

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4534 HHS HB 204



CHAPTER 4  
COMMISSION ON GENERAL EDUCATION

21-1-4-2 [28-802]. Administrative control.

**Compiler's Notes.** The statutory entity created by this section was abolished and all powers, duties and functions terminated, effective June 30, 1986, or on the date when all bonds, indebtedness and lease agreements outstanding on June 30, 1986, are retired, by 4-26-3-23(a).

CHAPTER 5  
COMMISSION ON GENERAL EDUCATION—ADVANCEMENTS  
TO CONSOLIDATED SCHOOLS—DISASTER LOSS

## SECTION.

- 21-1-5-3. Commission authorized to make advancements.  
21-1-5-4. Qualifications necessary for advancement.

## SECTION.

- 21-1-5-5. Length of time of advancement — Interest rate.

**21-1-5-3 [28-815]. Commission authorized to make advancements.** — The commission on general education of the Indiana state board of education established under the provisions of IC 20-1-1 [20-1-1-1 — 20-1-1-6] is hereby authorized to advance sums of money to consolidated school corporations from the Indiana common school fund to be used by such school corporations for the purchase of real estate, the construction of school buildings and the equipment of such buildings and the remodeling, repairing, or improving of school facilities, subject to the limitations and conditions as prescribed in this chapter. However, a dollar limitation placed by the commission on the amount a school corporation may receive under this chapter is waived if:

- (1) The school corporation has an adjusted assessed valuation per pupil ADA of less than eighteen thousand dollars [\$18,000];
- (2) The school corporation's debt service tax rate would exceed one dollar fifty cents [\$1.50] per one hundred dollars [\$100] of assessed valuation without a waiver of the dollar limitation; and
- (3) The school property tax control board recommends a waiver of the dollar limitation. [Acts 1959, ch. 379, § 2; 1973, P.L. 234, § 9; 1975, P.L. 246, § 1; 1980, P.L. 44, § 2.]

**Amendments.** The 1980 amendment inserted "and the remodeling, repairing, or improving of school facilities" in the first sentence, substituted "eighteen thousand dollars" for "eight thousand four hundred dollars" in subdivision (1), and substituted

"one dollar fifty cents" for "three dollars" in subdivision (2).

**Effective Dates.** Acts 1980, P.L. 44, § 6, declared an emergency. Approved March 3, 1980.

**21-1-5-4 [28-816]. Qualifications necessary for advancement.** — In order to qualify for an advancement under the provisions of this act, the consolidated school corporation is required to raise, either by a bond issue or by a cumulative fund tax levy or by both such bond issue and tax levy, a sum of money equivalent to not less than two percent [2%] of the adjusted assessed valuation of its geographical district; and any advancement so made shall not exceed the sum of four thousand dollars [\$4,000] per pupil accommodated in the new or improved structure less the sum of money raised by and made available to the corporation. [Acts 1959, ch. 379, § 3; 1963, ch. 321, § 1; 1980, P.L. 44, § 3.]

CHAPTER 4  
GENERAL EDUCATION

ive control.

all bonds, indebtedness and lease agreements outstanding on June 30, 1986, are retired, by 4-26-3-23(a).

CHAPTER 5  
EDUCATION—ADVANCEMENTS  
SCHOOLS—DISASTER LOSS

SECTION.

21-1-5-5. Length of time of advancement — Interest rate.

authorized to make advancements. of the Indiana state board of education of IC 20-1-1 [20-1-1-1 — 20-1-1-6] is of money to consolidated school corporation fund to be used by such school corporation for the construction of school buildings and the remodeling, repairing, or to the limitations and conditions as a dollar limitation placed by the corporation may receive under this chapter

adjusted assessed valuation per pupil dollars (\$18.00); service tax rate would exceed one dollar dollars [\$100] of assessed valuation; and school board recommends a waiver of the 2: 1973, P.L. 234, § 9; 1975, P.L. 246,

"one dollar fifty cents" for "three dollars" in subdivision (2).

Effective Dates. Acts 1980, P.L. 44, § 6, declared an emergency. Approved March 3, 1980.

ns necessary for advancement. — In under the provisions of this act, the required to raise, either by a bond issue by both such bond issue and tax levy, than two percent (2%) of the adjusted district; and any advancement so thousand dollars [\$4,000] per pupil ved structure less the sum of money corporation. [Acts 1959, ch. 379, § 3;

Amendments. The 1980 amendment substituted "four thousand dollars (\$4,000)" for "two thousand dollars (\$2,000)" and inserted "or improved" preceding "structure."

Effective Dates. Acts 1980, P.L. 44, § 6, declared an emergency. Approved March 3, 1980.

21-1-5-5 [28-817]. Length of time of advancement — Interest rate. — The money advanced pursuant to the provisions of this chapter may be advanced for any period of time not exceeding twenty (20) years, and the receiving school corporation shall be required to pay interest on the unpaid balance. The commission on general education of the Indiana state board of education shall select a nationally recognized index of municipal bond averages and shall select a date not less than one (1) month nor more than two (2) months prior to the granting of advancements. The rate of interest shall be one percent (1%) less than the average published on the date closest to the selected date by the selected nationally recognized index, rounded down to the next lowest even percent. Such commission may determine that the rounding down should be to a fraction of a percent which is a multiple of either one-tenth ( $\frac{1}{10}$ ) or one-quarter ( $\frac{1}{4}$ ) of one (1%) percent. In order to guarantee the payment of any advancement made, the state of Indiana is authorized in its sole discretion to withhold from funds due to the school corporation an amount of money that shall be necessary to pay such advancement and interest in such twenty (20) year period, the exact sum to be fixed by the commission on general education of the Indiana state board of education at the time the advancement is negotiated by the school corporation: Provided, That in the case of any school corporation that currently has a loan hereunder such semi-annual withholding payment may be adjusted to conform with the provisions of this chapter. If available, such money should first be withheld from the distribution of the state school tuition fund: Provided, That if such distribution is not adequate, then money may be withheld from the distribution of other school funds. [Acts 1959, ch. 379, § 4; 1963, ch. 321, § 2; 1965, ch. 210, § 2; 1973, P.L. 234, § 10; 1980, P.L. 44, § 4.]

Amendments. The 1980 amendment deleted "at the rate of not less than two and one half percent and not more than four percent per annum" preceding "on the unpaid balance" in the first sentence; added the second, third, and fourth sentences; and deleted "semi-annually" following "discretion to withhold" and "could be raised by a tax levy

not to exceed seventy-five cents on the adjusted valuation of the consolidated school corporation or such greater tax levy as" preceding "shall be necessary" in the present fifth sentence.

Effective Dates. Acts 1980, P.L. 44, § 6, declared an emergency. Approved March 3, 1980.

CHAPTER 7

COMMON SCHOOL FUND (AND UNIVERSITY PERMANENT ENDOWMENT FUND)—COUNTY TRUST

SECTION.

21-1-7-16. [Repealed.]

21-1-7-20. Default in making payments.

21-1-7-16 [28-720]. [Repealed.]

Compiler's Notes. This section (Acts 1943, ch. 251, § 16) concerning fees in connection with mortgage loans by counties was repealed

by Acts 1982, P.L. 1, § 71. For present provisions concerning fees of county officers see 36-2-7-9 — 36-2-7-18.

21-1-7-20 [28-724]. Default in making payments. — (a) It is the duty of the auditor of each county, in case of default in the payment of any installment of the principal or interest of any school fund loan, to at once proceed to enforce the collection of that principal or interest.

(b) The department of inspection and supervision of public offices shall examine the records and affairs of the school funds held in trust by the several counties, and in the event that any such examination discloses a violation of this chapter, then the state examiner shall order that the county auditor or other public official charged with the performance of any duty comply with this chapter. In the event that the county auditor or other public official fails to comply with any such order within a reasonable time, then the state examiner shall certify to the prosecuting attorney of the county a copy of the report of examination and of the order issued for proper proceeding to enforce this chapter. [Acts 1943, ch. 251, § 20, p. 707; 1978, P.L. 2, § 2102, p. 2.]

## CHAPTER 11

### VETERANS MEMORIAL SCHOOL CONSTRUCTION FUND

#### SECTION.

21-1-11-2. Commission authorized to make advancements.

#### SECTION.

21-1-11-3.1. Disaster loans.

21-1-11-5. School building index.

**21-1-11-1 [28-901]. Veterans memorial school construction fund.**

Indiana Adm. Code. 510 IAC 3-5-2, 510 IAC 3-5-3.

**21-1-11-2 [28-903]. Commission authorized to make advancements.** — The commission is hereby authorized, subject to the provisions of this chapter [21-1-11-1 — 21-1-11-10], to order and direct the auditor of state to divert and make an advancement periodically from the state school tuition fund for the construction, remodeling or repair of school buildings to any school corporation or school organized and existing under and pursuant to any law of the state of Indiana for the operation of a public school which is a part of the common school system of the state. An advancement to any school or school corporation under section 3 [21-1-11-?] of this chapter shall not be in excess of two hundred fifty thousand dollar. [\$250,000]. However, this dollar limitation is waived if:

(1) the school corporation has an adjusted assessed valuation per pupil ADA of less than eight thousand four hundred dollars [\$8,400];

(2) the school corporation's debt service tax rate would exceed three dollars [\$3.00] for each one hundred dollars [\$100] of assessed valuation without a waiver of the dollar limitation; and

(3) the school property tax control board recommends a waiver of the limitation.

All advancements shall be made by the commission only as set forth in this chapter. In no instance shall an advancement be made for any purpose other than the construction, remodeling or repairing of school buildings and classrooms and shall not be made for gymnasiums, auditoriums or any athletic facilities. [Acts 1955, ch. 312, § 3, p. 958; 1974, P.L. 102, § 1, p. 371; 1975, P.L. 246, § 2, p. 1341.]

**21-1-11-3 [28-904]. Conditions for nondisaster advancements.**

Indiana Adm. Code. 510 IAC 3-5-2.

**21-1-11-3.1 [28-904a]. Disaster loans.** — (a) The commission may make a disaster loan to a school corporation that has suffered loss by fire, flood, tornado, wind or other disaster which makes all or part of the school

and supervision of public offices shall of the school funds held in trust by the. If any such examination discloses a deficiency, the examiner shall order that the county auditor be charged with the performance of any duty that the county auditor or other public officer shall order within a reasonable time, then the prosecuting attorney of the county a. and of the order issued for proper pro- 1943, ch. 251, § 20, p. 707; 1978, P.L.

CHAPTER 11

SCHOOL CONSTRUCTION FUND

SECTION

- 21-1-11-3.1. Disaster loans.
- 21-1-11-5. School building index.

Veterans Memorial school construction fund.

authorized to make advances hereby authorized, subject to the provisions of section 3 (21-1-11-10), to order and direct the state auditor to advance periodically from the state treasury the amount needed for remodeling or repair of school buildings organized and existing under and controlled by the operation of a public school system of the state. An advancement under section 3 (21-1-11-3) shall not exceed two hundred fifty thousand dollars unless the commission is waived if:

- (a) The assessed valuation per pupil does not exceed three hundred dollars (\$8,400);
- (b) The service tax rate would exceed three percent (3%) of assessed valuation; and
- (c) The board recommends a waiver of the advance.

The commission only as set forth in this section. No advancement shall be made for any purpose other than the repairing of school buildings and school gymnasiums, auditoriums or any other school buildings. 1973, P.L. 102, § 1, p. 371; 1974, P.L. 102, § 1, p. 958; 1974, P.L. 102, § 1, p. 371;

Non-disaster advancements.

Disaster advancements. — (a) The commission may advance to a school corporation that has suffered loss by fire, flood, or other disaster which makes all or part of the school

building or buildings unfit for school purposes as defined in IC 1971, 20-5-44 [20-5-44-1 — 20-5-44-6].

(b) A loan made under this section may not exceed three million dollars (\$3,000,000). The school corporation shall repay the loan within twenty (20) years at an annual interest rate of one per cent (1%) of the unpaid balance.

(c) The amounts repaid by school corporations under subsection (b) of this section shall be deposited in a special fund to be known as the "school disaster loan fund." The money remaining in the school disaster loan fund at the end of a fiscal year does not revert to the state general fund. The commission may use the money in the school disaster loan fund only to make disaster loans to school corporations under this section.

(d) The provisions of section(s) 5, 6, and 7 (21-1-11-5, 21-1-11-6, 21-1-11-7) of this chapter do not apply to loans made under this section. [IC 1971, 21-1-11-3.1, as added by Acts 1974, P.L. 102, § 3, p. 371; 1975, P.L. 247, § 1, p. 1342.]

21-1-11-4 [28-906]. Petition for advancement.

Indiana Adm. Code. 510 IAC 3-5-1.

21-1-11-5 [28-907]. School building index. — The commission shall compute and ascribe to such applicant school or school corporation a school building index, which shall be the ratio of the school building need, in terms of money, to the school corporation tax ability, in terms of money, both as defined in this section.

(a) The school building need, in terms of money, of a school or school corporation shall be determined by adding to the average daily attendance of school children in grades one (1) to twelve (12) of such school or school corporation during the current school year in which application for an advancement is made, twice the average daily attendance increase of said school or school corporation for the preceding three (3) years: Provided, however, That the general commission shall have authority to make adjustments to reflect the effect of changes of boundary lines, loss of transfer pupils and/or loss of resident pupils to private, parochial or cooperative program schools within such three (3) year period. The sum so obtained shall then be divided by twenty-five (25) to determine the number of classrooms needed to house the estimated enrollment increase. From the quotient so obtained there shall be subtracted the number of classrooms which are owned, or under a lease-rental arrangement, or under construction in said school corporation and which were constructed for and normally used for classroom purposes, at the time of making application for an advancement: Provided, however, That there shall not be subtracted classrooms in a building or buildings found to be inadequate for the proper education of pupils under standards and procedures prescribed by the commission on general education of the Indiana state board of education, or which have been condemned under the provisions of IC 1971, 20-5-44 [20-5-44-1 — 20-5-44-6] and which are to be replaced by funds applied for. The remainder so obtained shall be multiplied by the amount of twenty thousand dollars (\$20,000), and the product thereof shall be school building need of such school or school corporation in the terms of money.

