

05-071 DEPARTMENT OF EDUCATION

and

94-376 MAINE MUNICIPAL BOND BANK

Chapter 64: MAINE SCHOOL FACILITIES PROGRAM AND SCHOOL REVOLVING RENOVATION FUND

Summary: These rules govern the application and approval process for projects to be considered through the School Revolving Renovation Fund; Facility Maintenance and Capital Improvement Plans; Maine School Facilities Finance Program and lease and lease/purchase of temporary and interim space and permanent small instructional space.

1. DEFINITIONS

- A. “ADA” means federal *Americans with Disabilities Act*.
- B. “Administrative space” means property used for housing of superintendents, principals and school administrative unit-wide eligible administrative personnel.
- C. “Avoided Costs” means savings achieved from reduced energy use as a result of a renovation project.
- D. “Bank” means the Maine Municipal Bond Bank.
- E. “BGS” means the Bureau of General Services of the Department of Administrative and Financial Services.
- F. “Capital improvement plan” means a plan to replace and repair building systems on a building by building basis for each school administrative unit.
- G. “Commissioner” means the Commissioner of the Maine Department of Education.
- H. “Department” means the Maine Department of Education.
- I. “Educational Program” means the school administrative unit's (SAU's) programs and services adopted by the local school board that are aligned with or support the system of Learning Results.
- J. “Educational Specifications” means how a school administrative unit describes its educational goals and activities, and the interrelationships between those educational goals and activities and their associated facilities.
- K. “Energy and Water Conservation Project” means a school renovation project that is designed to save energy either from reduced heating fuel, reduced electrical consumption, or other conservation measures.

- L. “Equivalent cost basis” means an amount not to exceed the total annual cost currently approved for state subsidy on existing leases.
- M. “Fund” means the School Revolving Renovation Fund.
- N. “Hazardous material” means any chemical which is a physical hazard or a health hazard as defined by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA).
- O. “Instructional space” means property used for regular classrooms, small group instruction, libraries, clinics, guidance, and other instructional activities as approved by the Department. Instructional space does not include athletic or play fields.
- P. “Interim instructional space” means interim instructional space under 20-A M.R.S.A. §15672(2-A)(B)(2). Interim instructional space is fixed space that a school administrative unit rents for a defined period of time and then vacates at the end of the lease.
- Q. “Lease” means an agreement under which a school administrative unit rents property for a defined period of time without acquiring any permanent ownership interest in the property.
- R. “Lease space” means property that a school administrative unit is entitled to use for a defined period of time in accordance with the terms of a lease.
- S. “Lease-purchase agreement” means an agreement under which a school administrative unit leases space for a defined period of time at the end of which the school administrative unit has an option to purchase the property for one dollar.
- T. “Lease-purchase space” means space which a school administrative unit occupies and acquires over a defined period of time in accordance with the terms of a lease-purchase agreement.
- U. “Maintenance plan” means a plan to address scheduled and unscheduled repairs, upkeep, and preventative maintenance necessary to achieve the designed life expectancy of building systems and components.
- V. “Permanent small instructional space” means permanent small non-administrative space under 20-A M.R.S.A. §15672(2-A)(B)(3) that is constructed to replace temporary or interim leased space which is subsidizable on an equivalent cost basis. Construction may consist of new buildings or permanent additions to existing buildings that are secured to a permanent foundation.
- W. “Renovation project” means a school construction project that falls into one of the following categories:
- 1) **Priority One:** Health, safety and compliance repairs;
 - 2) **Priority Two:** Repairs and improvements not related to health, safety and compliance repairs, that are limited to a school building structure, windows and doors of a school building and to a school building's water or septic system;

- 3) **Priority Three:** Repairs and improvements related to energy and water conservation;
 - 4) **Priority Four:** Upgrades of learning spaces in school buildings; and
 - 5) **Priority Five:** Other repairs/projects approved by the Commissioner.
- X. “Temporary instructional space” means temporary instructional space under 20-A M.R.S.A. §15672(2-A)(B)(2). Temporary instructional space consists of one or more mobile or modular buildings (portables) constructed on or off site and which can be disassembled and moved economically to a new location.

