



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: House Committee on Corrections and Institutions
From: Rebecca Wasserman
Date: March 11, 2015
Subject: Provisions Relating to State Aid for School Construction

Statutory Provision

§ 3448. Approval and funding of school construction projects; renewable energy

(a) Construction aid.

(1) Preliminary application for construction aid. A district or independent school eligible for assistance under section 3447 of this title, that intends to construct or purchase a new school, or make extensive additions or alterations to its existing school, and desires to avail itself of State school construction aid, shall submit a written preliminary application to the Secretary. A preliminary application shall include information required by the State Board by rule and shall specify the need for and purpose of the project.

(2) Approval of preliminary application.

(A) When reviewing a preliminary application for approval, the Secretary shall consider:

- (i) regional educational opportunities and needs, including school building capacities across school district boundaries, and available infrastructure in neighboring communities;
- (ii) economic efficiencies;
- (iii) the suitability of an existing school building to continue to meet educational needs; and
- (iv) statewide educational initiatives and the strategic plan of the State Board of Education.

(B) The Secretary may approve a preliminary application if:

- (i) the project or part of the project fulfills a need occasioned by:
 - (I) conditions that threaten the health or safety of students or employees;
 - (II) facilities that are inadequate to provide programs required by State or federal law or regulation;
 - (III) excessive energy use resulting from the design of a building or reliance on fossil fuels or electric space heat; or
 - (IV) deterioration of an existing building;
- (ii) the need addressed by the project cannot reasonably be met by another means; and

(iii) the proposed type, kind, quality, size, and estimated cost of the project are suitable for the proposed curriculum and meet all legal standards.

(3) Priorities. Following approval of a preliminary application and provided that the district has voted funds or authorized a bond for the total estimated cost of a project, the State Board shall assign points to the project so that the project can be placed on a priority list based on the number of points received. Once a project receives points, if it does not receive funding in a given year, it shall not lose points in subsequent years and, pursuant to rule of the Board and provided the scope of the project remains the same, it shall gain points due to length of time on the list and may gain points for any other reason. The points shall be assigned in the following priority:

(A) First priority is given to emergency projects in excess of \$100,000.00 that address threats to the safety and health of students or employees created by unanticipated circumstances or events.

(B) Second priority is given to construction projects in excess of \$10,000.00 that address a need occasioned by deterioration of an existing building or equipment pursuant to subdivision (2)(A) of this subsection, and that extend the useful life of the building but that do not make additions or extensive alterations to existing school facilities in which students are provided services. Examples of projects given priority under this subdivision are replacement, addition, or repair to utilities; projects that address environmental quality issues; repair of a roof; replacement of an existing space-heating, water-heating, cooling, or refrigeration system; and replacement or upgrading of mechanical equipment.

(C) Remaining projects are given priority based on consideration of the relative degree of need pursuant to subdivision (2)(A) of this subsection.

(4) Request for legislative appropriation. By January 15 of each year, the State Board shall present the House Committee on Corrections and Institutions and the Senate Committee on Institutions with its annual capital construction funding request. Following receipt of the request, the Committees shall recommend a total school construction appropriation for the next fiscal year to the General Assembly. The General Assembly shall not revise the order of the project priorities presented by the State Board. The funding request to the Committees shall be in the form of separate line items as follows:

(A) a list of projects that have been assigned points in their order of priority, including the voted funds or authorized bond amount for each project;

(B) the cost of emergency projects that the State Board has approved but not yet reimbursed due to insufficient funds, as well as the estimated cost of those that might be approved in the coming year under subsection (d) of this section;

(C) the cost of projects to extend the life of a building that the State Board has approved but not yet reimbursed due to insufficient funds, as well as the estimated cost of those that might be approved by the State Board in the coming fiscal year under subdivision (3)(B) of this subsection.

(5) Final approval for construction aid.

(A) Unless approved by the Secretary for good cause in advance of commencement of construction, a school district shall not begin construction before the State Board approves a final application. A school district may submit a written final application to the State Board at any time following approval of a preliminary application.

(B) The State Board may approve a final application for a project provided that:

(i) the project has received preliminary approval;

(ii) the district has voted funds or authorized a bond for the total estimated cost of the project;

(iii) the district has made arrangements for project construction supervision by persons competent in the building trades;

(iv) the district has provided for construction financing of the project during a period prescribed by the State Board;

(v) the project has otherwise met the requirements of sections 3447-3456 of this title;

(vi) if the proposed project includes a playground, the project includes a requirement that the design and construction of playground equipment follow the guidelines set forth in the United States Consumer Product Safety Commission Handbook for Public Playground Safety; and

(vii) if the total estimated cost of the proposed project is less than \$50,000.00, no performance bond or irrevocable letter of credit shall be required.