(b) The school corporation tax ability, in terms of money, shall be six and one half per cent (6½%) of the value of the taxable property within a school corporation according to the last and latest assessment for state and county taxes immediately preceding the date of application, minus the principal amount of any outstanding general obligation bonds of such school or school corporation, and minus the principal amount of outstanding obligations of any corporation or holding company which has entered into a lease-rental

agreement with the applicant school corporation, and minus the principal amount of outstanding civil township, town or city school building bonds.

(c) If the school corporation tax ability of any school corporation as computed under subsection (b) of this section is less than one hundred dollars [\$100], the school corporation tax ability shall be deemed to be, and shall be considered for the purposes of this act [21-1-11-1 — 21-1-11-10] as being in the amount of one hundred dollars [\$100]. [Acts 1955, ch. 312, § 6, p. 958; 1959, ch. 382, § 2, p. 1051; 1975, P.L. 248, § 1, p. 1343.]

Indiana Adm. Code. 510 IAC 3-5-1, 510 IAC 3-5-2.

**21-1-11-6 [28-908]. Order of advancements.**

Indiana Adm. Code. 510 IAC 3-5-1.

**21-1-11-7 [28-909]. Constitutional limitation on indebtedness unaffected by advancement — Advancement deducted from semi-annual distribution.**

Burns' Adm. Rules and Reg., Code Edition. See Rule (21-1-11-7)-1.

**CHAPTER 12**

**VETERANS MEMORIAL SCHOOL CONSTRUCTION FUND—  
ADDITIONAL CONDITIONS FOR ADVANCEMENTS**

**21-1-12-1 [28-905]. Additional conditions for advancements.**

Indiana Adm. Code. 510 IAC 3-5-2.

**ARTICLE 2**

**SCHOOL FUNDS—LOCAL**

**CHAPTER.**

- 3.1. FUNDS FOR TOWNSHIP SCHOOL BUILDING, 21-2-3.1-1 — 21-2-3.1-4.
- 3.2. PETITION FOR TOWNSHIP SCHOOL BUILDING, 21-2-3.2-1 — 21-2-3.2-5.
- 4. DEBT SERVICE FUND — CONSTRUCTION BONDS, 21-2-4-2.
- 5.5. REPAIR AND REPLACEMENT FUND, 21-2-5.5-1 — 21-2-5.5-5.
- 5.6. FUNDS: SELF-INSURANCE, 21-2-5.6-1 — 21-2-5.6-4.
- 6. CUMULATIVE BUILDING OR SINKING FUND (— TAX LEVY), 21-2-6-1 — 21-2-6-2.2.
- 11. GENERAL SCHOOL FUND — TAX LEVY, 21-2-11-4.

**CHAPTER.**

- 11.5. SCHOOL TRANSPORTATION FUND, 21-2-11.5-1 — 21-2-11.5-4.
- 12. SUPPLEMENTAL SCHOOL CORPORATION FINANCING ACT — COUNTY SCHOOL DISTRIBUTION FUND, 21-2-12-2 — 21-2-12-3.1, 21-2-12-4.1, 21-2-12-5.1, 21-2-12-6.1, 21-2-12-7.1, 21-2-12-8.1.
- 13. SUPPLEMENTARY SCHOOL TAX ASSISTANCE IN DEARBORN COUNTY, 21-2-13-3, 21-2-13-6, 21-2-13-7.
- 14. LEVYING OF TAXES AND FUNDING BY DISTRESSED SCHOOL CORPORATIONS, 21-2-14-4, 21-2-14-6.

**CHAPTER 1**

**TOWNSHIPS—SEMINARY TOWNSHIP SCHOOL FUND**

**21-2-1-1 [28-528]. Seminary township school fund.**

Cross References. Building and building fixtures repair and replacement fund authorized, 21-2-5.5-1 — 21-2-5.5-5.

162.110

EDUCATION

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Time of sale.
2. Exceeding debt limit.

1. Time of Sale.  
The time of the sale of the bonds and not the time of election determined whether Const.,

§ 158 was violated. *Boll v. Ludlow*, 234 Ky. 812, 29 S.W.2d 547 (1930).

2. Exceeding Debt Limit.  
If a bond issue exceeded the constitutional limits only the excess was void. *Boll v. Ludlow*, 234 Ky. 812, 29 S.W.2d 547 (1930).

162.110. Bonds of subdistricts. [Repealed.]

Compiler's Notes. This section (4399-13) was repealed by Acts 1966, ch. 255, § 283.

162.120. Independent district in city may convey property to city provide buildings. — For the purpose of providing buildings for school purposes, boards of education of school districts embracing a city of any class may convey to the city a fee simple title with covenant of general warranty to a site now held or hereafter acquired by such boards of education. (4421.)

Cross-References. City of first class may set apart land for municipal university, KRS 165.060.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Although, under this section through KRS 162.300, a certificate from the trustee stating certain bonds and coupons were redeemed and canceled is sufficient evidence that the bonds and coupons have been paid and properly canceled, the school board treasurer should normally visually inspect the bonds and coupons before incineration. OAG 72-487.

Under the provisions of this section through KRS 162.300 a school board may not raise itself of liability for the bonds and coupons; a transfer of the "rental" money to a trust since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 72-487.

Under the provisions of this section through KRS 162.300 the school board should require the trustee to make an accounting each year of money received and bonds and coupons paid. OAG 72-487.

Under this section through KRS 162.300 any excess money left after liability for the bonds has ceased would revert to the school board treasury. OAG 72-487.

Under this section through KRS 162.300 a paying agent or trustee pays a wrong bond or coupon the improper payment is the liability of the trustee and not the school board does not insure the trustee's acts in this regard; therefore, the trustee is liable to the board but the board is liable to the holder. OAG 72-487.

Under this section through KRS 162.300 when bonds or coupons are not presented at maturity liability for these items would continue subject to the applicable statute of limitations. OAG 72-487.

Since financing of school bonds is done almost exclusively through the authority of KRS 162.120 through 162.300 and KRS 68.000 through 58.120, there is no authority for any change in the preexisting administrative procedure used for school building revenue bonds and fiscal courts and county treasurer.

must continue to perform the customary functions heretofore served by them in that regard. OAG 77-139, modifying OAG 76-711. Cited: *Cole v. McCracken County*, 297 Ky. 197, 181 S.W.2d 461 (1944); *Fyfe v. Hardin County Bd. of Educ.*, 305 Ky. 589, 205 S.W.2d 163 (1947); *Bell v. Board of Educ.*, 308 Ky. 848,

215 S.W.2d 1007 (1948); *Fendley v. Board of Educ.*, 240 S.W.2d 837 (Ky. App. 1951); *Wagner v. Fiscal Court*, 306 S.W.2d 288 (Ky. App. 1957); *Stull v. Webster County Bd. of Educ.*, 339 S.W.2d 189 (Ky. App. 1960); *Fosson v. Fiscal Court*, 369 S.W.2d 108 (Ky. App. 1963).

### NOTES TO DECISIONS

(Cross-References. See note to KRS 162.140 under heading 2. Abuse of Board's Discretion. *Carter v. Taylor*, 313 Ky. 445, 231 S.W.2d 601 (1950))

#### ANALYSIS

1. Conveyance and lease back.
2. Selection of site.
3. School building.
4. Merger with county after conveyance to city.
5. Acquisition of property and buildings.
6. Liability for tax.
7. Revenue bonds.

#### 1. Conveyance and Lease Back.

Bonds issued by a city as a conduit of independent school district pursuant to KRS 162.120 to 162.300 to pay costs of school auditorium-gymnasium to be erected on site conveyed by county board of education to the independent school district which was to convey it to the city which was to lease it back to school district until retirement of the bonds would not constitute direct obligations of the city or of the independent school district but would be secured by a first lien upon the auditorium-gymnasium and the right of the bondholders to enforce the lien would in no way be affected by a merger of independent school district and county school district. *Ranier v. Board of Educ.*, 273 S.W.2d 577 (Ky. App. 1954).

The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 143 (Ky. App. 1969).

The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 143 (Ky. App. 1969).

#### 2. Selection of Site.

The selection of the site is to be made by the

board of education. *Franklin County v. Franklin County Bd. of Educ.*, 267 Ky. 554, 102 S.W.2d 1024 (1937).

#### 3. School Building.

An auditorium-gymnasium is a school building within the meaning of KRS 162.120 to 162.300. *Ranier v. Board of Educ.*, 273 S.W.2d 577 (Ky. App. 1954).

#### 4. Merger with County after Conveyance to City.

The fact that after conveyance to the city, the independent district was merged with the county district does not affect the right of the city to consummate the original plan. *Piggott v. Kasey*, 271 Ky. 651, 113 S.W.2d 5 (1938).

#### 5. Acquisition of Property and Buildings.

A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300. *Morgan v. Fayette County Bd. of Educ.*, 294 Ky. 597, 172 S.W.2d 64 (1943).

#### 6. Liability for Tax.

Regardless of time or amount, the voting of a tax to pay revenue bonds issued for school construction does not impose a tax in futuro but merely grants authority to the taxing power to increase the amount of annual tax that the law otherwise authorized to be levied and property transferred by county school board to city school district is not liable for county school building tax voted prior to the transfer. *Board of Educ. v. Board of Educ.*, 250 S.W.2d 1017 (Ky. App. 1952).

#### 7. Revenue Bonds.

Revenue bonds issued under KRS 162.120 to 162.300 did not constitute an indebtedness of county school district so city school district to which territory was transferred from county school district after voters of county district authorized a special school building tax to pay rentals for the school buildings to be erected and financed by the bonds was not liable for any part of the revenue bonds under proportional assumption statute KRS 160.065. *Board of Educ. v. Board of Educ.*, 250 S.W.2d 1017 (Ky. App. 1952).

City is required to cooperate with independent school district in the issuance and sale of bonds but it is merely a conduit through which the board of education acts to have the bonds issued and sold and has no

discretion in the matter. *Ranier v. Board of Educ.*, 273 S.W.2d 577 (Ky. App. 1954). Collateral References, 78 C.J.S., Schools and School Districts, § 241.

**162.130. City to contract for erection of building.** — Every city to which a site for a building has been conveyed, as provided in KRS 162.120, shall enter into a contract or contracts with some person for the erection on the site of a building with the necessary appurtenances, according to plans and specifications adopted by the city and approved by the board of education and the superintendent of public instruction. (4421-2.)

Cited: *Fyfe v. Hardin County Bd. of Educ.*, 305 Ky. 589, 205 S.W.2d 165 (1947).

NOTES TO DECISIONS

1. Financing Improvements.

The authority of the school board to convey property to the city and then lease back the property with improvements was not

conditioned upon financing under any particular statutory authority. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

**162.140. Lease of building by board of education — Terms — Amount** of rent. — Immediately upon the approval of the plans and specifications as provided in KRS 162.130, the board of education shall offer to lease the building for a term of one (1) year from the time the building is completed and ready for occupancy. The lease by its terms shall give the lessee the right and option to extend the term of the lease from year to year, for periods of one (1) year, until the original term of the lease has been extended for a total number of years, acceptable to the city, not exceeding thirty (30) years, at a rental which, if paid for the original term and for each of the full number of years for which the term is extended, will amortize the total cost of the erection of the building and appurtenances, provide an adequate maintenance fund and in addition thereto a sum sufficient to pay the cost of insuring the building against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto. (4421-3.)

Opinions of Attorney General. The school board has broad discretion under KRS 160.160 and 160.290 in the selection of school sites and the establishment of schools so that even if the county is the legal owner of the property and is leasing it to the the school board under this section, as the school district holds equitable title, the fiscal court has no rights relative to a high school building which the board of education plans to tear down and replace with a new building, unless the county

could negotiate to purchase the property from the school board. OAG 74-221.

A school board should not tie up school property for a period exceeding a year but should, instead, provide for an extension of the term of the lease from year to year, for periods of one year, for a specified number of total years. OAG 77-771.

Cited: *Fyfe v. Hardin County Bd. of Educ.*, 305 Ky. 589, 205 S.W.2d 165 (1947); *Fosson v. Fiscal Court*, 369 S.W.2d 108 (Ky. App. 1963).

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NOTES TO DECISIONS

ANALYSIS

- 1 Authority to lease.
- 2 Abuse of board's discretion.
- 3 Lease for thirty years invalid.

1. Authority to Lease.

The authority of the school board to convey property to the city and then lease back the property with improvements was not conditioned upon financing under any particular statutory authority. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

The school board had the right to convey a school site to the city and then lease back the site and improvements thereon. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

The school board is authorized to convey a building site to the city and lease it back with improvements financed by city's bonds. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

2. Abuse of Board's Discretion.

Where county had existing bonded debt of \$225,000 and the county board of education a

debt of nearly \$100,000 and estimates of future revenue indicated there would be available \$2,000 to \$5,600 more than necessary for servicing existing debts and meeting obligations incurred in building proposed new school, approval of plan by which county board of education and fiscal court proposed to erect a new high school and issue \$250,000 in bonds payable from rents received annually from school board over 20-year period was not an abuse of discretion. *Carter v. Taylor*, 313 Ky. 445, 231 S.W.2d 601 (1950).

3. Lease for Thirty Years Invalid.

A lease for one year with annual renewal option is valid, when rental involved does not result in violation of Const., § 157. However a 30-year lease is invalid since it does result in a violation of said constitutional section. *Davis v. Board of Educ.*, 260 Ky. 294, 83 S.W.2d 34 (1935).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 256, 263.

Lease of school property, power of school or local authorities as to grant of. 111 A.L.R. 1051.

162.150. City may erect school buildings. — Any city may establish and erect school buildings and necessary appurtenances within the corporate limits under the provisions of KRS 162.160 to 162.280, for the purpose of supplying the board of education of the independent district embracing the city with adequate buildings necessary to carry out its duties and powers. (4421-5.)

Cross-References. City of first class may set apart land for municipal university, KRS 165.060.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Other school property, title to which has been returned by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and

complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 169.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

A city may establish and erect school buildings within its corporate limits for the purpose of supplying the board of education of an independent school district embracing the city with adequate buildings necessary to carry out its powers and duties. OAG 72-796.

Cited: *City of Bowling Green v. Board of Educ.*, 443 S.W.2d 243 (Ky. App. 1969).

in the matter. *Ranier v. Board of Educ.*, 195 S.W.2d 577 (Ky. App. 1954).  
Collateral References. 78 C.J.S., Schools and School Districts, § 241.