2. MAINTENANCE AND CAPITAL IMPROVEMENT PLANS

- A. Each school administrative unit will develop and maintain a facility maintenance plan and a capital improvement plan that includes a plan for each building in the school administrative unit.
- B. Each facility maintenance plan must include, at a minimum, a maintenance and replacement schedule for all major building systems to include but not limited to the following:
- 1) heating, ventilation/air conditioning (HVAC);
 - 2) plumbing and electrical systems;
 - 3) roof systems;
 - 4) building exterior;
 - 5) windows and doors;
 - 6) interior (painting, flooring, etc.); and
 - 7) site maintenance.
- C. Each ten year capital improvement plan at a minimum must include:
- 1) educational mission, vision and goals;
 - 2) educational program, facility, and space usage assessment;
 - 3) enrollment projections and new program needs;
 - 4) match of infrastructure to programs;
 - 5) educational specifications;
 - 6) capital project description, schedule, and budgets; and
 - 7) energy and water conservation analysis.

3. LEASE AND LEASE-PURCHASE SPACE

A. Temporary and interim instructional space

- 1) A school administrative unit may lease or lease-purchase temporary or interim instructional space with State support for a period not to exceed five (5) years.
- 2) All requests for State support for leases for temporary or interim instructional space must include a justification in the context of a long-range facilities plan.
- 3) The school administrative unit may appeal to the Commissioner if the five-year period restriction presents an undue burden to the unit. The decision of the Commissioner is final.
- 4) A lease for temporary or interim instructional space may be converted to a lease-purchase when it is consistent with the school administrative unit's long-range facilities plan.

NOTE: Pursuant to PL 2017 Chapter 284, Sec.VVVV-9 "A school administrative unit engaged in a state-approved lease-purchase agreement for regional programs and services space that serves students from 2 or more school administrative units is eligible for state support for a maximum of 5 years."

B. Permanent small instructional space

- 1) A school administrative unit may convert a lease of temporary or interim instructional space to a lease-purchase of permanent small instructional space that consists of new buildings, or additions to existing buildings, that are secured to a permanent foundation. These lease-purchases must be entered into to replace existing leases of current temporary or interim instructional space and are eligible for state support at an amount not to exceed the annual cost currently approved for existing leases and for a period not to exceed ten years from the beginning date of the financing agreement.

C. Application

- 1) Each unit requesting State support for a lease of temporary or interim space and permanent small space shall apply annually for such support on forms supplied by the Department. Applications must be submitted no later than September 15 in the fiscal year prior to the fiscal year of State support.

D. Subsidizable Rate

- 1) The Commissioner shall determine the maximum dollar amount per square foot eligible for subsidy for leased and lease purchased space on July 1 of the year prior to the granting of State support.

4. SCHOOL REVOLVING RENOVATION FUND

A. Purpose

The School Revolving Renovation Fund is established to make loans for school renovation projects that contribute to safe, healthy, efficient, and adequate school facilities in which an SAU can deliver its educational program.

B. Eligible Renovation Projects

All projects must receive Department of Education and BGS approval prior to construction in order to be eligible for funding consideration. Projects in the following categories shall be eligible for consideration for loans from the School Revolving Renovation Fund, provided that the application for funding a renovation project is submitted to the Department and is approved by the Department prior to the commencement of work on the renovation project.

1) Priority One

- a) Repair or replacement of a roof on a school building;
- b) Bringing a school building into compliance with the Federal *Americans with Disabilities Act*, 42 *United States Code*, Section 12101 *et seq.*;
- c) Improving air quality in a school building;
- d) Removing or abating hazardous materials in a school building;

NOTE: Pursuant to PL 2019 Chapter 158, Sec. 2 “including, but not limited to, water lead abatement or mitigation pursuant to Title 22, section 2604-B”,

and

- e) Other health, safety and compliance repairs.

NOTE: Pursuant to PL 2018 Chapter 389, Sec 1 “including installations or improvements necessary to increase school facility security.”

2) Priority Two

- a) School building structures;
- b) Windows and doors; and
- c) Water and septic systems including waste disposal systems.

NOTE: Pursuant to PL 2019 Chapter 158, Sec 2 “other than water lead abatement or mitigation pursuant to Title 22, section 2604-B.”

- 3) **Priority Three**
 - a) Building insulation;
 - b) Variable speed electric motors;
 - c) Efficient lighting systems and controls;
 - d) Alternative energy installations; and
 - e) Other energy and water conservation projects.

- 4) **Priority Four**
 - a) Upgrades of learning spaces in school buildings.

NOTE: Pursuant to PL 2019 Chapter 343, Sec. ZZZZ-1,
“including renovations to retrofit learning spaces for public
preschool programs.”

