employee satisfy conditions 1-3 above such that the exception was met, the district offering the cash in lieu would not have to include the amount of cash in lieu in the employee’s cost of coverage for purposes of measuring whether or not its “affordable.” Also, the district would not have to include the cash in lieu in the employee’s cost of coverage reported on line 15 of Form 1095-C. On the other hand, if the District offers cash in lieu and requires an employee to certify that he or she has coverage under another employer’s group health plan, but does not meet the remainder of the requirements above (for example, there is no certification regarding the coverage for other members of the employee’s tax family), the employer would still have to include the cash in lieu in the employee’s cost of coverage reported on line 15 of Form 1095-C. This could have the effect of making the coverage offered “unaffordable,” however if the employee has coverage under another employer’s group health plan and is not on the

Exchange, the unaffordable coverage would not trigger an “Affordability Penalty, which only apply when the coverage offered to the full-time employee is unaffordable AND the employee is on the Exchange receiving subsidized insurance.

IV. ACA Reporting

School districts that are “large employers,” as defined above, are required to submit reports to the IRS and to all full-time employees, describing whether or not each full-time employee had access to affordable, qualifying health insurance coverage under the employer’s health plan. The reporting is accomplished on IRS Form 1095-C and requires employers to certify whether the employer offered each full-time employee and their dependents the opportunity to enroll in minimum essential coverage under an employer sponsored plan by calendar month. The purpose of Form 1095-C Reporting is to provide the IRS with information by which to enforce the Play or Pay rules, described above (e.g. information about whether the employer offered each full-time employee affordable health insurance providing minimum value) and to provide employees with information by which to determine eligibility for premium assistance tax credits on their individual income tax returns (individuals are only eligible for premium assistance tax credits if they do not have an offer of affordable, qualifying health insurance from their employers).

Under these rules, districts that are “large employers” are required to furnish a copy of IRS Form 1095-C to each full-time employee by January 31st following year-end (e.g. the 2023 IRS Form 1095-C will be due to employees January 31, 2024). Employers are required to submit copies of the form to the IRS by February 28th following year-end (or March 31st if filing electronically).

The information provided on Form 1095-C includes:

- 1) The name and Employer Identification Number (EIN) of the applicable large employer, along with the contact information of the contact person regarding the plan (may be an employee or agent of the employer);
- 2) A certification as to whether the large employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan by calendar month;
- 3) The number of full-time employees for each calendar month of the calendar year;
- 4) For each full-time employees the months during the calendar year for which minimum essential coverage was available under the plan;

- 5) For each full-time employee, the employee's share of the lowest cost monthly premium by calendar month for the lowest cost option self-only coverage option offered in plan offering minimum value (including cash in lieu, as provided above); and
- 6) For each full-time employee, the name, address, and taxpayer identification number of the employee (but not the dependent or spouse) and the months (if any) during which the full-time employee (or any dependent(s)) were covered under the eligible employer-sponsored plan.

Noteworthy details regarding 1095-C Reporting are as follows:

- 1) Only "Large Employers": 1095-C Reporting is only required for employers offering fully insured health plans that are "large employers" for the year in question ("large employer" status is discussed above). If a school district offers a fully insured health plan but is not a large employer, it would not have to file Form 1095-C's with respect to its health insurance plan.
- 2) No Reporting for Part-Time Employees: A Form 1095-C is not required to be furnished to an employee that is considered part-time for each month during the reporting period. For example, if a substitute teacher had less than 130 paid hours of service each month during 2023, the district would not have to prepare a Form 1095-C for the substitute for 2023.
- 3) Reporting on 1095-C Required if Full-Time for One or More Months: A 1095-C is required to be furnished to an employee that is considered full-time for one month or more during the reporting period. For example, if a substitute teacher has 130 paid hours of service for one month during 2023, the district would have to prepare a Form 1095-C for the substitute for 2023 (unless possibly the district operated under the Look-Back approach as described above).
- 4) Delivery: Electronic delivery is permitted provided rules similar to the rules for electronic delivery of an employee's Form W-2 are met and the employee consents to electronic delivery. Also, the Form W-2 and Form 1095-C may be combined in 1 mailing to the employee.
- 5) Electronic Filing: Electronic filing with the IRS is required if the reporting employer files 250 or more forms.
- 6) Third Party Reporting Permitted: Employers are permitted to arrange for third parties to prepare the form but the employer will still be required to file the authoritative transmittal form. An agent

may be listed as the contact person on Form 1095-C. However, the employer would still be ultimately responsible for any failure to file, or related IRS penalties.