Building. — Every city to which provided in KRS 162.120, shall person for the erection on the finances, according to plans and approved by the board of education. (4421-2.)

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and upon financing under any or statutory authority. *City of Bowling Green v. Board of Educ.*, 443 S.W.2d App. 1969.

Education — Terms — Amount. The plans and specifications for the building shall offer to lease the building is completed shall give the lessee the right year to year, for periods of has been extended for a total exceeding thirty (30) years, at for each of the full number amortize the total cost of the costs, provide an adequate sum sufficient to pay the cost by fire and windstorm of the parties thereto. (4421-3)

Authority to purchase the property from board. OAG 74-221.

Authority to purchase the property from board should not tie up school for a period exceeding a year but instead, provide for an extension of the lease from year to year, for one year, for a specified number of years. OAG 77-771.

*City of Hardin County Bd. of Educ. v. Board of Educ.*, 205 S.W.2d 165 (1947); *Posner v. Board of Educ.*, 369 S.W.2d 108 (Ky. App. 1963).

## NOTES TO DECISIONS

## I. Acquisition of Property and Buildings.

A county or city may acquire property on which school buildings have already been erected and finance the cost of acquisition under the provisions of KRS 162.120 to 162.300 and several buildings or properties may be included in one mortgage and bond

issue. *Morgan v. Fayette County Board of Educ.*, 294 Ky. 397, 172 S.W.2d 64 (1943).  
 Collateral References. 68 Am. Jur. 2d Schools, § 70.  
 78 C.J.S., Schools and School Districts, § 256.

**162.160. Plans and specifications for buildings — Board of education must offer to lease building before construction contract is made. — (1)** When any city desires to construct a school building, under the provisions of KRS 162.150, the governing body of the city shall, by ordinance, cause plans and specifications for the building to be duly made and filed in the office of the city clerk. The plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction. The plans and specifications shall be prepared by an architect selected by the city and approved by the board of education of the school district, and shall be submitted to the board of education of the school district and to the superintendent of public instruction for approval.

(2) If the plans and specifications are approved, and if the board of education of the school district offers to lease the building under a lease of the kind provided in KRS 162.140, the city governing body shall cause the city clerk to advertise for bids, and thereafter the city governing body, through the mayor or chairman of the board of trustees, may contract for the construction of the building. (4421-12.)

**Cross-References.** Public works involving two thousand dollars or more to be under supervision of registered engineer or architect, KRS 322.360.

**Cited:** *Bell v. Board of Educ.*, 308 Ky. 848, 215 S.W.2d 1007 (1948); *City of Louisville v. Manning*, 219 S.W.2d 13 (Ky. App. 1949).

**Collateral References.** 78 C.J.S., Schools and School Districts, §§ 256, 263, 282-285.

**162.170. Financing construction of buildings. —** For the purpose of defraying the cost of constructing or acquiring any school buildings and appurtenances thereto for common school purposes under the provisions of KRS 162.150, any city may borrow money and issue negotiable revenue bonds. No such bonds for common school purposes shall be issued until the conditions of KRS 162.160 have been complied with, and until authorized by an ordinance specifying the proposed undertaking, the amount of bonds to be issued, and the maximum rate of interest the bonds are to bear, which rate, as applicable to revenue bonds issued to finance buildings and appurtenant facilities for common school purposes, shall be established by regulation of the state board for elementary and secondary education. The ordinance shall further provide that the buildings and appurtenant facilities are to be constructed or acquired under the provisions of KRS 162.150 to 162.280. (4421-6, 4421-12: amend. Acts 1970, ch. 137, § 1; 1978, ch. 155, § 82, effective June 17, 1978.)

Cross-References Governmental agency may issue revenue bonds for any public property. KRS 58.010 to 58.120. Kentucky Law Journal. Martin. Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 238 (1961). Opinions of Attorney General. The Kentucky statutes do not authorize the expending of bonds proceeds to renovate

school buildings presently existing and already acquired. OAG 71-107. The statutory sections relating to acquisition of existing buildings in this chapter and KRS chapter 58 are broad enough to include, by reasonable implication, whatever may be properly spent for the functional adaptation of purchased buildings to school purposes. OAG 71-107.

NOTES TO DECISIONS

ANALYSIS

- 1. Sale of bonds.
- 2. Sources of loans.
- 1. Sale of Bonds. Bonds issued hereunder may be sold directly to private individual by the city. J.D. Van Horner & Co. v. University of Ky., 262 Ky. 341, 90 S.W.2d 1029 (1936). See Piggott v. Lacey, 271 Ky. 651, 113 S.W.2d 5 (1938). But see Eagle v. City of Corbin, 275 Ky. 808, 122 S.W.2d 798 (1938).

- 2. Sources of Loans. Counties and cities, in financing construction of school buildings, may borrow money from sources other than the federal government. Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943). Collateral References. 78 C.J.S., Schools and School Districts, §§ 323-330.

162.180. Bonds — Interest on — When payable — How sold. — All bonds issued under the provisions of KRS 162.170 for common school purposes may bear interest at a rate not exceeding the maximum rate per annum which has been established by regulation of the state board for elementary and secondary education, payable semiannually, and shall be executed in such manner and be payable at such times, not exceeding thirty (30) years from the date thereof, and at such place as the governing body of the city determines. The bonds shall be sold in such manner and upon such terms as the governing body of the city deems for the best interest of the city. (421 7, 4421-8; amend. Acts 1970, ch. 137, § 2; 1978, ch. 155, § 82, effective June 17, 1978.)

Kentucky Law Journal. Martin. Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 238 (1961). Cited: Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943); City of Bowling Green v. Board of Educ., 443 S.W.2d 243 (Ky. App. 1969).

162.185. Applicability of KRS 162.170 and 162.180. — Nothing contained in KRS 162.170 or 162.180 is intended to or shall be construed to make interest rates applicable to revenue bonds issued by the governing bodies of state institutions of higher learning under KRS 162.340 to 162.380, inclusive, subject to regulation, establishment, limitation or approval by the state board for elementary and secondary education. (Enact. Acts 1970, ch. 137, § 3; 1978, ch. 155, § 82, effective June 17, 1978.)

162.190. Bonds negotiable — Tax-exempt — Signatures — Not a city debt. — All bonds issued under the provisions of KRS 162.170 shall have all

Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943). Collateral References. 78 C.J.S., Schools and School Districts, §§ 323-330.

ings — Board of education on contract is made. Building, under the provisions shall, by ordinance duly made and filed in accordance with the provisions shall give the details thereof and the provisions shall be prepared by the board of education of the board of education of the instruction for approved, and if the board building under a loan governing body shall cause the city government trustees, may contract for

References. 78 C.J.S., Schools and School Districts, §§ 323-330.

s. — For the purpose of any school building under the provisions of issue negotiable bonds shall be issued until the amount of bonds to be issued are to bear the finance building shall be established by secondary education. The provisions of KRS 162.170 § 1; 1978, ch. 155, § 82

of the qualities of negotiable instruments, and shall not be subject to taxation. If any of the officers whose signatures appear on the bonds or coupons cease to be such officers before delivery of the bonds, the signatures shall nevertheless be valid for all purposes the same as if the officers had remained in office until delivery. The bonds shall be payable solely from the revenue derived from the school building as provided in KRS 162.230, and shall not constitute an indebtedness of the city within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of each bond that it was issued under the provisions of KRS 162.150 to 162.280 and that it does not constitute an indebtedness of the city. (4421-8.)

Cited: Pulaski County v. Ben Hur Life Ass'n, 286 Ky. 119, 149 S.W.2d 738 (1941); Board of Educ. v. Fyfe v. Hardin County Bd. of Educ., 305 Ky. 589, 205 S.W.2d 165 (1947); Board of Educ., 250 S.W.2d 1017 (Ky. App. 1952).

#### NOTES TO DECISIONS

##### 1. Constitutionality.

The tax exemption feature does not violate Const., §§ 3, 170 or 171. J.D. Van Hooser & Co. v. University of Ky., 262 Ky. 581, 90 S.W.2d 1029 (1936).

Collateral References. 78 C.J.S., Schools and School Districts, §§ 359, 371, 373.

162.200. Use of funds — Lien on building. — All money received from any bonds issued pursuant to KRS 162.170 shall be used solely for the establishment or erection of the school building and necessary appurtenances, except that the money may be used also to advance the payment of the interest on bonds during the first three (3) years following the date of the bonds. There shall be a statutory mortgage lien upon the school building and appurtenances in favor of the holders of the bonds and coupons. (4421-9.)

Kentucky Law Journal. Martin, Administrative Action for Efficient Debt Management: The Kentucky Case, 49 Ky. L.J. 505 (1961).

Opinions of Attorney General. A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and

complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

#### NOTES TO DECISIONS

##### 1. Lien on Reversionary Interest.

The lien created by this section is only as good as the title to the property offered as security and subject to the terms of that title and where deed to school board provided it was not to be sold to anyone for residence

purposes but was to remain a part of the colored school property so long as the school remained where then located and the colored school was abandoned and the property offered for sale by the board, the board's title terminated and the ownership of the property

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 fee simple with special limitation or a  
 determinable fee and the possibility of  
 reverter remained in grantor. Fleming

County Bd. of Educ. v. Hall, 380 S.W.2d 273  
 (Ky. App. 1964).  
 Collateral References, 78 C.J.S., Schools  
 and School Districts, §§ 317, 410.

162.210. Rights of bondholders to enforce lien. — The school building  
 and appurtenances shall remain subject to the statutory lien provided by  
 KRS 152.200 until the payment in full of the principal and interest of the  
 bonds. Any holder of the bonds or of any of the coupons may, either at law  
 or in equity, protect and enforce the lien, and may by action enforce and  
 compel performance of all duties required by KRS 162.150 to 162.280,  
 including the making and collecting of sufficient rents, the segregation of  
 the income and revenue, and the application thereof. (4421-10.)

Opinions of Attorney General. A fund  
 resulting from the sale of school property  
 could be used for the purchase of sites for  
 school buildings, for the erection and  
 complete equipping of school buildings, and  
 for the major alteration, enlargement and  
 complete equipping of buildings, in  
 accordance with the provisions of KRS  
 160.476, even though refunding revenue

bonds were outstanding on other school  
 property. OAG 66-224.  
 Other school property, title to which has  
 been retained by the school district, does not  
 represent part of the security for refunding  
 revenue bonds issued to provide for a specific  
 building. OAG 66-224.  
 Collateral References, 78 C.J.S., Schools  
 and School Districts, § 317.

162.220. Receiver in case of default. — If there is any default in the  
 payment of the principal or interest on any of the bonds, any court having  
 jurisdiction of the action may appoint a receiver to administer the school  
 building on behalf of the city, with power to charge and collect rentals  
 sufficient to provide for the payment of any bonds or obligations outstanding  
 against the school building and for the payment of the operating expenses,  
 and to apply the income and revenues in conformity with KRS 162.150 to  
 162.280, and the ordinance referred to in KRS 162.170 and 162.230.  
 (4421-11.)

162.230. Rent — Disposition of to be fixed by ordinance. — At or before  
 the issuance of the bonds, the governing body of the city shall, by ordinance,  
 set aside and pledge the income of the building into a special fund to be used  
 and applied in payment of the cost and maintenance of the building. The  
 ordinance shall definitely fix the amount of revenue necessary to be set aside  
 and applied for the payment of the principal and interest of the bonds. The  
 balance of the income shall be set aside for the reasonable and proper  
 maintenance of the building, including a sufficient sum to pay the cost of  
 insurance. The city governing body may provide by ordinance any provision  
 and stipulation it deems necessary for the administration of the income for  
 the security of the bondholders. (4421-13, 4421-17.)

Collateral References, 79 C.J.S., Schools  
 and School Districts, § 374.

162.210. Deposit and investment of sinking fund. — The sinking fund

shall be deposited in a depository selected by the governing body of the city. The deposit, where practicable, shall be continuously secured by a pledge to the city of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the account or in some other manner acceptable to the purchasers or holders of the bonds. The securities shall be deposited with the city or held by a trustee or agent satisfactory to the governing body of the city. The sinking fund may be invested in direct obligations of the United States. (4421-17.)

**Cross-References.** Sinking funds may be invested in bonds secured by credit of United States, KRS 386.050.

**Opinions of Attorney General.** Boards of education may place their general funds in banks designated as depositories pursuant to KRS 160.570 and obtain from such banks certificates of deposit representing time deposits of surplus funds subject to withdrawal on demand. OAG 64-70.

The "school building revenue bond and interest redemption fund" mentioned on the face of the specimen copy of a typical school

bond is really a part and parcel of the "sinking fund" mentioned in this section, and the transfer of such funds finally to the trustee of the bonds does not automatically relieve the board of education (now board for elementary and secondary education) of liability, since the board is contractually responsible for taking steps to insure that the debt service and liquidation of coupons and bonds for the benefit of bondholders is effectively secured. OAG 73-188.

**Collateral References.** 79 C.J.S., Schools and School Districts, § 374.

**162.250. Maintenance fund surplus to be transferred to sinking fund.** -- If a surplus is accumulated in the maintenance fund equal to the cost of maintaining the building during the remainder of the calendar or fiscal year, as may be provided by the ordinance required by KRS 162.230, and the cost of maintaining and operating the building for the succeeding like calendar or fiscal year, the excess over such amount shall be transferred to the sinking fund. (4421-14.)

**Collateral References.** 79 C.J.S., Schools and School Districts, §§ 338, 374.

**162.260. Refunding bonds may be issued.** -- The city may issue refunding bonds for the purpose of providing funds for the payment of any outstanding bonds, in accordance with the procedure prescribed for the issuance of the original bonds. The refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds which are refunded. (4421-15.)

**Opinions of Attorney General.** A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in

accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding

revenue bonds issued to provide for a specific building OAG 66-224.

Cited: Morgan v. Fayette County Bd. of Educ., 294 Ky. 597, 172 S.W.2d 64 (1943).

NOTES TO DECISIONS

New obligations. Refunding bonds always create a new obligation, but the issue, if otherwise proper, is authorized by this section. Hemlepp v. Aronberg, 369 S.W.2d 121 (Ky. App. 1963).