(C) The board of trustees of an independent school may submit a written final application to the State Board for a project for which a preliminary application has been approved by the Secretary, provided that each municipality represented on the board of trustees has voted funds or authorized a bond issue for 100 percent of the municipality's estimated share of the project in an amount determined by the Secretary under this section.

(D) The State Board may provide that a grant for a high school project is conditioned upon the agreement of the recipient to provide high school instruction for any high school pupil living in an area prescribed by the Board who may elect to attend the school.

(E) A district may begin construction upon receipt of final approval. However, a district shall not be reimbursed for debt incurred due to borrowing of funds in anticipation of aid under this section.

(6) Repealed.]

(7) Award of construction aid.

(A) Except as provided in other subdivisions of this subdivision (7) and elsewhere in law, the amount of an award shall be 30 percent of the approved cost of the project.

(B) The amount of an award for the incremental costs associated with the installation of a space-heating, water-heating, cooling, or refrigeration system that uses biomass, a geothermal ground-source, wind, or solar energy as the primary heating or cooling source shall be 75 percent of the approved cost of those elements of the project specifically related to the renewable fuel source being used; provided that those elements may include the costs of necessary equipment, a chimney, air quality technology, and additional square footage necessary to house the heating unit and fuel; and further provided that those elements shall not include the costs of staff areas, site improvements relating to fuel delivery, and other ancillary costs as determined by the Secretary.

(C) The amount of an award shall be 50 percent of the approved cost of a project or applicable portion of a project that results in consolidation of two or more school buildings and that will serve the educational needs of students in a more cost-effective and educationally appropriate manner as compared to individual projects constructed separately. A decision of the Secretary as to eligibility for aid under this subdivision (C) shall be final. This subdivision (C) shall apply only to a project that has received preliminary approval by June 30, 2013.

(8) Eligible construction cost.

(A) Space and cost parameters. Only those portions of a project shall be eligible for construction aid that meet space and cost parameters adopted by the State Board. The parameters shall define maximum square footage costs, maximum gross square footage per student by grade range and school size, and minimum and maximum square footage allowances per student for programs and services.

(B) Eligible costs. Construction costs eligible for State aid may include the cost of a preliminary land test on an approved project as required under 10 V.S.A. chapter 151 and any expenditures of federal funds for retrofitting to conserve energy or for asbestos abatement. Expenditures of federal funds for any other purpose shall not be eligible for reimbursement by State aid under this chapter. Expenditures of funds borrowed under subdivision 563(21) of this title shall not be eligible for reimbursement by State aid.

(9) Payment. Upon satisfactory evidence that a project approved under subdivision (5) of this subsection is under construction or has been constructed, and upon appropriation of funds sufficient to fund the State aid due under this section, the State Board shall certify an award for the project to the Commissioner of Finance and Management

who shall issue a warrant for the payment of one-half of the award, or the entire award if the project is complete. After a project has been completed according to approved plans and specifications and the cost thereof has been audited by the Agency, the Secretary shall certify the remainder of the award due for the project to the Commissioner of Finance and Management who shall issue a warrant for the payment. Provided, however, if a project that is included on a prioritized list, for which list the General Assembly has appropriated funds in any year, is not eligible to be certified for one-half of the award or for the entire award, and if another project of lesser priority is eligible for certification, nothing in this section shall preclude the State Board from certifying an award for the lesser priority project prior to the higher priority project.

(b) Refund upon sale. Upon the sale by a district of any item, building, or unit that may be relocated, for which State construction aid was awarded under this title, the district shall refund to the State a percentage of the sale price equal to the percentage of construction aid received. In no event shall the sum refunded be in excess of the amount of the original State aid received for the purchase of the item, building, or unit. All refunds shall be deposited with the State Treasurer and used for school construction aid awards.

(c) Repayment as a condition of general aid. No school district shall receive any State general aid unless the school district complies with subsection (b) of this section.

(d) Emergency aid. Notwithstanding any other provision of this section, the Secretary may grant aid pursuant to subdivision (a)(7) of this section for a project the Secretary deems to be an emergency, up to a maximum total project cost of \$100,000.00.

(e) Rules. The State Board shall adopt rules pertaining to school construction and capital outlay.

(f) Aid in excess of statutory percentages. Notwithstanding any provision of law to the contrary, no approved school construction project deemed eligible by the Secretary for State construction aid in excess of the percentages set forth in subdivision (a)(7) of this section shall be guaranteed such additional funding until the additional funding is approved by the General Assembly.