- 7) Truncated TIN: Form 1095-C being furnished to the employee may identify the employee using a truncated TIN rather than a social security number.

V. ACA Reporting Handouts

- a. Form 1095-C, Part I: Employee and Employer Contact information
- b. Form 1095-C, Part II: Employee Offer and Coverage
 - **Line 14** – measures offer of “minimum essential coverage” and minimum value”
 - a. Employer-sponsored health ins. – “minimum essential coverage”
 - b. All MEA Plans = “minimum value”
 - c. “1E” - offered coverage to employee, spouse, dependents
 - d. “1H” – no coverage offered (part-time employee, not employee for month)
 - **Line 15** – allows IRS to measure “affordability”
 - a. Complete only if offered coverage to employee;
 - b. Most affordable single coverage offered (e.g. cheapest);
 - c. Annual employee cost /12, per instructions (“\$0.00” if school pays 100%); include cash in lieu unless qualified, conditional CIL.
 - **Line 16** - communicate why “affordability penalty” does not apply to you
 - a. If enrolled, always enter “2C”***
 - b. “2H” – rate of pay safe harbor; “2A” not an employee; “2B” part-time or terminates mid-month; “2D” limited non-assessment period (e.g. waiting period)
- c. Form 1095-C, Part III:
 - **Fully-Insured Health Plans:** Schools with MEA Plans (or other fully insured plans) Skip
 - **Self-Insured Health Plans:**
 - complete for any employee enrolled in the coverage (full or part-time)
 - List all covered dependents/spouse

d. Hypothetical School Example:

School District with:

- 1) Full-Time Employees (59 through August, 60 from Sept – December)
 - 40 teachers (one teacher is new and starts 8/28, health insurance 9/1),
 - 10 year-round administrators,
 - 10 Ed Techs.
- 2) 20 Part-time employees:
 - 10 substitute teachers who all work each month except July and August. They are paid for a 6.5 hour day but only 2 substitutes hit the 130 hour mark in any month during 2023 (May and October).
 - 10 coaches are paid a stipend; 5 coaches work March – June and 5 work Sept – December. No coaches work January, February, July, August.
 - The school does not currently use a “look-back” approach (but is considering switching).

District Health Benefits for the Full-Time Employees Only:

- 1) Standard Plan (80% single, 50% family); Choice Plus (90% single, 55% family).

Question: What’s the cheapest single coverage? A: Choice Plus

- Assume: total premium for Choice Plus single coverage is \$7,200 for year ending 6/30/23 and \$7,500 for year ending 6/30/24. Employee contribution is 10% or \$720 (or \$60/month) for yr ending 6/30/23 and \$750 (or \$62.50/month) for 6/30/24.
- Assume: Coverage is “affordable” under Rate of Pay Safe Harbor (\$60/\$62.50 is less than 9.12% of each full-time employee’s monthly rate of pay).

Handout Examples

Coaches: Part-Time employees (no 1095-C)

Ms. Administrator: 22/23 – Family Choice Plus, 23/24 – Family Standard

Mr. Long-Term Teacher: Waived coverage 22/23; Elected single Standard 23/24

Ms. New-Teacher: New to the District, first day 8/28, enrolled in Standard family effective 9/1

Mr. Ed Tech: Declined coverage both years (but was a f.t. employee)

Mr. Regular-Sub: Full-time for May and October but offered no coverage (no look-back).

Mr. Retiring Teacher: Family choice Plus through June 30, 2023, MainePERS coverage after that

Form 1094-C

Department of the Treasury Internal Revenue Service

Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns

Go to www.irs.gov/Form1094C for instructions and the latest information.

CORRECTED

OMB No. 1545-2251

2023

Part I Applicable Large Employer Member (ALE Member)

1 Name of ALE Member (Employer) [School District In as on W-2]
2 Employer identification number (EIN)
3 Street address (including room or suite no.)
4 City or town
5 State or province
6 Country and ZIP or foreign postal code
7 Name of person to contact
8 Contact telephone number
9 Name of Designated Government Entity (only if applicable)
10 Employer identification number (EIN)
11 Street address (including room or suite no.)
12 City or town
13 State or province
14 Country and ZIP or foreign postal code
15 Name of person to contact
16 Contact telephone number

For Official Use Only



17 Reserved

18 Total number of Forms 1095-C submitted with this transmittal 62

19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions [X]

Part II ALE Member Information

20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member 62

21 Is ALE Member a member of an Aggregated ALE Group? [X] No [] Yes

If "No," do not complete Part IV.