Collateral References. 79 C.J.S., Schools and School Districts, § 370.

162.270. Additional bonds authorized. — If the governing body of the city finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the same procedure. (4421-16.)

Collateral References. 79 C.J.S., Schools and School Districts, § 359.

162.280. When city to convey property to board. — When the board of education of the school district has paid rent, as provided in KRS 162.160, sufficient to amortize the cost of erection of the building and appurtenances and to maintain the building and pay the cost of insurance, the city shall thereupon convey the premises to the board, and shall transfer any balance remaining in the funds provided for in KRS 162.230 to 162.250 to the account of the board of education. (4421-18.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 241, 242, 244.

162.290. Alternative methods — Other procedure not required. — KRS 162.120 to 162.140 and KRS 162.150 to 162.280 are additional and alternate methods for the acquisition of school buildings by boards of education of independent districts embracing cities of any class, and do not include, alter, amend or repeal any other statute. No proceeding shall be required for the acquisition of any school building or the issuance of bonds under KRS 162.150 to 162.280 except such as are prescribed by those sections. (4421-4, 4421-19.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 241, 242, 244.

162.300. County boards of education and boards of independent districts not embracing cities may obtain school buildings in manner provided in KRS 162.120 to 162.290. — County boards of education and boards of education of independent districts not embracing a city of any class may obtain buildings for school purposes by proceedings under the provisions of KRS 162.120 to 162.290. When applied to such boards of education, KRS 162.120 to 162.290 shall be so read that the term:

governing body of the city... secured by a pledge... exclusive of accrued... deposit in the account... sers or holders of... or held by a trustee... The sinking fund... s. (4421-17.)

ent and parcel of the... in this section, and... ends finally to the trustee... t automatically relieve... (now board for elementary... cation) of liability, and... ally responsible for taking... hat the debt service... spons and bonds for the... ders is effectively secured... rences. 79 C.J.S., Schools... s, § 374.

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- (1) "City" means "county" or "urban-county," as the case may be.
- (2) "City clerk" means "county clerk" or the appropriate record keeping officer in an urban-county government.
- (3) "Governing body of the city" means "fiscal court" or the governing body of an urban-county government, as the case may be.
- (4) "Mayor or chairman of the board of trustees" means "county judge/executive" or "chief executive officer of the urban-county government," as the case may be.
- (5) "Ordinance" means either "ordinance" or "resolution." (4421-20 to 4421-38; amend. Acts 1974, ch. 367, § 1.)

**Cross-References.** Governmental agency may issue revenue bonds for any public project. KRS 58.010 to 58.120.

Kentucky Law Journal. Meuth, The Development of Financing Public Improvements by Kentucky Municipalities, 25 Ky. L.J. 230 (1937).

Opinions of Attorney General. Where the fee simple title to school property was owned by the county and the city wanted to blacktop certain roads on the property, the county was liable for its apportionate cost of the improvement as a benefited property owner. OAG 60-377.

A fund resulting from the sale of school property could be used for the purchase of sites for school buildings, for the erection and complete equipping of school buildings, and for the major alteration, enlargement and complete equipping of buildings, in accordance with the provisions of KRS 160.476, even though refunding revenue bonds were outstanding on other school property. OAG 66-224.

Other school property, title to which has been retained by the school district, does not represent part of the security for refunding revenue bonds issued to provide for a specific building. OAG 66-224.

Where the construction of a school building and later lease back to the school district was to be assumed by the county, a company in which the county judge (now county judge/executive) was the principal stockholder would be prohibited from selling materials to private contractors building the school. OAG 66-514.

After merger, an urban-county government would stand in the place of the fiscal court as far as the agency to contract with the county board of education in connection with the construction of school facilities in the county and the issuance of bonds for such construction. OAG 74-187.

Cited: City of Louisville v. Manning, 210 S.W.2d 13 (Ky. App. 1949); Fosson v. Fiscal Court, 369 S.W.2d 108 (Ky. App. 1963).

## NOTES TO DECISIONS

### ANALYSIS

1. Authority of board.
2. Determination of site.
3. Acquisition of school buildings.
4. Borrowing money.
5. Lease of school building.
6. Power of fiscal court.
7. Bondholders' rights.

#### 1. Authority of Board.

The authority vested in the school board is clearly a general and comprehensive power, given it without limitation, express or implied, effective to forbid it from making its financing plan of a group conveyance of three school properties and providing for a refund of all taxes paid by holders of its school bonds where amount was within its annual income. Scott County Bd. of Educ., v. McMillen, 270 Ky. 483, 109 S.W.2d 1201 (1937).

County board of education is vested with the broad power and authority to control, buy and sell real estate for school sites, and to control and manage all public school property of its district and to use such school funds and property to promote public education in such ways as it deems necessary and proper in the exercise of its judgment and discretion. Scott County Bd. of Educ. v. McMillen, 270 Ky. 483, 109 S.W.2d 1201 (1937).

A county board of education had no authority to execute a plan by which board was to convey to a nonprofit corporation 20 percent of school property in county, but not site on which school building was to be erected, and corporation was to erect building and execute lease-option contract to board by which, after payment of rental for period of years, board was to become owner of all property conveyed to corporation. Weeks v.

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Collateral References. 79 C.J.S., Schools  
 and School Districts. § 338.

STATE PROPERTY AND BUILDINGS COMMISSION

162.510. Kentucky public school authority — Public corporation.  
 [Repealed.]

Compiler's Notes. This section (Acts 1960,  
 ch. 81, § 1) was repealed by Acts 1964, ch. 7,  
 § 2.

162.520. Definitions for KRS 162.520 to 162.620. — As used in KRS  
 162.520 to 162.620, the following terms and words have the following  
 respective meanings, unless another meaning is clearly indicated by the  
 context:

- (1) As used in KRS 162.540, 162.550, 162.580, 162.590, 162.600 and 162.620  
 "authority" means "state property and buildings commission;"
- (2) "Department" means the state department of education;
- (3) "Superintendent" means the superintendent of public instruction;
- (4) "Board of education" means the governing body of a county school  
 district, or of an independent school district, for which the authority issues  
 revenue bonds pursuant to KRS 162.520 to 162.620;
- (5) "Project" means any undertaking to provide for a board of education  
 any school buildings, facilities, improvements, and appurtenances and may  
 include not only such as are authorized in KRS 162.120 to 162.300, but also  
 those for any purpose enumerated in KRS 160.477 (1) (a);
- (6) "Lease" or "lease instrument" means a written instrument for the  
 leasing of one or more school projects executed by the authority as lessor and  
 a board of education at lessee, conforming to the specifications set forth in  
 KRS 162.140;
- (7) "Bonds" or "bonds of the authority" means bonds issued by the  
 authority under KRS 162.520 to 162.620, payable as to principal and interest  
 solely from rentals received from a board of education pursuant to a lease.  
 (Enact. Acts 1960, ch. 81, § 2; 1964, ch. 7, § 9.)

162.530. Membership — Succession — Quorum — Compensation —  
 Officers — Register of membership — Official records — Regulations —  
 Meetings. [Repealed.]

Compiler's Notes. This section (Acts 1960,  
 ch. 81, § 3) was repealed by Acts 1964, ch. 7,  
 § 12.

162.540. Interpretation of terms in KRS 162.120 to 162.300, when applied to KRS 162.520 to 162.620. — Upon receiving a request in writing from a board of education, the authority may, in its discretion, assist such board of education in financing any project by acting in the capacity and manner authorized to be performed by cities under KRS 162.120 to 162.290 and by counties under KRS 162.300. When applied to the authority, KRS 162.120 to 162.300 shall be so read that the following terms and passages have the following respective meanings or interpretations:

- (1) "City" or "county" means "authority";
- (2) "City clerk" or "county clerk" means "secretary or assistant secretary of the authority";
- (3) "Governing body of the city" or "fiscal court" means "authority";
- (4) "Mayor or chairman of the board of trustees" or "county judge/executive" means "chairman or vice-chairman of the authority";
- (5) "Ordinance" in the case of a city, or "resolution" in the case of a county, means a resolution of the authority;
- (6) "Building and appurtenances" means "project" as defined in subsection (5) of KRS 162.520;
- (7) The last sentence of KRS 162.190 shall read, "It shall be plainly stated on the face of each bond that it was or is issued under the provisions of KRS 162.520 to 162.620 (omitting reference to KRS 162.150 to 162.280 as such), and that it does not constitute an indebtedness of the authority or of the Commonwealth";
- (8) KRS 162.200 is modified to permit use of money received from bonds for the additional purpose of paying reasonable expenses incurred in the authorization, advertising, preparation, sale and delivery of bonds, and may include a fee contracted to be paid to a fiscal agent for financial advice and services if the contract or agreement therefor shall have been approved by the board of education and by the authority;
- (9) As used in KRS 162.140, "lease" shall have the meaning defined in subsection (6) of KRS 162.520, and the same shall be recorded or filed for recording in the office of the county clerk of the county in which the project is situated, as evidenced by a written receipt or acknowledgment of filing issued by such clerk, or by a copy of the lease attested or certified by such clerk as being of record in his office. It shall be the duty of the secretary of the authority to obtain such evidence before delivery of the bonds to a purchaser thereof; but failure to obtain the same shall not affect the validity of the bonds in the hands of any purchaser or holder;
- (10) KRS 162.240 shall not apply; and the following provisions shall govern in lieu thereof:

"One or more depositories and paying agents may be selected and designated by the board of education, subject to the approval of the authority, which approval shall not unreasonably be withheld; but each depository and paying agent shall be a financial institution, within or without the Commonwealth, which is a member of federal deposit insurance

corporation. All deposits of sinking funds and of bonds proceeds shall continuously be secured by a pledge to the authority of direct obligations of the United States, exclusive of accrued interest, at all times at least equal to the balance on deposit in the fund or account, such securities to be deposited with the authority or held by a trustee or agent designated by the authority; provided, however, in lieu of requiring such security the authority may in its discretion invest, or cause to be invested and reinvested, any moneys in direct obligations of the United States until such time as cash funds may be needed, and the authority may prescribe for the custody and safekeeping of such securities. When cash funds are needed, the authority shall direct the conversion into cash of such securities, or a sufficient portion thereof, and may require that the same be secured until disbursement, as herein provided. All income from such securities shall accrue to the board of education, but may be retained by the authority and credited upon any rental obligation of the board of education under the lease, or applied to supplement bond proceeds if the same should for any reason turn out to be insufficient to defray the costs and expenses of the project." (Enact. Acts 1960, ch. 81, § 4, effective June 16, 1960; 1976 (Ex. Sess.), ch. 20, § 6, effective January 2, 1978; 1978, ch. 384, § 293, effective June 17, 1978.)

NOTES TO DECISIONS

*In re* [illegible] v. [illegible], 162.550. Designation of an out-of-state bank as agent whose duties were to protect bondholders rather than city does not invalidate revenue bond financing plan. *Gregory v. City of Lewisport*, 369 S.W.2d 133 (Ky. App. 1963).

162.550. Ownership of certain moneys determined. — Moneys received by the authority as rentals under any lease, and from the sale of bonds, are declared not to be funds of the Commonwealth but shall be corporate funds of the authority to be held, administered, invested and disbursed as trust funds under the terms, provisions, pledges, covenants, and agreements set forth in its leases and bond resolutions and bonds. (Enact. Acts 1960, ch. 81, § 6, effective June 16, 1960.)

Collateral References. 78 C.J.S., Schools and School Districts, § 242.

162.560 to 162.570. [Repealed.]

Compiler's Notes. These sections (Acts 1960, ch. 81, §§ 6, 7) were repealed by Acts 1964, ch. 7, § 12.

to 162.300. [illegible]  
 a request in [illegible]  
 discretion, [illegible]  
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 RS 162.120 to 162.130  
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162.580. Duty of authority as to each bond issue. — In connection with each bond issue of the authority, it shall be the duty of the authority:

(1) To require the board of education to insure the project to its full insurable value, or to the amount of the bonds outstanding from time to time, whichever is the less, against the hazards covered by the standard fire insurance policy with standard indorsement of "extended coverage"; and to require that a copy of each policy be delivered to the authority for inspection and for its records;

(2) To require periodic accounting from all depositories of funds, the same to be submitted on forms prepared and supplied by the authority;

(3) To furnish to the auditing staff of the department a summary identification and description of each issue, and to request that the financial records of the board of education relating thereto be audited as a part of the annual audit of the board of education, and that a separate statement or report thereof be filed with the authority;

(4) To send to each board of education, at least thirty (30) days before the due date of any rental payment, a notice of the amount of rental to become due and the date thereof, and to require acknowledgment thereof;

(5) In the event of failure to receive from the board of education satisfactory evidence that sufficient funds have been transmitted to the authority, or will be so transmitted, for paying bond principal and/or interest when due, as provided in the lease, to notify and request that the department withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated to it, and to request that the department transfer the required amount thereof to the authority for the account of the board of education. (Enact. Acts 1960, ch. 81, § 8, effective June 16, 1960.)

Cross-References. Approval of contracts payable from revenue bonds, KRS 56.470.

Collateral References. 79 C.J.S., Schools and School Districts, § 363.

162.590. Duty of department upon request of authority. — It shall be the duty of the department, upon written request of the authority:

(1) To cause its auditing staff to audit the financial records of a board of education relating to any identified and described bond issue of the authority, as an incident to the department's next ensuing annual audit of such board of education, and each subsequent annual audit thereof; and to provide to the authority a statement or report thereof;

(2) Upon receiving a notification and request from the authority as described in KRS 162.580, to ascertain whether the lease of the board of education has been renewed and is in force in accordance with its terms; and if the same is ascertained to be in force, to withhold from the board of education a sufficient portion of any undisbursed funds then held or set aside or allocated by the department for the board of education, and to comply

with the terms of the notification and request of the authority, for the amount of said board of education. (Enact. Acts 1960, ch. 81, § 9, effective June 16, 1960.)

*Cross-References.* Department of education, KRS 156.010.

162.600. Bonds to issue in name of authority — Identification — Investment designation. — (1) Bonds of the authority shall be issued in the name of the authority, shall be designated "school building revenue bonds," or, if appropriate, "school building revenue refunding bonds," and shall additionally be identified by the name of the board of education executing the lease. If the authority shall issue more than one (1) series of bonds for the same lessee from time to time, each series, including the first or subsequent to the first, shall additionally be identified distinctly by alphabetical or chronological designation, by date of the bonds, or otherwise as the authority may determine.