- 5) **Priority Five:** Other projects approved by the Commissioner.

C. Priority of Funding

Approved projects must be funded based on the availability of funds and in priority order from Priority One to Priority Five. The Commissioner of Education may approve funding for renovation projects as an exception to the Priority One to Priority Five funding rule if category-specific funds become available from sources other than principal and interest received from the repayment of loans made from the fund, interest earned from the investment of fund balances and funds from school construction audit recoveries.

D. Application

- 1) A Department approved application form will be accepted on a schedule set by the Department.
- 2) A separate application must be submitted for each individual project
- 3) All applications submitted to the Department must provide supporting materials appropriate to the project. These materials may include but are not limited to the following:
 - a) Educational program and maintenance and capital improvement plans;
 - b) Engineering studies, including Renovation vs. New Construction analyses, to be conducted by licensed engineers, architects or firms licensed to provide such services;
 - c) Life-cycle studies for renovation, energy and water conservation projects;

- d) A payback schedule for avoided costs in energy and water conservation projects; and
- e) Any other materials requested by the Department.

E. Application Review

- 1) Applications will be reviewed by the Department and assigned priority status in accordance with the rating system contained in these rules. Funds will be distributed based on funding availability and a school administrative unit's readiness to proceed.
- 2) **Rating System.** Emergency projects will be funded before non-emergency projects.
- 3) **Emergency.** An emergency situation posing imminent danger to the health and safety of students and staff. Projects necessitated by an emergency will be dealt with on a case by case basis as determined by the Department in cooperation with the BGS.
- 4) The following criteria will be applied to rating of Priority One and Priority Two projects:
 - (i) Percentage of student population impacted;
 - (ii) Extent or severity of the problem;
 - (iii) Location within the facility;
 - (iv) Code violations; and
 - (v) Structural condition of the facility.
- 5) The following criteria will be applied to rating of Priority Three projects:
 - (i) Number of years of avoided costs necessary to pay for project;
 - (ii) Percentage of energy saved annually based on gallons of oil, cubic feet of natural gas, kWh of electricity, etc.;
 - (iii) Percentage of annual dollar savings for energy costs in the affected facility;
 - (iv) Life of the facility following the proposed project; and
 - (v) Other benefits gained.
- 6) Priority Four projects will be rated based on State of Maine Board of Education Rules Chapter 61, "Rules for Major Capital School Construction Projects".

- 7) **Bureau of General Services review.** All projects, as required by 5 M.R.S.A. §1742(7), will be reviewed by BGS and only those projects approved by BGS under rules developed by the Bureau pursuant to Chapter 787 will be eligible for submission by the Department to the Bank.
- 8) Any project with an estimated value of \$100,000 or more shall be awarded by competitive bid unless the bidding provision is waived by the Department.

F. Forgiveness Rates

- 1) The Bank will forgive a portion of the principal payments of a loan for an eligible school administrative unit determined by the Department based on the school administrative unit's State share percentage as determined in 20-A M.R.S.A. §15672, subsection 31, for the most recent year of enacted General Purpose Aid. Notwithstanding these guidelines, the loan forgiveness shall be no more than 70% and not less than 30%.
- 2) The Department will provide the Bank with the eligible administrative unit's State share percentage.
- 3) Funds allocated to an eligible school administrative unit will not be included in that unit's debt service allocation under 20-A M.R.S.A. §15683-A.

G. Notification to the Bank. The Department will develop a list of priority projects approved for funding based on the Department's application review and BGS's approval and submit it to the Bank for funding. This list will be updated annually. Each eligible school administrative unit and the Bank shall receive an eligibility certificate which shall include the following:

- 1) name of school administrative unit that is eligible;
- 2) amount of the loan;
- 3) amount and percentage to be forgiven;
- 4) length of the loan; and
- 5) time limit for completion of the project.

H. Maximum Loan. The maximum total loans for repairs, renovations, and improvement projects (for Priority One, Two, Three, Four, and Five projects as described in Section 4(B)(5) of this rule) for a school building from the fund will be \$~~4~~8 million.

School administrative units may raise additional local funds to support the project. Local funds will not be subject to the forgiveness provisions and are not eligible for State participation.

The maximum loan amount from the fund to address each priority in a school building will be \$~~1~~2 million within any 5-year period.