22 Certifications of Eligibility (select all that apply):

- [] A. Qualifying Offer Method [] B. Reserved [] C. Reserved [] D. 98% Offer Method

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and to the best of my knowledge and belief, they are true, correct, and complete.

Signature Title Date

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 61571A

Form 1094-C (2023)

Part III ALE Member Information – Monthly

	(a) Minimum Essential Coverage Offer Indicator		(b) Section 4980H Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Reserved
	Yes	No				
23 All 12 Months	<input checked="" type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24 Jan	<input type="checkbox"/>	<input type="checkbox"/>	59	69	<input type="checkbox"/>	
25 Feb	<input type="checkbox"/>	<input type="checkbox"/>	59	69	<input type="checkbox"/>	
26 Mar	<input type="checkbox"/>	<input type="checkbox"/>	59	74	<input type="checkbox"/>	
27 Apr	<input type="checkbox"/>	<input type="checkbox"/>	59	74	<input type="checkbox"/>	
28 May	<input type="checkbox"/>	<input type="checkbox"/>	61	74	<input type="checkbox"/>	
29 June	<input type="checkbox"/>	<input type="checkbox"/>	59	74	<input type="checkbox"/>	
30 July	<input type="checkbox"/>	<input type="checkbox"/>	59	59	<input type="checkbox"/>	
31 Aug	<input type="checkbox"/>	<input type="checkbox"/>	59	60	<input type="checkbox"/>	
32 Sept	<input type="checkbox"/>	<input type="checkbox"/>	60	75	<input type="checkbox"/>	
33 Oct	<input type="checkbox"/>	<input type="checkbox"/>	62	75	<input type="checkbox"/>	
34 Nov	<input type="checkbox"/>	<input type="checkbox"/>	60	75	<input type="checkbox"/>	
35 Dec	<input type="checkbox"/>	<input type="checkbox"/>	60	75	<input type="checkbox"/>	

Part IV Other ALE Members of Aggregated ALE Group

Enter the names and EINs of Other ALE Members of the Aggregated ALE Group (who were members at any time during the calendar year).

	Name	EIN	Name	EIN
36			51	
37			52	
38			53	
39			54	
40			55	
41			56	
42			57	
43			58	
44			59	
45			60	
46			61	
47			62	
48			63	
49			64	
50			65	

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.

Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

2023

Part I Employee

Applicable Large Employer Member (Employer)

1 Name of employee (first name, middle initial, last name) Ms. Administrator	2 Social security number (SSN)	7 Name of employer [same info as W-2]	8 Employer identification number (EIN)
3 Street address (including apartment no.)	6 Country and ZIP or foreign postal code	9 Street address (including room or suite no.)	10 Contact telephone number
4 City or town	5 State or province	11 City or town	12 State or province
		13 Country and ZIP or foreign postal code	

Part II Employee Offer of Coverage

Employee's Age on January 1

Plan Start Month (enter 2-digit number):

14 Offer of Coverage (enter required code)	All 12 Months	Employee's Age on January 1															
		Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec				
1E																	
15 Employee Required Contribution (see instructions)	\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	2C																

17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form 1095-C (2023)

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.

Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

2023

Part I Employee

Applicable Large Employer Member (Employer)

1 Name of employee (first name, middle initial, last name) Mr. Longterm Teacher	2 Social security number (SSN)	7 Name of employer [same info as W-2]	8 Employer identification number (EIN)
3 Street address (including apartment no.)	6 Country and ZIP or foreign postal code	9 Street address (including room or suite no.)	10 Contact telephone number
4 City or town	5 State or province	11 City or town	12 State or province
		13 Country and ZIP or foreign postal code	

Part II Employee Offer of Coverage

Employee's Age on January 1

Plan Start Month (enter 2-digit number):

14 Offer of Coverage (enter required code)	Employee's Age on January 1												15 Employee Required Contribution (see instructions)	16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)						
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov			Dec					
1E																				
\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$	62.50\$
	2H	2H	2H	2H	2H	2H	2H	2H	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C	2C

17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form 1095-C (2023)

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095C for instructions and the latest information.