(2) For the purposes of determining any limit prescribed by any law for investment of any public funds, or funds of banks, trust companies, insurance companies, building and loan associations, credit unions, pension and retirement funds, and fiduciaries, in obligations of a single obligor, bonds issued by the authority pursuant to KRS 162.520 to 162.620 shall not be deemed to be bonds or obligations of the same obligor except to the aggregate of all series of bonds involving leases of a single board of education.

(3) Bonds issued by the authority under the provisions of KRS 162.520 to 162.620 are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law. (Enact. Acts 1960, ch. 81, § 10, effective June 16, 1960.)

*Cross-References.* State property and buildings commission, KRS 56.440 to 56.580. *Collateral References.* 79 C.J.S., School and School Districts, § 361.

162.610. Transactions of authority exempt from other control.  
[Repealed.]

Compiler's Notes. This section (Acts 1960, ch. 81, § 11) was repealed by Acts 1964, ch. 7, § 12.

162.620. Sale of bonds — Conditions. — Bonds of the authority shall be sold only upon the basis of sealed bids or proposals, publicly solicited, received, opened and acted upon. The "publication area," as that term is used in KRS chapter 424, shall not be deemed to be the area within which the office of the authority is situated, but shall be deemed to be the "publication area" of the board of education executing the lease. Each sale shall be publicly advertised by means of a notice conforming to the provisions of KRS 424.140 (3), and the same shall be published at least one (1) time, at least seven (7) days in advance of the date set forth for opening bids, in a daily newspaper having bona fide general circulation throughout the Commonwealth. If such publication is made, it shall be sufficient for publication in the "publication area" to be made only one (1) time, at least seven (7) days in advance for the date set forth for the opening of bids, notwithstanding provisions for publication more often as provided in KRS chapter 424. If a copy of the sale notice be delivered or transmitted in good faith to the qualified newspaper of the "publication area" in time for publication in an issue thereof published seven (7) days or more in advance of the date set forth for the opening of bids, and with direction for publication therein, any failure of such newspaper to make publication as directed shall not invalidate the sale of the bonds by the authority on the designated date, nor require postponement or cancellation thereof. (Enact. Acts 1960, ch. 81, § 12, effective June 16, 1960.)

Collateral References. 79 C.J.S., Schools and School Districts, § 370.

#### PENALTIES

162.990. Penalties. — Any person who violates any of the provisions of KRS 162.500 is liable to the board of education, in an action brought by the board of education, or by any citizen of the district, or by the superintendent of public instruction, for the restoration of the wrongful appropriation. In addition he is guilty of malfeasance in office and upon conviction shall forfeit his office, and may for each offense be fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or imprisoned from one (1) to five (5) years, or both so fined and imprisoned. One-half (½) of the fine shall be paid to the board of education by the collecting officer. (3219a-7.)

Collateral References. 78 C.J.S., Schools and School Districts, §§ 140, 141.



(2) Plus the aggregate principal amount of general obligation bonds of the district outstanding on the date of approval, not exceeding the limitation on net debt of the district in section 475.53, subdivision 4, or 24 percent of the adjusted assessed value, whichever is less;

(3) Less the maximum net debt permissible for the district on the date of approval, under the limitation in section 475.53, subdivision 4, or 24 percent of the adjusted assessed value, whichever is less; and

(4) Less any amount by which the amount voted exceeds the total cost of the facilities for which the loan is granted, as estimated in accordance with subdivision 4, provided that the loan may be approved in an amount computed as provided in clauses (1) to (3), subject to subsequent reduction in accordance with this clause.

**Subd. 2. District procedures.** The school board of any district desiring a loan shall adopt a resolution stating the amount proposed to be borrowed, the purpose for which the debt is to be incurred, and an estimate of the dates when the facilities for which the loan is requested will be contracted for and completed. The question of authorizing the borrowing of funds for the facilities shall be submitted to the voters of the district at a regular or special election. The question submitted shall state the total amount to be borrowed from all sources. A majority of those voting on the question shall be sufficient to authorize the district to effect the state loan application and also to issue the bonds on public sale in accordance with chapter 475. Applications for loans shall be accompanied by (a) a copy of the resolution, (b) a certificate by the clerk showing the vote at the election, (c) a certificate by the clerk and treasurer showing the then outstanding indebtedness of the district, and (d) a certificate by the county auditor of each county in which a portion of the district lies showing the information in his official records which is required to be used in computing the debt limit of the district under section 475.53, subdivision 4. The clerk's and treasurer's certificate shall show, as to each outstanding bond issue, the amount originally issued, the purpose for which issued, the date of issue, the amount remaining unpaid as of the date of the resolution, and the interest rates and due dates and amounts of principal thereon. Applications shall be in the form and accompanied by the additional data which the commissioner and state board of education prescribe. When an application is received, the commissioner shall obtain from the commissioner of revenue, and from the public utilities commission when required, the information in their official records which is required to be used in computing the debt limit of the district under section 475.53, subdivision 4.

**Subd. 3. Award of loans.** The commissioner shall examine and consider all applications for capital loans which have been recommended by the state board of education, and if any applicant district is found not qualified it shall be promptly notified thereof. On January 1 and July 1 of each year, the commissioner shall make a determination on all pending applications which have been on file with the commissioner more than one month. If an applicant is qualified in the opinion of the commissioner and the aggregate of the amounts applied for does not exceed the amount available or which can be made available in the capital loan account, all loans so applied for shall be granted, subject to acceptance by the respective districts as specified below. If the aggregate exceeds the amount which is or can be made available, the commissioner shall allot the available amount among the qualified applicant districts, or any of them, according to the commissioner's judgment and discretion based upon their respective needs. The commissioner shall promptly certify to each qualified applicant district the amount, if any, of the capital loan granted to it, subject to adjustment under subdivision 1, clause (4).

**Subd. 4. Contract.** Each capital loan shall be evidenced by a contract between the school district and the state acting through the commissioner. It shall obligate the state to pay to the district, out of the maximum effort school loan

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fund, an amount computed as provided in subdivision 1, upon receipt by the commissioner of a certified resolution of the school board reciting that contracts for construction of the facilities for which the loan is granted have been awarded and that bonds of the district have been issued and sold in the amount necessary to pay all costs thereof in excess of the amount of the loan, and estimating the costs. It shall obligate the district to repay the loan out of the excesses of its maximum effort debt service levy over its required debt service levy, including interest at a rate equal to the average annual rate payable on Minnesota state school loan bonds most recently issued prior to the disbursement of the loan to the district, but in no event less than 3 1/2 percent per annum on the principal amount from time to time unpaid. The district shall each year, as long as it is indebted to the state, levy for debt service (a) the amount of its maximum effort debt service levy or (b) the amount of its required debt service levy, whichever is greater, except as the required debt service levy may be reduced by a loan under section 124.42. Whenever the maximum effort debt service levy is greater, the district shall remit to the commissioner within ten days after its receipt of the last regular tax distribution in each year, that portion of the debt service tax collections, including penalties and interest, which exceeded the required debt service levy. The commissioner shall supervise the collection of outstanding accounts due the fund and may, by notice to the proper county auditor require the maximum levy to be made as required hereunder. Interest on capital loans shall be paid on December 15 of the year next following that in which the loan is granted and annually thereafter. On or before November 1 in each year the commissioner shall notify the county auditor of each county containing taxable property situated within the school district of the amount of the maximum effort debt service levy of the district for that year, and the county auditor or auditors shall extend upon the tax rolls an ad valorem tax upon all taxable property within the district in the aggregate amount so certified. If any capital loan is not paid within 30 years after it is granted from maximum effort debt service levies in excess of required debt service levies, the liability of the school district thereon shall be satisfied and discharged and interest thereon shall cease. After a district's capital loan has been outstanding for 20 years, the district shall not issue bonds on the public market except for the purpose of refunding the loan.

Subd. 5. Participation by county auditor; record of contract; payment of loan. Before delivery of any capital loan contract, the school district shall file a copy thereof with the county auditor of each county in which any portion of the district is situated, and shall obtain from each county auditor and furnish to the commissioner a certificate stating that the county auditor has entered the capital loan evidenced thereby in his bond register. As each executed contract is delivered to the commissioner, the commissioner shall cause a record thereof to be made and preserved showing the name and address of the district, the date of the contract, and the amount of the loan initially approved in accordance with subdivision 1. Upon receipt of the resolution required in subdivision 4, the commissioner shall issue a warrant on the capital loan account for the amount which may be disbursed in accordance with subdivision 1, payable on presentation to the state treasurer. On presentation the treasurer shall remit the amount to the district and enter the date and amount in his account with the district. Interest thereon shall accrue from that date.

Subd. 6. No district having an outstanding state loan shall issue and sell any bonds on the public market, except for the purpose of refunding state loans, unless it agrees to make the maximum effort debt service levy in each year thereafter at the higher rate provided in section 124.38, subdivision 7, and unless it schedules

the maturities of such bonds in accordance with section 475.54, subdivision 2. The district shall report each such sale to the commissioner of education.

*History: Ex1959 c 27 s 8; 1961 c 752 s 5,6; 1965 c 875 s 6-10; 1967 c 583 s 3; 1969 c 1056 s 5-9; 1973 c 492 s 14; 1973 c 582 s 3; 1975 c 432 s 58-61; 1976 c 271 s 53; 1980 c 545 s 2,3; 1980 c 614 s 123; 1981 c 358 art 9 s 7-11*

#### 124.44 PREPAYMENTS.

Any school district may at any time pay the entire principal or part thereof and interest then due on a note or contract held by the state, out of any moneys not needed for school purposes, and may issue and sell its refunding bonds in accordance with chapter 475, for such purpose, by actions of its school board and without the necessity of a vote by its electors, if such refunding bonds plus its net debt does not exceed the debt limit prescribed by said chapter 475. Any such refunding bonds may bear interest at a rate or rates higher or lower than the rate payable on the loan or loans refunded thereby.

*History: Ex1959 c 27 s 9; 1961 c 752 s 7*

#### 124.45 APPLICATIONS OF PAYMENT.

The commissioner shall apply payments received from collections of maximum effort debt service levies in excess of required debt service levies of a district on its debt service notes and capital loan contracts as follows: First, to payment of interest accrued on its notes, if any; second, to interest on its contracts, if any; third, toward principal of its notes, if any; and last, toward principal of its contracts, if any. While more than one note or more than one contract is held, priority of payment of interest shall be given to the one of earliest date, and after interest accrued on all notes is paid, similar priority shall be given in the application of any remaining amount to the payment of principal. In any year when the receipts from a district are not sufficient to pay the interest accrued on any of its notes or contracts, the deficiency shall be added to the principal, and the commissioner shall notify the district and each county auditor concerned of the new amount of principal of the note or contract.

*History: Ex1959 c 27 s 10; 1975 c 432 s 62*

#### 124.46 ISSUANCE AND SALE OF BONDS.

Subdivision 1. On or before October 1 in each year, the commissioner shall certify to the commissioner of finance the amount which he anticipates will be needed for debt service loans and capital loans to be made under the maximum effort school aid law prior to October 1 in the following year. Each such certification of the commissioner shall also state his estimate of the dates and amounts the certified amount will be needed in the maximum effort school loan fund and his estimate as to the years and amounts in which payments on debt service loans and capital loans will be received.

Subd. 2. Upon receipt of each such certification, subject to authorization as provided in subdivision 4, the commissioner of finance shall from time to time as needed issue and sell state of Minnesota school loan bonds in the aggregate principal amount stated in the commissioner's certificate, for the prompt and full payment of which, with the interest thereon, the full faith, credit, and taxing powers of the state are hereby irrevocably pledged, and shall credit the net proceeds of their sale to the purposes for which they are appropriated by section 124.40, subdivision 1. Such bonds shall be issued and sold at not less than their par value in such manner, in such number of series, at such times, and in such form and denominations, shall bear such dates of issue and of maturity, either without option of prior redemption or subject to prepayment upon such notice and

Library references: Schools and School Districts § 19(1), 77 et seq.; Schools and School Districts §§ 19, 21, 270 et seq.; P.L. Schools § 21

Historical Note

Code of 1919: The act of 1955 substituted "where" for "where in audit under the direction of the State Superintendent of Public Instruction reveals that", substituted "fails" for "has failed", substituted "substitution" from the "Authority" "these amendments", substituted "pay" for "may pay", and added words "in payment of the debts"

§ 7-786. Joint action of districts

With the approval of the Department of Public Instruction the county board of school directors, any two or more school districts may (1) jointly enter into contracts and leases with the State Public School Building Authority for the construction or improvement of a school building and the furnishings and equipment thereof for the use of school districts, and may (2) either jointly or individually convey or lease, as hereinbefore provided, to the Authority, any lands and improvements now owned or hereafter acquired by any one or more of such school districts, and may (3) jointly acquire title to additional lands or interests in land, as hereinbefore provided.

The sharing of the cost of such land and improvements and of the rental or rentals payable to the Authority and the maintenance, management and control of the school shall be agreed upon by the boards of directors of such districts so joining, in such manner and in such proportions as they may agree upon. All schools established under the provisions of this section shall be maintained, governed and controlled as other public schools under the laws of this Commonwealth.

March 10, P.L. 30, art. VII, § 786, added 1949, May 9, P.L. 1017. 1. Enrolled bill omits the word "may". Library references: Schools and School Districts § 71, 77 et seq.; C.J.S. Schools and School Districts §§ 256, 257, 270 et seq.

(G) MUNICIPALITY AUTHORITIES

Historical Note

Subdivision (G) added by act 1951, Jan. 21 (1952), P.L. 2195, § 3.

Cross References

Municipal Authorities Act of 1915, see sections 301 to 322, 373 and 371 of Title 53, Municipal and Quasi-Municipal Corporations.