- I. All construction projects supported through the Revolving Renovation Loan Fund for construction of new facilities, additions to existing buildings, renovations or remodeling of existing buildings shall be designed and constructed with materials that provide long-term durability and meet energy efficiency standards as defined in 5 M.R.S.A. §§ 1762-1769. Prior approval of the Department is required before changes including changes which reduce the durability of materials may be made. Approval or disapproval by the Department shall be in response to recommendations from BGS.
- J. **Length of Loan.** Loans from the fund are subject to the following time limits for repayment:
- 1) Loans of \$500,000 or less = 5 years or less than 5 years if accelerated by mutual agreement of the parties; and
 - 2) Loans of \$500,001 or more = 10 years or less than 10 years if accelerated by mutual agreement of the parties.
- K. **Disbursement of loan proceeds.** For projects approved by the Department and BGS for funding, the Bank shall make payment from that unit's Revolving Renovation Fund loan upon presentation of a requisition form with supporting invoices approved by the school administrative unit. With the final requisition form, certifications from the school administrative unit, designer and contractor confirming project completion are required.

5. MAINE SCHOOL FACILITIES FINANCE PROGRAM

- A. The Bank shall be responsible for the following:
- 1) The loan application to eligible school administrative units;
 - 2) The loan agreement with eligible school administrative units;
 - 3) The management of all loans from the Revolving Renovation Fund;
 - 4) That the applicant certifies to the Bank that it has secured all permits, licenses and approvals necessary to undertake the renovations and construct the improvements to be financed by the loan; and
 - 5) That the applicant demonstrates to the satisfaction of the Bank that it has the ability to repay the loan made to the school administrative unit by the Bank.

6. MAINE SCHOOL FACILITIES FINANCE PROGRAM LEASE-PURCHASE PROVISIONS

- A. The Bank shall be responsible for the following:
- 1) The lease-purchase assistance program is for the lease-purchase of buildings only;
 - 2) Only school administrative units approved for subsidy by the Department must participate in the lease-purchase assistance program;

- 3) Under the lease-purchase assistance program, the Bank shall establish a competitive bidding process for the financing of a lease-purchase agreement which takes into account the cost and reasonable terms and conditions of lease-purchase;
- 4) After the Department notifies the Bank that a school administrative unit is approved and eligible to acquire a school facility via a lease-purchase agreement, the Bank shall solicit quotations from two or more private institutions; and
- 5) After quotations for financing a lease-purchase agreement have been received by the Bank, the two lowest cost quotations shall be provided to the school administrative unit which shall retain the right to select the financing institution of its choice subject to the requirement of State law and local ordinance.

STATUTORY AUTHORITY: Title 20-A, Sections 1, 4001, 5804, 5805, 15603, 15907, 15918, and Title 30-A Sections 5953-E, 6006-E, 6006-F, 6014; Resolve 2007 ch. 174 effective March 31, 2008; Public Law 506 (126th Legislature 2nd Regular Session) effective August 1, 2014.

EFFECTIVE DATE (PROVISIONAL ADOPTION):

December 28, 1998 - EMERGENCY - major substantive rule, legislative review pending. Signed by the Commissioner of Education.

FINAL ADOPTION:

filed May 30, 2000 - as 2000-235, signed by the Commissioner of Education. Legislative Resolve 1999 c.14 was effective April 16, 1999. Private and Special Laws 1999 c.79 asserted the effective date of this rule filing is retroactive to April 16, 1999. Signed by the Commissioner of Education.

AMENDED:

March 18, 2003 - filed as routine technical on March 13, 2003, filings 2003-68 and 2003-69, signed by the Commissioner of Education and the Director of the Maine Municipal Bond Bank respectively.

NON-SUBSTANTIVE CORRECTIONS:

April 28, 2003 - capitalization and punctuation only, signed and filed by Department of Education affecting its version only.

AMENDED:

May 9, 2008 - major substantive final adoptions, filings 2008-165 and 2008-166, signed by the Commissioner of Education and the Director of the Maine Municipal Bond Bank respectively.

May 9, 2012 - major substantive final adoptions, filings 2012-102 and 2012-103, signed by the Commissioner of Education and the Director of the Maine Municipal Bond Bank respectively.

November 24, 2014 - routine technical adoptions, filings 2014-270 and 2014-271, signed by the Commissioner of Education and the Director of the Maine Municipal Bond Bank respectively.

NOTES ADDED:

September 15, 2017 -

note added to Section 3(A) by the authority of Assistant Attorney General Sarah Forster.

July 22, 2019 -

notes added to Sections 4(B) by the authority of Assistant Attorney General Sarah Forster.