OMB No. 1545-2251

2023

VOID
 CORRECTED

Part I Employee

1 Name of employee (first name, middle initial, last name) Ms. New Teacher		2 Social security number (SSN)		7 Name of employer [same info as W-2]		8 Employer identification number (EIN)	
3 Street address (including apartment no.)		9 Street address (including room or suite no.)		10 Contact telephone number		11 Country and ZIP or foreign postal code	
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		12 State or province	

Applicable Large Employer Member (Employer)

14 Offer of Coverage (enter required code)	Employee's Age on January 1												15 Employee Required Contribution (see instructions)	16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	17 ZIP Code
	Employee Offer of Coverage			Employee's Age on January 1			Plan Start Month (enter 2-digit number):			Plan Start Month (enter 2-digit number):					
All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec			
1H	1H	1H	1H	1H	1H	1H	1H	1H	1E	1E	1E	1E			
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	62.50\$	62.50\$	
2A	2A	2A	2A	2A	2A	2A	2A	2D	2C	2C	2C	2C			

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form 1095-C (2023)

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID
 CORRECTED

OMB No. 1545-2251

2023

Part I Employee

Applicable Large Employer Member (Employer)

1 Name of employee (first name, middle initial, last name) Mr. Ed Tech	2 Social security number (SSN)	7 Name of employer [same info as W-2]	8 Employer identification number (EIN)
3 Street address (including apartment no.)	6 Country and ZIP or foreign postal code	9 Street address (including room or suite no.)	10 Contact telephone number
4 City or town	5 State or province	11 City or town	12 State or province
		13 Country and ZIP or foreign postal code	

Part II Employee Offer of Coverage

Employee's Age on January 1

Plan Start Month (enter 2-digit number):

All 12 Months	Employee's Age on January 1												
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
14 Offer of Coverage (enter required code) 1E													
15 Employee Required Contribution (see instructions) \$	\$ 60.00\$	\$ 60.00\$	\$ 60.00\$	\$ 60.00\$	\$ 60.00\$	\$ 60.00\$	\$ 62.50\$	\$ 62.50\$	\$ 62.50\$	\$ 62.50\$	\$ 62.50\$	\$ 62.50\$	\$ 62.50\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable) 2H													

17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form **1095-C** (2023)

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.
Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID
 CORRECTED

OMB No. 1545-2251

2023

Part I Employee

1 Name of employee (first name, middle initial, last name) Mr. Regular Substitute		2 Social security number (SSN) [same info as W-2]		7 Name of employer [same info as W-2]		8 Employer identification number (EIN)	
3 Street address (including apartment no.)		9 Street address (including room or suite no.)		10 Contact telephone number		11 Country and ZIP or foreign postal code	
4 City or town		5 State or province		6 Country and ZIP or foreign postal code		12 State or province	

Applicable Large Employer Member (Employer)

14 Offer of Coverage (enter required code)	Employee's Age on January 1												15 Employee Required Contribution (see instructions)	16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)	17 ZIP Code			
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov				Dec		
1H																		
\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
	2B	2B	2B	2B	2B	2B	2A	2A	2A	2B	2B	2B	2B	2B	2B	2B	2B	2B

Part II Employee Offer of Coverage

Plan Start Month (enter 2-digit number):

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form 1095-C (2023)

Form 1095-C

Department of the Treasury
Internal Revenue Service

Employer-Provided Health Insurance Offer and Coverage

Do not attach to your tax return. Keep for your records.

Go to www.irs.gov/Form1095C for instructions and the latest information.

VOID

CORRECTED

OMB No. 1545-2251

2023

Part I Employee

Applicable Large Employer Member (Employer)

1 Name of employee (first name, middle initial, last name) Mr. Retiring Teacher	2 Social security number (SSN)	7 Name of employer [same info as W-2]	8 Employer identification number (EIN)
3 Street address (including apartment no.)	9 Street address (including room or suite no.)	10 Contact telephone number	
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	11 City or town
		12 State or province	13 Country and ZIP or foreign postal code

Part II Employee Offer of Coverage

Employee's Age on January 1

Plan Start Month (enter 2-digit number):

14 Offer of Coverage (enter required code)	Employee's Age on January 1												Plan Start Month (enter 2-digit number):			
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec			
15 Employee Required Contribution (see instructions)	\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	60.00\$	\$	\$	\$
16 Section 4980H Safe Harbor and Other Relief (enter code, if applicable)		2C	2C	2C	2C	2C	2C	2A	2A	2A	2A	2A	2A	2A	2A	2A

17 ZIP Code

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 60705M

Form 1095-C (2023)

SECTION 5.