§ 7-790. Grants, conveyances, appropriations to, contracts with, and leases from, municipality authorities

Whenever the board of any municipality authority shall have undertaken a school project or projects for use by a school district individually

for use by two or more school districts jointly, such school district and school districts shall have the power, upon written approval of the Department of Public Instruction:

(1) To sell, lease, lend, grant or convey to such municipality authority individually or jointly, with or without consideration, any lands, interests or rights in lands which may be deemed necessary for the project, together with any buildings, structures or improvements thereon erected, as well as furnishings and equipment used or useful in connection therewith.

(2) To purchase or otherwise acquire additional lands or interests in lands which may be deemed necessary for the project, and to finance such acquisition by the issuance and sale of general obligation bonds according to law.

(3) To transfer, assign and set over to such municipality authority any contract which may have been awarded for such project or projects.

(4) To make appropriations to such municipality authority out of their general funds or out of any other available funds, including proceeds of insurance on school property, the proceeds of bonds of the school district or districts issued for building purposes and not so used, and moneys set aside or otherwise available for building purposes. Any such funds which represent the proceeds of any general obligation bonds heretofore or hereafter issued by the school district shall be used by such municipality authority for or towards the purpose or purposes for which such bonds were issued and, in the event that any such bonds were issued pursuant to a vote of the electors, any appropriation of such proceeds, as above set forth, shall not be deemed such a change of purpose from that for which such bonds were authorized as shall require the question to be again submitted to a vote of the electors under existing law.

(5) To lease, individually or jointly, from such municipality authority such school project or projects for a term not exceeding forty (40) years, at such rental or rentals, payable out of current revenues, and upon such terms and conditions as may be authorized by the board of such municipality authority and the board or boards of school directors of such school district or school districts, and, in case of joint leases, to agree upon the manner of sharing, as between the school districts, the rental or rentals and any other sums payable to the municipality authority and the costs and expenses of insuring, operating, maintaining and repairing the school property leased.

(6) To make all other contracts or agreements with such municipality authority or with other school districts as may be deemed necessary or convenient in connection with the project.

§ 7-781. Grants to State Public School Building Authority

Any school district shall have power and authority, with the approval of the Department of Public Instruction, to grant, assign and convey to the State Public School Building Authority, with or without consideration, any lands, easements or rights in lands, together with improvements, buildings or structures therein or thereon, now owned by such school district or hereafter acquired by it, needed or convenient to carry out the purposes of these amendments, as well as furnishing and equipment for school buildings. 1949, March 10, P.L. 30, art. VII, § 781, added 1949, May 9, P.L. 1017, § 2.

Library references: Schools and School Districts § 65; C.J.S. Schools and School Districts § 211 et seq.; P.L.E. Schools §§ 51 et seq., 56, 58, 61, 83.

§ 7-782. Acquisition of lands; bond issues

Any school district shall have power and authority, with the approval of the Department of Public Instruction and in the manner hereinbefore provided, to acquire title in the name of the school district to any additional lands or interests in lands which may be required to carry out the purposes of these amendments and to finance such acquisition by the issuance and sale of its general obligation bonds in the manner provided by law. 1949, March 10, P.L. 30, art. VII, § 782, added 1949, May 9, P.L. 1017, § 2.

Library references: Schools and School Districts § 65, 97(1); C.J.S. Schools and School Districts §§ 211 et seq., 359 et seq.; P.L.E. Schools § 93.

§ 7-783. Appropriations; use of proceeds of bond issues

Any school district shall have power and authority, with approval of the Department of Public Instruction, to appropriate to the State Public School Building Authority any funds available for building purposes. Any such funds which represent the proceeds of any general obligation bonds issued by the school district shall be used by the State Public School Building Authority for or toward the purposes or purposes for which such bonds were issued, and in the event any such bonds were issued pursuant to a vote of the electors, any appropriation of such proceeds, as above set forth, shall not be deemed such a change of purpose from that for which such bonds were authorized as shall require the question to be again submitted to a vote of the electors under any existing law. 1949, March 10, P.L. 30, art. VII, § 783, added 1949, May 9, P.L. 1017, § 2.

Library references: Schools and School Districts § 93, 97(1); C.J.S. Schools and School Districts §§ 326, 339-343, 359 et seq.

§ 7-784. Contracts to lease and leases; operation and maintenance

Any school district shall have power and authority, with the approval of the Department of Public Instruction, to enter into contracts with the State Public School Building Authority to lease as lessee from the Authority any school building or any improvement thereto, and the furnishings and equipment thereof, constructed by the Authority, for a term not exceeding forty (40) years, at such rental or rentals as may be determined by the Authority, and upon the execution of a contract for the construction of, or during the period of construction of, or upon the completion of such school buildings or improvements and the furnishings and equipment thereof, the school district shall have power and authority to lease the same as lessee, for a term not exceeding forty (40) years, at such rental or rentals as may be determined by the Authority. There shall be included in the annual budget of all school districts an appropriation to meet the amount of such rental or rentals.

Any school district shall have the power and authority to pay for operation and maintenance of any school building or any improvement thereto, and furnishings and equipment thereof, leased as lessee by it from the Authority under the provisions of the first paragraph of this section. 1949, March 10, P.L. 30, art. VII, § 784, added 1949, May 9, P.L. 1017, § 2; as amended 1951, June 28, P.L. 920, No. 172, § 1.

Enrolled bill omitted the word "or".

Library references: Schools and School Districts § 77 et seq.; C.J.S. Schools and School Districts § 270 et seq.; P.L.E. Schools § 93.

Historical Note

Code of 1949: The act of 1951 inserted near the middle of this section: "execution of a contract . . . or upon the".

§ 7-785. Failure to pay rent; withholding appropriation

In all cases where the board of directors of any school district fails to pay or to provide for the payment of any rental or rentals due the State Public School Building Authority for any period in accordance with the terms of any lease entered into under the terms of subdivision (j) of this article, upon written notice thereof from the Authority, the State Superintendent of Public Instruction shall notify such board of school directors of its obligation and shall withhold out of any State appropriation due such school district an amount equal to the amount of the rental or rentals owing by such school district to the State Public School Building Authority and shall pay over the amount so withheld to the Authority in payment of the rental. 1949, March 10, P.L.

12) APPEALS FROM AUDIT: DISTRICTS SECOND, THIRD AND FOURTH CLASS

§ 24—2151. Who may appeal; conditions

3. Bond on appeal

An appeal from a surcharge by a tax collector filed within the time limit will not be stricken off by reason of appellant's failure to file a bond until five days after the period for taking the ap-

peal had expired, since the court acquired jurisdiction on the timely filing of the appeal and its perfection was accomplished within a reasonable time. Appeal of Lefcourt, 49 D. & C.2d 176, 1970.

§ 24—2153. Procedure; jury trials; appeals to appellate courts

When any appeal is taken, the appeal may be placed upon the argument list by direction of any party interested by intervention or otherwise. Depositions of witnesses, and other evidence to be used at the argument, may be taken on behalf of any party, before any person competent to administer an oath, upon rule for that purpose served upon the opposite party or such party's counsel. After hearing argument the court shall file its finding of fact and conclusions of law, and enter judgment in accordance therewith. If, after argument, the court shall deem any question or questions of fact so doubtful, under the evidence submitted, as to render it desirable that an issue be directed as to such question or questions to be tried by a jury, the court may direct such an issue. As amended 1971, June 3, P.L. 1972, No. 6, § 1 (§ 509(a)(141)).

*The last sentence of this section is specifically repealed by the Appellate Court Jurisdiction Act of 1970, July 31, No. 223, § 509 (a)(141), added by Act 1971, June 3, No. 6 [17 P.S. § 211.509(a)(141)].*

(F) ACCOUNTS OF TEACHERS' INSTITUTES AND SCHOOL DIRECTORS' ASSOCIATIONS

§ 24—2401. Repealed. 1970, Jan. 14, P.L. (1969) 468, § 60, effective July 1, 1970

§ 24—2402. School directors' association

The account of the treasurer of a school director association within an intermediate unit shall be properly audited annually by a certified public accountant, and filed with the association. As amended 1970, Jan. 14, P.L. (1969) 468, § 70, effective July 1, 1970.

ARTICLE XXV. REIMBURSEMENTS BY COMMONWEALTH AND BETWEEN SCHOOL DISTRICTS

Law Review Commentaries  
School finance in Pennsylvania. (1980)  
41 U.Pitt.L.Rev. 715.

Rules and Regulations  
Computation of subsidy, see 22 Pa.  
Code § 329.1 et seq.

(A) DEFINITIONS

§ 25—2501. Definitions

For the purposes of this article the following terms shall have the following meanings:

(1) "District Pupils" of a school district shall designate all pupils enrolled in the public schools of the Commonwealth, and of adjacent states, who are residents of a given school district, except those pupils

For Title 24, Consolidated Statutes, see Appendix following this Title

who are enrolled in the public schools maintained by the vocational school district, the territorial limits of which include the school district, "District Pupils" of a vocational school district shall designate all pupils enrolled in the public schools, maintained by the vocational school district who are residents of the district.

(2) "Teaching Units" consist of twenty-two (22) high school pupils or thirty (30) elementary school pupils. Fractions thereof shall be fractional teaching units. If a district's pupil-teacher ratio exceeds thirty-three (33) its district teaching unit shall be obtained by multiplying the total number of all teaching units, as defined above, by thirty-three (33), and dividing the product so obtained by the pupil-teacher ratio of the district. High school pupils are those pupils in a secondary school program classified as such by the Department of Public Instruction, but in no case shall include any pupils below grade seven (7).

(3) "Average Daily Membership" shall be computed in accordance with rules of procedure as established by the Superintendent of Public Instruction.

(4) to (7) Repealed. 1966, Feb. 1, P.L. (1965) 1642, § 16, effective June 30, 1968.

(8) Deleted by amendment. 1968, June 12, P.L. 192, No. 96, § 3.

(9) "Real Property Valuation." A school district's or vocational school district's real property valuation, to be used for purposes of computing the basic account standard reimbursement fraction, the subsidiary account reimbursement fraction, and the aid ratio shall be the valuation placed upon its taxable real property by the State Tax Equalization Board.

(9.1) "Personal Income Valuation." A school district's personal income valuation for purposes of reimbursement to a school district under subsections (d), (e), and (f) of section 2502,<sup>1</sup> and section 2592<sup>2</sup> shall be the valuation of the total taxable income for the tax year preceding the immediate prior year, determined under Article III of the act of March 4, 1971 (P.L. 6, No. 2), known as the "Tax Reform Code of 1971,"<sup>3</sup> for each school district each year by the Secretary of Revenue and certified to the Secretary of Education.

(9.2) "Equalized Millage." A school district's tax effort to be used for purposes of determining the base earned for reimbursement and used for reimbursement under subsections (d) and (e) of section 2502,<sup>4</sup> shall be the amount of local school taxes collected during the year for which reimbursement is being computed, divided by the most recent real property valuation of the school district.

(9.3) "Median Equalized Millage." For the school year 1976-1977 and each year thereafter, the Secretary of Education shall annually calculate the equalized millage for which an equal number of districts are above and below for that year.

(10) "Number of District Teaching Units for Purposes of Determination of Basic Account Standard Reimbursement Fraction, and Subsidiary Account Reimbursement Fraction." A school district's or vocational school district's number of district teaching units for purposes of determination of the basic account standard reimbursement fraction and the subsidiary account reimbursement fraction shall be obtained as follows: (i) divide by twenty-two (22) the number of district pupils in average daily membership in a public high school and in high school grades of a laboratory school of a State-owned college during the preceding school term, (ii) divide by thirty (30) the number of district pupils in average daily membership in a public elementary school and laboratory school of a State-owned college during the preceding school term, and (iii) add the quotients obtained under (i) and (ii) above, except when the pupil

For Title 24, Consolidated Statutes, see Appendix following this Title

teacher ratio exceeds thirty-three (33), in which case, the sum obtained under (1) and (ii) above shall be multiplied by thirty-three (33) and the product so obtained shall be divided by the pupil-teacher ratio of the district. No school district or vocational school district shall be credited with less than one teaching unit. No school district or vocational school district shall be assigned a basic account standard reimbursement fraction lower in value than the minimum instruction subsidy divided by the maximum instruction subsidy. All one-room schools operated in accordance with the provisions of this act shall, if their operation is approved, be credited with at least one teaching unit. The State Board of Education shall withhold its approval of any one-room one-teacher school, unless (i) topography, distance or condition of roads are such as to make transportation of pupils impractical, or (ii) it is impossible to accommodate pupils in existing graded schools in the district or other districts, or (iii) the district is financially unable to construct a consolidated school.

(10.1) "Weighted Pupil" shall mean a value placed upon district pupils in average daily membership at various levels of instruction. Such values shall be as follows:

Kindergarten	0.50, if attending one session per day; 1.00, if attending two sessions per day.
Elementary	1.00
Secondary	1.36

(10.2) "Weighted Average Daily Membership" (WADM). The average daily membership for all resident pupils in the various levels of instruction shall be multiplied by the weight for that level as indicated to obtain the weighted average daily membership. The sum of the products so obtained shall be the weighted average daily membership for the district. The weighted average daily membership used in computing the aid ratio shall include kindergarten, elementary and secondary pupils.

(11.1) "Actual Instruction Expense per Weighted Average Daily Membership." For the school year 1966-1967, and each school year thereafter, the Superintendent of Public Instruction shall calculate for each school district the actual instruction expense per weighted average daily membership for each district pupil. The actual instruction expense shall include all General Fund expenses of the district except those for health services, transportation, debt service, capital outlay, homebound instruction, and outgoing transfers to community colleges and technical institutes. From this cost shall be deducted the amount received from the State for driver's education; special class operation; vocational curriculum; area vocational technical schools; payments of tuition by district patrons, parents, the State and Federal government; and all moneys received from the State or Federal government under Public Laws 89-10 (Elementary and Secondary Education Act),<sup>1</sup> 88-452 (Economic Opportunity Act),<sup>2</sup> and 87-415 (Manpower Training and Development Act)<sup>3</sup> and for projects under section 2508.3 of this act.<sup>4</sup> The actual instruction expense so determined, when divided by the weighted average daily membership for the district shall be the actual instruction expense per weighted average daily membership. Added 1966, Feb. 1, P.L. (1965) 1642, § 5.