Laws Relating to Suspension of State Aid for School Construction

2007 Acts and Resolves No. 52, Sec. 36

Sec. 36. STATE AID FOR SCHOOL CONSTRUCTION; SUSPENSION

(a) The commissioner of education shall not accept, review, or act on any applications for state aid under chapter 123 of Title 16 submitted after March 7, 2007 unless, prior to March 7, 2007, the electorate voted funds or authorized bonds, and thereafter all periods for reconsideration of the vote have expired, except for those projects which are:

- (1) eligible to be assigned first priority under 16 V.S.A. § 3448(a)(3);
- (2) necessary to ensure the health and safety, as determined by the commissioner, of students and employees using the building; or
- (3) school consolidation projects eligible for 50 percent aid under 16 V.S.A. § 3448(a)(7)(C).

(b) It is the intent of the general assembly to use the time that state aid for school construction is suspended to review the recommendations of the commissioner of education and the commissioner of finance and management reported under Sec. 38 of this act and, based on those recommendations, develop a sustainable plan for state aid to school construction. If no plan is in place by July 1, 2008, the general assembly will extend the period of suspension until a plan is in place.

2008 Acts and Resolves No. 200, Sec. 45

Sec. 45. CONTINUATION OF SUSPENSION OF STATE AID FOR SCHOOL CONSTRUCTION

(a) In Sec. 36 of No. 52 of the Acts of 2007, the general assembly suspended state aid for school construction in order to provide time to enable the commissioner of education and the commissioner of finance and management to make recommendations for a sustainable plan for state aid to school construction. In the absence of a viable plan for funding school construction, the general assembly hereby extends the period of suspension until a plan is developed and adopted.

(b) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of calculating whether the district has exceeded the excess spending threshold and neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide technical assistance regarding the planning and implementation of school renovation and construction.

(c) No year during which state aid for school construction is suspended shall be included within the department's determination under 24 V.S.A. § 2804(b) of whether amounts deposited in a reserve fund have been used within five years of deposit.

2009 Acts and Resolves No. 54, Sec. 22

Sec. 22. Sec. 45(b) of No. 200 of the Acts of the 2007 Adj. Sess. (2008) is amended to read:

(b)(1) Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, if a school district declares its intent to pay for the cost of a school construction project without state aid provided pursuant to chapter 123 of Title 16 and has received voter approval for the project on or after March 7, 2007, then the commissioner of education shall review the project as a preliminary application upon the district's request. In this case, the commissioner shall use the standards and processes of chapter 123 for determining preliminary approval, and shall deduct the portion of education spending that is approved from the calculation of excess spending under 32 V.S.A. § 5401(12). Preliminary approval received pursuant to this subsection is to be used solely for purposes of:

(A) calculating whether the district has exceeded the excess spending threshold ~~and neither;~~ or

(B) enabling the district to proceed with a project using funds other than those provided under chapter 123 of Title 16, or both.

(2) Neither preliminary approval nor the provision of technical assistance indicates that the district will receive state aid for school construction or preliminary approval for that aid when school construction aid is again available. Notwithstanding subsection (a) of Sec. 36 of No. 52 of the Acts of 2007, upon the request of the district, the department shall provide technical assistance regarding the planning and implementation of school renovation and construction.

2011 Acts and Resolves No. 40, Sec. 43

Sec. 43. STATE AID FOR SCHOOL CONSTRUCTION

On or before January 15, 2012, the department of education shall provide a report on the costs of lifting the moratorium on state aid for school construction, required by Sec. 36 of No. 52 of the Acts of 2007, including the

moratorium on biomass, to the house committee on corrections and institutions and the senate committee on institutions. In preparing its report, the department shall consider the demand for new projects, how other states fund school construction, and new funding formulas, including formulas that do not utilize capital funding. The report shall include a recommendation about when the moratorium should be lifted.

2013 Acts and Resolves No. 51, Sec. 45

Sec. 45. STATE AID FOR SCHOOL CONSTRUCTION; EXTENSION OF SUSPENSION

(a) In 2007 Acts and Resolves No. 52, Sec. 36, the General Assembly suspended state aid for school construction in order to permit the Secretary of Education and the Commissioner of Finance and Management to recommend a sustainable plan for state aid for school construction.

(b) In 2008 Acts and Resolves No. 200, Sec. 45, as amended by 2009 Acts and Resolves No. 54, Sec. 22, the General Assembly, in the absence of a recommendation, extended the suspension until a sustainable plan for state aid for school construction is developed and adopted.

(c) State aid remains suspended pursuant to the terms of 2008 Acts and Resolves No. 200, Sec. 45 as amended by 2009 Acts and Resolves No. 54, Sec. 22.

(d) Notwithstanding the suspension, the State intends to honor its obligation by FY 2016 to pay for projects for which state aid had been committed prior to the suspension.