**Managing Fund Balance
Carryforward/Reserve Funds**

CONTENTS

Managing Fund Balance Carry Forward / Reserve Funds

*Bill Stockmeyer, Greg Im & Clíodhna O’Malley
Drummond Woodsum*

1. Applicable Statutes

- a. Fund Balance Statute - 20-A M.R.S. § 15689-B(6), (9) 147
- b. SAD Reserve Fund Statute – 20-A M.R.S. § 1312 148
- c. RSU Reserve Fund Statute – 20-A M.R.S. § 1491 149
- d. CSD Reserve Fund Statute – 20-A M.R.S. § 1706 150
- e. CTE Region Reserve Fund Statutes – 20-A M.R.S. § 8468 151
- f. Fuel Cost Stabilization Fund Statute – 20-A M.R.S. § 15008 152
- g. Municipal Reserve Fund Statute – 30-A M.R.S. §§ 5801-5802 153

2. Sample Warrant Articles

- a. SAD/RSU/CSD Reserve Fund articles 154
- b. CTE Region Reserve Fund article 154
- c. Fuel Cost Stabilization Fund article..... 154
- d. Contingency Fund article 155

Fund Balance Statute

20-A M.R.S. § 15689-B(6), (9). Authorization and schedules of payment of state subsidy; appeals

• • • •

6. Balance of allocations. Notwithstanding any other law, general operating fund balances at the end of a school administrative unit's fiscal year must be carried forward to meet the unit's needs in the next year or over a period not to exceed 3 years. Unallocated balances in excess of 5% of the previous fiscal year's school budget must be used to reduce the state and local share of the total allocation for the purpose of computing state subsidy. School boards may carry forward unallocated balances in excess of 5% of the previous year's school budget and disburse these funds in the next year or over a period not to exceed 3 years. For fiscal years 2021-22, 2022-23, 2023-24 and 2024-25 only, unallocated balances in excess of 9% of the previous fiscal year's school budget must be used to reduce the state and local share of the total allocation for the purpose of computing state subsidy and school boards may carry forward unallocated balances in excess of 9% of the previous fiscal year's school budget and disburse these funds in the next year or over a period not to exceed 3 years.

• • • •

9. Career and technical education region. This section applies to a career and technical education region in the same manner as to a school administrative unit.

School Administrative District – Reserve Fund Statute

20-A M.R.S. § 1312. Reserve fund

School administrative districts may establish a reserve fund as follows.

1. Establishment. A school administrative district may establish a reserve fund for school construction projects, financing the acquisition or reconstruction of a specific or type of capital improvement, financing the acquisition of a specific item or type of capital equipment or any of the expenditures listed under [section 1485, subsection 1, paragraph A](#) by including a request in the district budget, which must include a description of the purpose of the reserve fund, and receiving voter approval. The board of directors is the trustee of the reserve fund. The reserve fund must be deposited or invested by the treasurer under the direction of the board.

2. Deposit or investment. All district funds, including reserve funds and trust funds to the extent that the terms of the instrument or vote creating the fund do not prohibit, shall be deposited or invested by the treasurer under the direction of the board of directors according to the requirements for the deposit or investment of municipal funds contained in [Title 30-A, chapter 223, subchapter III-A](#).

3. Expending money from reserve funds. The board of directors may expend the sum in the reserve fund when authorized to do so by a vote of the district at a district meeting or a district budget meeting, when an article for that purpose is set out in the warrant calling the meeting, except that the board of directors may expend funds from a reserve fund by a vote of the board in accordance with the procedure in [subsection 4](#):

- A. In the event of an emergency that requires the immediate expenditure of funds and when, in responding to the emergency, a vote of the district for permission is cost-prohibitive; or
- B. When such an expenditure is required by law.

4. Procedure for expending money from reserve funds by vote of board. The procedure for the board of directors to expend funds from the reserve fund pursuant to [subsection 3, paragraph A](#) or [B](#) must be as follows.

- A. The board of directors shall provide public notice of the regular or special meeting at which the vote to expend funds from the reserve fund will be taken.
- B. The board of directors shall hold a public hearing prior to the vote to expend funds from the reserve fund.
- C. The vote to expend funds from the reserve fund must be recorded in the meeting minutes of the board of directors.