(12) "State's Share of Total Cost." For the school year 1966-1967 and each school year thereafter, the State's share of total reimbursable cost shall be fifty percent (50%). Total reimbursable cost shall be the lesser of actual expense per WADM as defined in clause (11.1) or a maximum amount to be fixed by the general assembly each year to represent the estimated median actual instruction expense per WADM in the year for which the reimbursement is to be payable. For the school year

commencing the first day of July 1976 and each school year thereafter the maximum amount shall be the median actual instruction expense per WADM in the year for which the reimbursement is to be payable. The Secretary of Education annually shall calculate the State "median actual instruction expense per weighted average daily membership" and shall supply the same to the General Assembly.

(12.1) "Median Actual Instruction Expense Per Weighted Average Daily Membership." For the school year 1976-1977 and each school year thereafter, the Secretary of Education shall annually calculate the actual instruction expense per weighted average daily membership for which at equal number of districts are above and below for that year.

(13) "District's Share of Total Cost." The district's share of total cost shall be the State's share subtracted from 1.00.

(14) "Aid Ratio" shall represent the Commonwealth's share of reimbursable cost as defined in clause (12). The aid ratio shall be determined in the following manner: (a) divide the market value per weighted average daily membership of the district by the market value per weighted average daily membership of the State; (b) determine the product of (a) multiplied by district's share of total cost; (c) subtract the resultant product in (b) from one (1.0000) to determine the aid ratio

$$\text{Aid Ratio} = 1.0000 - \left[ \frac{\text{District MV/WADM}}{\text{State MV/WADM}} \right] \times 0.51$$

(14.1) "Market Value/Income Aid Ratio." For purposes of reimbursement to a school district under subsections (d), (e), and (f) of section 2502,<sup>4</sup> and section 2592,<sup>4</sup> shall be the Commonwealth's method of determining the combined market value and income wealth for each pupil and shall be computed as follows:

(a)(1) Divide the market value per weighted average daily membership of the district by the market value per weighted average daily membership of the State;

(ii) Determine the product of (a)(1) multiplied by the district's share of total costs which is .5;

(iii) Subtract the resultant product in (a)(ii) from 1.000 to determine the market value portion of the aid ratio.

(b)(1) Divide the income per weighted average daily membership of the district by the average personal income per weighted average daily membership of the State;

(ii) Determine the product of (b)(1) multiplied by the district's share of total costs which is .5;

(iii) Subtract the resultant product in (b)(ii) from 1.0000 to determine the income aid ratio.

(c) Add sixty percent (60%) of the market value aid ratio to forty percent (40%) of the income aid ratio to determine the market value/income aid ratio.

(15) "Minimum Subsidy." For the school years 1976-1977 and 1977-1978, in no case shall a district receive for each pupil in weighted average daily membership, an amount less than ten percent (10%) of the actual cost of instruction or ten percent (10%) of the base earned for reimbursement whichever is the lesser amount. For the 1978-1979 school year and each school year thereafter, no school district shall receive for each pupil in weighted average daily membership an amount less than fifteen percent (15%) of the base earned for reimbursement or actual instructional expense per WADM, whichever is the lesser amount. For 1976-1977 and each school year thereafter, a district whose actual instruction expense per weighted average daily membership is more than two hundred dollars (\$200) less than the median actual instruction ex

pension per weighted average daily membership, and whose equalized millage is within fifteen percent (15%) of the median equalized millage, the reimbursement shall be two hundred dollars (\$200) below the median actual instruction expense per weighted average daily membership times the district's aid ratio for each weighted average daily membership.

(16) "Density Factor" shall be assigned for those school districts whether coterminous with a city, borough, town or township or not, whose population exceeds ten thousand (10,000) per square mile as determined by the Superintendent of Public Instruction from the most recent records of the United States Census Bureau. Provided, That any school district which was assigned a density factor for any school year prior to 1969-1970, and for any school year thereafter is determined by the superintendent to have a population of ten thousand (10,000) per square mile or less shall qualify for a modified density payment which shall be in the ratio of its population per square mile to ten thousand (10,000) of the amount to which it would have been entitled had its population per square mile exceeded ten thousand (10,000): And, provided further, That any school district which was assigned a density factor for any school year prior to 1969-1970, and for any school year thereafter and as a result of a merger with one or more other school districts becomes a part of a new school district and such new school district is determined by the superintendent to have a population of ten thousand (10,000) per square mile or less, such new school district shall qualify for a modified density payment which shall be in the ratio of its population per square mile to ten thousand (10,000) of the amount to which it would have been entitled had its population per square mile exceeded ten thousand (10,000). A school district qualifying under the density factor shall be paid by the Commonwealth on account of excess expenditures per weighted average daily membership, not to exceed for the school year 1966-1967 one hundred dollars (\$100), for the school year 1967-1968 one hundred fifty dollars (\$150), for the school year 1968-1969 two hundred dollars (\$200), for the school year 1969-1970 and each school year thereafter two hundred fifty dollars (\$250), in excess of four hundred dollars (\$400), an amount to be determined by multiplying the excess expenditures by the aid ratio or by three hundred seventy-five thousandths (.375), whichever is greater and by the number of weighted pupils, such amount to be in addition to any other payments for such pupils: Provided, however, a school district qualifying under the density factor may, in lieu of the above payment, elect for any school year to be paid and the Commonwealth shall pay on account of excess expenditures per weighted average daily membership in excess of four hundred dollars (\$400) a sum of thirty dollars (\$30) per weighted average daily membership, such amount to be in addition to any other payments for such pupils.

Added 1966, Feb. 1, P.L. (1965) 1642, § 5, as amended 1970, June 22, P.L. 404, No. 132, § 1.

(17) "Sparsity Factor" shall be assigned for those districts whose population is less than fifty (50) per square mile as determined by the Secretary of Education from the most recent records of the United States Census Bureau. A school district qualifying under the sparsity factor shall be paid by the Commonwealth on account of excess expenditures per weighted average daily membership, not to exceed for the school year 1966-1967 one hundred dollars (\$100), for the school year 1967-1968 one hundred fifty dollars (\$150), for the school year 1968-1969 two hundred dollars (\$200), for the school year 1969-1970 through school year 1977-1978 two hundred fifty dollars (\$250), for the school year 1978-1979 and each school year thereafter two hundred sixty-five dollars (\$265) in excess of four hundred dollars (\$400), an amount to be determined by

multiplying the excess expenditures by the aid ratio or by three hundred seventy-five thousandths (.375), whichever is greater and by the number of weighted pupils, such amount to be in addition to any other payment for such pupils: Provided, however, a school district qualifying under the sparsity factor may, in lieu of the above payment, elect for any school year to be paid and the Commonwealth shall pay on account of excess expenditures per weighted average daily membership in excess of four hundred dollars (\$400) a sum of thirty dollars (\$30) per weighted average daily membership, such amount to be in addition to any other payments for such pupils.

Any school district determined by the Secretary of Education to have a population of at least fifty (50) per square mile but less than one hundred (100) per square mile shall, for the school year 1976-1977 and each school year thereafter, qualify for a modified sparsity payment which shall be the ratio of its population per square mile to fifty (50) subtracted from 2.00 and multiplied by the amount to which it would have been entitled had its population per square mile been less than fifty (50).

(17.1) "Base Earned for Reimbursement." Shall be the lesser of (a) the actual instruction expense per weighted average daily membership of the district, or (b) the amount earned as follows:

(i) Subtract the individual school district's equalized millage from the highest equalized millage in the State.

(ii) Divide the amount determined in subclause (i) by the difference between the highest and lowest equalized millage in the State.

(iii) Multiply the quotient determined in subclause (ii) by two hundred dollars (\$200) and round to the nearest whole dollar amount.

(iv) Subtract the amount determined in subclause (iii) from the median actual instruction expense per weighted average daily membership for the year for which reimbursement is being computed.

As amended 1965, Oct. 21, P.L. 601, § 50; 1966, Feb. 1, P.L. (1965) 1642, §§ 2, 3, 4, 5, 16, effective June 30, 1968; 1968, June 12, P.L. 192 No. 96, § 3, effective July 1, 1974; 1970, June 22, P.L. 404, No. 132, § 1 1971, Aug. 18, P.L. 339, No. 88, § 2, effective July 1, 1974; 1971, Aug. 18, P.L. 340, No. 88, § 2, effective July 1, 1974; 1971, Aug. 18, P.L. 341, No. 88, § 2, *imd.* effective; 1972, Nov. 15, P.L. 1229, No. 273, § 1 *imd.* effective; 1974, June 26, P.L. 370, No. 125, § 3, effective July 1 1974; 1977, Aug. 24, P.L. 199, No. 59, § 9, *imd.* effective; 1979, Jul 13 P.L. 94, No. 41, § 2, effective July 1, 1979; 1980, June 30, P.L. 271 No. 80, § 4.

1 Section 25-2502, subsecs. (d), (e), (f) of this title.

2 Section 25-2592 of this title.

3 72 P.S. § 7301 et seq.

4 Section 25-2502, subsecs. (d), (e) of this title.

5 Section 25-2502, subsecs. (d), (e), (f) of this title.

6 Section 25-2592 of this title.

Section 10 of Act 1979, July 13, P.L. 91, No. 41 provides:

"Section 10. Notwithstanding any other provisions of the act of March 10, 1949 (P.L. 30, No. 14), known as the 'Public School Code of 1949,' the board of school directors of each school district is authorized to and shall reopen its 1979 or 1979-1980 budget, whichever is applicable, during the month of August, 1979 only, to make any revisions in the budget and tax levies heretofore adopted to reflect anticipated increases in subsidies payable to the school district during its 1979 or 1979-1980 fiscal year under the provisions of this act."

Section 16. (repealed, 1979, July 13, P.L. 94, No. 41, § 9.)

"Section 14. Notwithstanding any other provisions of the act of March 10, 1949 (P.L. 30, No. 14), known as the 'Public School Code of 1949,' the board of school directors of each school district is authorized to and shall reopen its 1977

or 1977-1978 budget, whichever is applicable, during the month of August, 1979 only, to make any revisions in the budget and tax levies heretofore adopted to reflect anticipated increases in subsidies payable to the school district during its 1977 or 1977-1978 fiscal year under the provisions of this act."

"Section 15. It is the intent and purpose of the General Assembly that the funds which accrue to the school districts of the Commonwealth on account of the provisions of this act be expended only for the reduction of school district and the restoration of school district programs and activities reduced or eliminated as a result of the previous adopted 1977 or 1977-1978 budget of the district.

"Section 16. (a) It is the intent of the General Assembly that under no circumstances shall the increased costs resulting from the subsidy formula change set forth in this act, excluding subse-

changes applying to nonpublic schools, exceed the sum of \$100,000,000 for the 1976-1977 school year and \$150,000,000 for the 1977-1978 school year and each school year thereafter over the existing costs incurred by the Commonwealth under present law.

(b) It is the intent of the General Assembly that under no circumstances shall the increased costs resulting from the subsidy formula changes applicable for nonpublic schools set forth in this act exceed the sum of \$5,057,000 for the school year 1977-1978 and \$7,546,000 for the school year 1978-1979 and each school year thereafter over the existing costs incurred by the Commonwealth under present law.

(c) If the sums appropriated for any fiscal year for making payments provided in this act subject to the limitation set forth in subsection (a) are not sufficient to pay in full the total amounts to which all qualified school districts are entitled to receive under this act for such year, the allocations to such school districts, shall be proportionately reduced by the percentage of difference between the amount needed and the amount appropriated to the extent necessary to bring the aggregate of such allocations within the limits of the amount appropriated.

Sections 14, 15 and 16 of Act 1977, Aug. 24, P.L. 329, No. 59 provide as follows: Section 6 of Act 1974, June 26, P.L. 370, No. 125 provides as follows:

"It is the legislative intent that, except in school districts of the first class and first class A, wherever possible, school districts use the additional subsidy payments to reduce school real property taxes.

"Notwithstanding any other provisions of the 'Public School Code of 1949' [24 P.S. § 1-101 et seq.] to which this is an amendment, the board of school directors of each school district except school districts of the first class is hereby authorized, for the school year 1974-1975 to reopen its 1974-1975 budget during the month of July, 1974 only and to make any revisions in the budget and tax levies heretofore adopted to reflect anticipated increases in State subsidies payable during 1974-1975 to the school district under the provisions of this act."

Section 3 of the act of 1972 provided: "This act shall take effect immediately and shall be retroactive to July 1, 1971."

Sections 7 and 8 of Act 1971, Aug. 18, P.L. 339, No. 58, provided:

**Section 7.**

In addition to all other reimbursements payable to school districts of the second, third and fourth class an additional payment shall be made to certain school districts of such classes for the school year 1970-1971. The amount and manner of payment shall be determined as follows:

(1) There is hereby created a committee consisting of the Secretary of Education, who shall serve as chairman, and four members of the General Assembly to be determined as follows: (i) one member appointed by the President Pro Tempore of the Senate; (ii) one member appointed by the Minority Leader of the Senate; (iii) one member appointed by the Speaker of the House of Representatives; and (iv) one member appointed by the Minority Leader of the House of Representatives.

(2) The sum of five million dollars (\$5,000,000) shall be distributed among certain school districts of the second, third and fourth class by the committee.

(3) The amount, if any, that any such school district shall receive shall be determined solely by the committee. In making such determination the committee shall consider any and all amounts a school district will receive for the school year 1970-1971 as a result of the provisions of this amendatory act in order to arrive at a fair and equitable formula of distribution.

(4) The committee shall make its determination and distribute such payments during the fiscal year 1971-1972.

**Section 8.**

Any additional subsidy payable to a school district for the school year 1970-1971 by virtue of any provision of this amendatory act may be used by such school district to reduce its school real property taxes for the fiscal year 1971-1972 (or for the fiscal year 1972 in the case of any district operating on a calendar year) and any provisions of the "Public School Code of 1949," to the contrary notwithstanding, any school district receiving any such additional subsidy for the school year 1970-1971 may reduce any or all of its school real property tax rates for the fiscal year 1971-1972 (or for the fiscal year 1972 in the case of any district operating on a calendar year); provided, however, that the provisions of this section shall not apply to school districts of the first class and first class A.

It is the legislative intent of this section, that wherever possible, school districts use the additional subsidy payments to reduce school real property taxes.

Prior to repeal, subsections (5) and (6) were amended by Act 1963, Aug. 1, P.L. 461, § 1.