Regional School Unit – Reserve Fund Statute

20-A M.R.S. § 1491. Reserve fund

1. Establishment. A regional school unit may establish a reserve fund for school construction projects, financing the acquisition or reconstruction of a specific or type of capital improvement, financing the acquisition of a specific item or type of capital equipment or any of the expenditures listed under [section 1485, subsection 1, paragraph A](#) by including a request in the regional school unit budget, which must include a description of the purpose of the reserve fund, and receiving voter approval. The regional school unit board is the trustee of the reserve fund. The reserve fund must be deposited or invested by the treasurer of the regional school unit under the direction of the regional school unit board.

2. Deposit or investment. All regional school unit funds, including reserve funds and trust funds to the extent not prohibited by the terms of the instrument or vote creating the fund, must be deposited or invested by the treasurer of the regional school unit under the direction of the regional school unit board according to the requirements for the deposit or investment of municipal funds contained in [Title 30-A, chapter 223, subchapter 3-A](#).

3. Expending money from reserve funds. The regional school unit board may expend the sum in the reserve fund when authorized to do so by a vote of the regional school unit at a regional school unit meeting or a regional school unit budget meeting when an article for that purpose is set out in the warrant calling the meeting, except that the regional school unit board may expend funds from a reserve fund by a vote of the board in accordance with the procedure in [subsection 4](#):

- A. In the event of an emergency that requires the immediate expenditure of funds and when, in responding to the emergency, a vote of the regional school unit for permission is cost-prohibitive; or
- B. When such an expenditure is required by law.

4. Procedure for expending money from reserve funds by vote of board. The procedure for the regional school unit board to expend funds from the reserve fund pursuant to [subsection 3, paragraph A](#) or [B](#) must be as follows.

- A. The regional school unit board shall provide public notice of the regular or special meeting at which the vote to expend funds from the reserve fund will be taken.
- B. The regional school unit board shall hold a public hearing prior to the vote to expend funds from the reserve fund.
- C. The vote to expend funds from the reserve fund must be recorded in the meeting minutes of the regional school unit board.

Community School District – Reserve Fund Statute

20-A M.R.S. § 1706. Reserve fund

Community school districts may establish a reserve fund as follows:

1. Establishment. A community school district may establish a reserve fund for school construction projects, financing the acquisition or reconstruction of a specific or type of capital improvement, financing the acquisition of a specific item or type of capital equipment or any of the expenditures listed under [section 1485, subsection 1, paragraph A](#) by including a request in the district budget, which must include a description of the purpose of the reserve fund, and receiving voter approval.

The district school committee is the trustee of the reserve fund. The reserve fund must be deposited or invested by the treasurer under the direction of the school committee.

2. Deposit or investment. All district funds, including reserve funds and trust funds to the extent that the terms of the instrument or vote creating the fund do not prohibit, shall be deposited or invested by the treasurer under the direction of the district school committee according to the requirements for the deposit or investment of municipal funds contained in [Title 30-A, section 5706](#).

3. Expending money from reserve funds. The district school committee may expend the sum in the reserve fund when authorized to do so by a vote of the district at a district meeting or a district budget meeting, when an article for that purpose is set out in the warrant calling the meeting, except that the district school committee may expend funds from a reserve fund by a vote of the committee in accordance with the procedure in [subsection 4](#):

- A. In the event of an emergency that requires the immediate expenditure of funds and when, in responding to the emergency, a vote of the district for permission is cost-prohibitive; or
- B. When the expenditure is required by law.

4. Procedure for expending money from reserve funds by vote of committee. The procedure for the district school committee to expend funds from the reserve fund pursuant to [subsection 3, paragraph A](#) or [B](#) must be as follows.

- A. The district school committee shall provide public notice of the regular or special meeting at which the vote to expend funds from the reserve fund will be taken.
- B. The district school committee shall hold a public hearing prior to the vote to expend funds from the reserve fund.
- C. The vote to expend funds from the reserve fund must be recorded in the meeting minutes of the district school committee.

Career and Technical Education Region – Reserve Fund Statute

20-A M.R.S. § 8468. Reserve fund

1. Establishment. A career and technical education region may establish a reserve fund for a school construction project, the acquisition or reconstruction of a specific item or type of capital improvement, the acquisition of a specific item or type of capital equipment or any of the expenditures listed under [section 1485, subsection 1, paragraph A](#) by including a request in the region budget, which must include a description of the purpose of the reserve fund, pursuant to this chapter. The cooperative board is the trustee of such a reserve fund.

2. Deposit or investment. All region funds, including reserve funds and trust funds to the extent that the terms of the instrument or vote creating the fund do not prohibit, must be deposited or invested by the treasurer of the cooperative board under the direction of the cooperative board according to the requirements for the deposit or investment of municipal funds contained in [Title 30-A, section 5706](#).

3. Expending money from reserve funds. The cooperative board may expend a sum in a reserve fund if permitted by the conditions of any indebtedness secured by the reserve fund and if approved in the region budget. A separate article for that purpose must be included in the region budget proposal. The cooperative board may expend funds from the reserve fund by a vote of the board without the expenditure's having to be included in the region budget or region budget proposal in accordance with the procedure in [subsection 4](#):

- A. In the event of an emergency that requires the immediate expenditure of funds and when, in responding to the emergency, a vote of the region for permission is cost-prohibitive; or
- B. When the expenditure is required by law.

4. Procedure for expending money from reserve funds by vote of board. The procedure for the cooperative board to expend funds from the reserve fund pursuant to [subsection 3, paragraph A](#) or [B](#) must be as follows.

- A. The cooperative board shall provide public notice of the regular or special meeting at which the vote to expend funds from the reserve fund will be taken.
- B. The cooperative board shall hold a public hearing prior to the vote to expend funds from the reserve fund.
- C. The vote to expend funds from the reserve fund must be recorded in the meeting minutes of the cooperative board.

Fuel Cost Stabilization Fund Statute

§15008. Fuel cost stabilization fund

A school administrative unit may establish and expend a fuel cost stabilization fund as provided in this section.

1. Establishment and funding. The voters or other legislative body of a school administrative unit may establish a fuel cost stabilization fund and may raise and appropriate funds for that purpose in addition to the school operating budget. A separate warrant article for that purpose must be approved at the budget meeting and at the budget validation referendum. If a school administrative unit has discontinued the budget validation referendum process, the article must be approved by the voters or other legislative body using the same process as for approval of the school budget. If a school administrative unit has available fund balances at the end of a fiscal year, the transfer of those funds to the fuel cost stabilization fund may be authorized at a budget meeting or other meeting of the voters or other legislative body. An article authorizing an appropriation or transfer to the fuel cost stabilization fund must be accompanied by a statement that includes the balance in the fuel cost stabilization fund before and after the proposed appropriation or transfer, the amounts expended from the fund in each of the 2 prior fiscal years and, in the case of a transfer, the amount expended from the fund in the current fiscal year.

2. Fund limit. An appropriation or transfer may not cause the aggregate amount in the fuel cost stabilization fund to exceed the school administrative unit's highest annual total cost for heating and transportation fuel in the 3 completed fiscal years prior to the authorization of that proposed funding amount. During the first 3 years of operation of a new or reorganized school administrative unit, the fuel costs of the original school administrative units may be aggregated for purposes of determining the total amount that may not be exceeded due to an appropriation or transfer.

3. Expenditures. In addition to its approved operating budget, a school board may expend funds in the fuel cost stabilization fund to offset fuel costs for heating and transportation that exceed budgeted amounts. A school board may transfer funds from the fuel cost stabilization fund for another purpose only when authorized to do so at a budget meeting or other meeting of the voters or other legislative body.

4. Investment. The money in the fuel cost stabilization fund may be invested as provided by law for school reserve funds with the earnings to be credited to that fund.

5. Fund not to lapse. A balance in the fuel cost stabilization fund at the end of a fiscal year does not lapse.

Municipal Reserve Fund Statutes (not specifically for municipal school units)

30-A M.R.S. § 5801. Establishment

A municipality may establish a reserve fund, consisting of one or more accounts, by appropriating money or by authorizing the transfer of unencumbered surplus funds at the end of any fiscal year for the following purposes:

- 1. Capital improvement account.** Financing the acquisition or reconstruction of a specific, or a type of, capital improvement;
- 2. Capital equipment account.** Financing the acquisition of a specific item or type of capital equipment;
- 3. Credit reserve account.** Providing a reserve which may be applied in periods of financial emergency to assist in continuing its normal operation without increasing the tax rate.
 - A. The annual appropriation for this purpose may not exceed 5% of the current tax commitment.
 - B. When the municipal legislative body determines that a financial emergency exists, it may order the withdrawal of the necessary amount from the account; and
- 4. Sinking fund account.** Paying a funded debt.
 - A. Any assets remaining in a sinking fund account, other than its own bonds, shall be withdrawn from the account when the debt for the payment of which it was established has been refunded. The legislative body may pledge the assets for payment of the new debt or may order them transferred to another account.

30-A M.R.S. § 5802. Trustees

The municipal officers are trustees of the municipal reserve fund.

- 1. Fund deposited or invested.** They shall deposit or invest the fund according to [subchapter III-A](#).
 - A. Any interest earned or capital gains realized shall accrue to and become part of the fund. Unless otherwise ordered by the municipal legislative body, interest and capital gains shall be prorated among the various accounts.
- 2. Purpose of expenditure.** An expenditure from any account of the fund may be made only for the specific purpose for which the account was established.
- 3. Transfer of balance.** The balance of any account of a reserve fund may be transferred to another reserve account or to surplus when the purpose for which it was established has been accomplished or abandoned.
- 4. Use of fund for purpose not provided for.** Notwithstanding [Title 17-A, section 4-A](#), any municipal official who uses the assets of any account of the reserve fund in any manner or for any purpose other than that provided by the municipality is guilty of a Class C crime and shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 2 years.

Warrant article for authorization to establish, transfer funds to, and expend from a new reserve fund (SAD, RSU, CSD).

ARTICLE 20: Shall the School Board be authorized to (i) establish a Special Education reserve fund to pay unanticipated special education costs; (ii) transfer **\$100,000** from available fund balances to the Special Education reserve fund; and (iii) expend from the Special Education reserve fund as needed in the discretion of the School Board?

Warrant article for authorization to transfer funds to and expend from an existing reserve fund (SAD, RSU, CSD).

ARTICLE 21: Shall the School Board be authorized to transfer **\$200,000** from available fund balances to the existing capital reserve fund and to expend up to \$100,000 from the capital reserve fund for its intended purposes during the 2024-2025 school year?

Warrant article for authorization to transfer funds to an existing reserve fund (SAD, RSU, CSD).

ARTICLE 22: Shall the School Board be authorized to transfer **\$50,000** from unexpended balances at the end of the 2023-2024 fiscal year to the existing Elementary School Roof Replacement reserve fund?

Warrant article for authorization re CTE Region reserve fund.

ARTICLE 23: Shall the Cooperative Board of Career and Technical Education Region 12 be authorized to expend funds in the Capital Reserve Account for the purpose that such reserve account was created and in an amount not to exceed the lesser of **\$147,232** or the balance of such reserve account in the 2024-2025 school year?

Warrant article for Fuel Cost Stabilization Fund (SAD, RSU, CSD, Municipal School Unit)

ARTICLE 24: Shall the School Board be authorized to transfer up to **\$50,000** to the fuel cost stabilization fund from year end available fund balances?

Statutory Disclosure Statement relating to Fuel Cost Stabilization

Fund: The fuel cost stabilization fund balance is currently \$74,000. If this article is approved as written, the fuel cost stabilization fund balance will be \$124,000. The amount used from the fuel cost stabilization fund in the last three years through the date this article was prepared is as follows:

Fiscal year 2023-2024:	\$ 26,000 (to date)
Fiscal year 2022-2023:	\$ 0
Fiscal year 2021-2022:	\$ 0

Warrant article for authorization to establish, transfer funds to, and expend from a contingency fund.

ARTICLE 25: Shall the RSU authorize the School Board to establish a non-lapsing contingency fund for periods of financial emergency pursuant to section 1482-B(3) of Title 20-A, and to transfer the RSU's unallocated balances in excess of 9% of the prior fiscal year's budget, as determined by audit, to that fund; and shall the RSU delegate authority to the School Board to expend sums in the contingency fund when the School Board determines by public vote that an emergency need exists, and to transfer sums in the contingency fund to the RSU's general fund for use in school operating budgets approved by RSU voters?

Contact Us

84 Marginal Way, Suite 600
Portland, Maine 04101
207.772.1941 Main
207.772.3627 Fax

670 N. Commercial Street, Suite 207
Manchester, NH 03101
603.716.2895 Main
603.716.2899 Fax

78 Bank Street
Lebanon, NH 03766
603.433.3317 Main
603.433.5384 Fax

114 N. San Francisco Street
Suite 100, Box 24
Flagstaff, AZ 86001
800.727.1941 Main