Budget and effective date provisions of 1968 amendatory act, with the 1969 amendment to that act, see note under section 11-1142 of this title.

Transfer of functions, powers and duties of the Department of Public Instruction to the Department of Education, see 71 P.S. § 1037.

1974 Amendment: In clause (12), deleted provisions relating to the years 1969-1972, and inserted provision relating to 1973 and each school year thereafter, and in clause (15), deleted provisions relating to the school years 1970-1971 and 1971-1972, and inserted provision relating to 1973-1974 and each school year thereafter.

1977 Amendment: Amended definitions of "valuation," "state's share of total cost," "minimum subsidy" and "sparsity factor" and added definitions of "personal income valuation," "equalized millage," "median equalized millage," "median actual instruction expense per weighted average daily membership," "market value/income aid ratio," and "base earned for reimbursement."

1979 Amendment: Amended definitions of "minimum subsidy," "sparsity factor" and "base earned for reimbursement."

1980 Amendment: In cl. (3.1), inserted "(for the tax year preceding the immediate prior year" and in cl. (15) made numerous changes.

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**1. Validity**

The two requirements of this section [clause (17)], for eligibility to receive "modified sparsity payments," namely, that a school district must have qualified for such payments in past years or must be comprised of one or more component school districts which were eligible for such payments, bear a rational relationship to legitimate state interests and are not violative of either the equal protection clause or substantive due process. *Northwestern School Dist. v. Pittenger*, 397 F.Supp. 975, D.C.1975.

Constitutionality of provisions of clause (17), which grant sparsity payment subsidies to certain school districts and not to others based on low population densities is to be judged under the rational basis test, rather than the strict judicial scrutiny test, *id.*

In absence of any allegation that Philadelphia school district had suffered any legal harm from projected financial deficit or that any Philadelphia public school student was suffering, had suffered or would suffer any legal injury as a result of operation of challenged state financing scheme and where there was no allegation that Philadelphia children were being denied an adequate or basic education and the only allegation was that Philadelphia school children were being denied a "normal program of educational services" available to other children in Pennsylvania, complaint based on allegation that the statutory system by which the Philadelphia school district was funded violated the Pennsylvania Constitution did not state a justiciable cause of action. *Danson v. Casey*, 399 A.2d 360, 484 Pa. 416, 1979.

As long as the legislative scheme for financing public education has a reasonable relation to providing for the maintenance and support of a thorough and efficient system of public schools, the General Assembly has fulfilled its constitutional duty to the public school students of Philadelphia. *id.*

In view of fact that the legislatively enacted school financing scheme was reasonably related to maintenance and support of a system of public education in the Commonwealth and where the framework was neutral with regard to the school district of Philadelphia and provided the Philadelphia school district with its fair share of state subsidy funds, the statutory scheme did not clearly, palpably and plainly violate the Pennsylvania Constitution. *id.*

**2. Construction and application**

If plaintiff, in civil rights action under 28 U.S.C.A. §§ 1331 and 1332(3) and 42 U.S.C.A. § 1984 brought against state officials challenging "modified sparsity payments" provisions, (clause (17)), had challenged the legislation as being violative of the Constitution and laws of Pennsylvania as well as of the Fourteenth Amendment's equal protection clause, (U.S.C.A. Const. Amend. 14), abstention would have been proper; likewise, if a separate action attacking the legislation primarily on state grounds were simultaneously proceeding in state court, abstention would have been appropriate; however, there being no ambiguity in the statute, the federal court would not abstain merely to await an attempt to vindicate the claim in state court. *Northwestern School Dist. v. Pittenger*, 397 F.Supp. 976, D.C.1975.

School district was without standing to bring civil rights action against various state officials challenging the constitutionality of provisions of this section [clause (17)], which grant sparsity payment subsidies to certain school districts and not to others based on the low population densities, but individuals who resided in the school district on paid taxes, had a sufficient personal stake in the outcome of the controversy to grant him standing, and he also has standing as the parent of two children presently attending public schools in the district. *id.*

Market value/income aid ratio of section 25-2502 of this title and this section was not meant to be an exact measure of each school district's actual effort, but rather a measure of high personal income and real estate value, have an ability of the state to raise revenue. *O'Donnell v. Casey*, 405 A.2d 1006, 45 Pa. Cmwlth. 394, 1979.

Challenge to section 25-2502 of the title and this section, concerning weight to be ascribed personal income variable of aid ratio, was an attempt to enter degree of mathematical exactitude never deemed part of constitutional rational relation analysis and was also a later attempt to invoke judicial legislation. *id.*

Aid formula of section 25-2502 of the title and this section bears a rational relationship to promoting equal education aid opportunity; therefore, petition for review of such provisions failed to state a cause of action predicated on violation of due process. *id.*

Under now-repealed provision of this section, in computing basic account standard reimbursement fraction in the case of a school district, teaching units should have been based only upon enrolled public school pupils and could not be based upon all pupils residing in district attending public, parochial and private schools. 1959 Op. Att'y Gen. No. 18.

Department of Public Instruction need not calculate actual instruction expense as required by this section prior to making its first semi-annual payment to school districts for school year 1958-59 under § 25-2517 of this Title, where districts have not been able to furnish department with supporting data in time to allow necessary calculations to be made prior to October and November payment dates, but may calculate and make this payment on basis of actual amounts paid to school districts for preceding school year; however, calculation of actual instruction expense must be made before second payment in order that amounts paid will not exceed amount payable under formula provided by § 25-2502 of this Title. 1958 Op. Att'y Gen. No. 150.

**3. Purpose**

Purpose of section 25-2502 of this title and this section is to equalize education opportunity and to remove such opportunity from dependence upon student's status or status. *O'Donnell v. Casey*, 405 A.2d 1006, 45 Pa. Cmwlth. 394, 1979.

School district may contract with private, nonreligious school for vocational education programs; and pupils attending such a program are enrolled in public school for average daily membership purposes and may be included for reimbursement computations. 1917 Op. Att'y Gen. No. 21.

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changes applying to nonpublic schools, exceed the sum of \$10,000,000 for the 1976-1977 school year and \$150,000,000 for the 1977-1978 school year and each school year thereafter over the existing costs incurred by the Commonwealth under present law.

"(b) It is the intent of the General Assembly that under no circumstances shall the increased costs resulting from the subsidy formula changes applicable for nonpublic schools set forth in this act exceed the sum of \$5,057,000 for the school year 1977-1978 and \$7,586,000 for the school year 1978-1979 and each school year thereafter over the existing costs incurred by the Commonwealth under present law.

"(c) If the sums appropriated for any fiscal year for making payments provided in this act subject to the limitation set forth in subsection (a) are not sufficient to pay in full the total amounts to which all qualified school districts are entitled to receive under this act for such year, the allocations to such school districts shall be proportionately reduced by the percentage of difference between the amount needed and the amount appropriated to the extent necessary to bring the aggregate of such allocations within the limits of the amount appropriated."

Sections 14, 15 and 16 of Act 1977, Aug. 21, P.L. 329, No. 55 provide as follows: Section 6 of Act 1971, June 26, P.L. 370, No. 125 provides as follows:

"It is the legislative intent that, except in school districts of the first class and first class A, wherever possible, school districts use the additional subsidy payments to reduce school real property taxes.

"Notwithstanding any other provisions of the 'Public School Code of 1919' [24 P.S. § 1-101 et seq.] to which this is an amendment, the board of school directors of each school district except school districts of the first class is hereby authorized, for the school year 1974-1975 to reopen its 1974-1975 budget during the month of July, 1974 only and to make any revisions in the budget and tax levies heretofore adopted to reflect anticipated increases in State subsidies payable during 1974-1975 to the school district under the provisions of this act."

Section 3 of the act of 1972 provided: "This act shall take effect immediately and shall be retroactive to July 1, 1971."

Sections 7 and 8 of Act 1971, Aug. 18, P.L. 339, No. 88, provided:

**Section 7.**

In addition to all other reimbursements payable to school districts of the second, third and fourth class an additional payment shall be made to certain school districts of such classes for the school year 1970-1971. The amount and manner of payment shall be determined as follows:

(1) There is hereby created a committee consisting of the Secretary of Education, who shall serve as chairman, and four members of the General Assembly to be determined as follows: (i) one member appointed by the President Pro Tempore of the Senate; (ii) one member appointed by the Minority Leader of the Senate; (iii) one member appointed by the Speaker of the House of Representatives; and (iv) one member appointed by the Minority Leader of the House of Representatives.

(2) The sum of five million dollars (\$5,000,000) shall be distributed among certain school districts of the second, third and fourth class by the committee.

(3) The amount, if any, that any such school district shall receive shall be determined solely by the committee. In making such determination the committee shall consider any and all amounts a school district will receive for the school year 1970-1971 as a result of the provisions of this amendatory act in order to arrive at a fair and equitable formula of distribution.

(4) The committee shall make its determination and distribute such payments during the fiscal year 1971-1972.

**Section 8.**

Any additional subsidy payable to a school district for the school year 1970-1971 by virtue of any provision of this amendatory act may be used by such school district to reduce its school real property taxes for the fiscal year 1971-1972 (or for the fiscal year 1972 in the case of any district operating on a calendar year) and any provisions of the "Public School Code of 1919," to the contrary notwithstanding, any school district receiving any such additional subsidy for the school year 1970-1971 may reduce any or all of its school real property tax rates for the fiscal year 1971-1972 (or for the fiscal year 1972 in the case of any district operating on a calendar year). Provided, however, that the provisions of this section shall not apply to school districts of the first class and first class A.

It is the legislative intent of this section that wherever possible, school districts use the additional subsidy payments to reduce school real property taxes.

Prior to repeal, subsections (5) and (6) were amended by Act 1963, Aug. 1, P.L. 461, § 1.

Budget and effective date provisions of 1968 amendatory act, with the 1969 amendment to that act, see note under section 11-1142 of this title.

Transfer of functions, powers and duties of the Department of Public Instruction to the Department of Education, see 71 P.S. § 1027.

1974 Amendment: In clause (12), deleted provisions relating to the years 1963-1972, and inserted provision relating to 1973 and each school year thereafter, and in clause (15), deleted provisions relating to the school years 1970-1971 and 1971-1972, and inserted provision relating to 1973-1974 and each school year thereafter.

1977 Amendment: Amended definitions of "valuation," "state's share of total cost," "minimum subsidy" and "sparsity factor," and added definitions of "personal income valuation," "equalized millage," "median equalized millage," "median actual instruction expense per weighted average daily membership," "market value/income aid ratio," and "base earned for reimbursement."

1979 Amendment: Amended definitions of "minimum subsidy," "sparsity factor" and "base earned for reimbursement."

1980 Amendment: In cl. (9.1), inserted "for the tax year preceding the immediate prior year" and in cl. (16) made numerous changes.

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**1. Validity**

The two requirements of this section [clause (17)], for eligibility to receive "modified sparsity payments," namely, that a school district must have qualified for such payments in past years or must be comprised of one or more component school districts which were eligible for such payments, bear a rational relationship to legitimate state interests and are not violative of either the equal protection clause or substantive due process. *Northwestern School Dist. v. Pittenger*, 397 F.Supp. 975, 13 C.1975.

Constitutionality of provisions of clause (17), which grant sparsity payment subsidies to certain school districts and not to others based on low population densities is to be judged under the rational basis test, rather than the strict judicial scrutiny test. *Id.*

In absence of any allegation that Philadelphia school district had suffered any legal harm from projected financial deficit or that any Philadelphia public school student was suffering, had suffered or would suffer any legal injury as a result of operation of challenged state financing scheme and where there was no allegation that Philadelphia children were being denied an adequate or basic education and the only allegation was that Philadelphia school children were being denied a "normal program of educational services" available to other children in Pennsylvania, complaint based on allegation that the statutory system by which the Philadelphia school district was funded violated the Pennsylvania Constitution did not state a justiciable cause of action. *Danson v. Casey*, 399 A.2d 360, 481 Pa. 416, 1979.

As long as the legislative scheme for financing public education has a reasonable relation to providing for the maintenance and support of a thorough and efficient system of public schools, the General Assembly has fulfilled its constitutional duty to the public school students of Philadelphia. *Id.*

In view of fact that the legislatively enacted school financing scheme was reasonably related to maintenance and support of a system of public education in the Commonwealth and where the framework was neutral with regard to the school district of Philadelphia and provided the Philadelphia school district with its fair share of state subsidy funds, the statutory scheme did not clearly, palpably and plainly violate the Pennsylvania Constitution. *Id.*

**2. Construction and application**

If plaintiff, in civil rights action under 28 U.S.C.A. §§ 1331 and 1343(3) and 42 U.S.C.A. § 1981 brought against state officials challenging "modified sparsity payments" provisions, [clause (17)], had challenged the legislation as being violative of the Constitution and laws of Pennsylvania as well as of the Fourteenth Amendment's equal protection clause, (U.S.C.A. Const. Amend. 14), abstention would have been proper; likewise, if a separate action attacking the legislation primarily on state grounds were simultaneously proceeding in state court, abstention would have been appropriate; however, there being no ambiguity in the statute, the federal court would not abstain merely to await an attempt to vindicate the claim in state court. *Northwestern School Dist. v. Pittenger*, 397 F.Supp. 976, D.C.1976.

School district was without standing to bring civil rights action against various state officials challenging the constitutionality of provisions of this section [clause (17)], which grant sparsity payment subsidies to certain school districts and not to others based on their low population densities, but individuals who resided in the school district on paid taxes, had a sufficient personal stake in the outcome of the controversy to grant him standing, and he also had standing as the parent of two children presently attending public schools in the district. *Id.*

Market value/income aid ratio of section 25-2502 of this title and this section was not meant to be an exact measure of each school district's actual effort, but rather a measure of input personal income and real estate value have on ability of a district to raise revenue. *O'Donnell v. Casey*, 405 A.2d 1006, 45 Pa.Cmwlth. 394, 1979.

Challenge to section 25-2502 of the title and this section, concerning weight to be ascribed personal income variable of aid ratio, was an attempt to enter degree of mathematical exactitude never deemed part of constitutional rational relation analysis and was also a later attempt to invoke judicial legislation. *Id.*

Aid formula of section 25-2502 of the title and this section bears a rational relationship to promoting equal education aid opportunity; therefore, petition for review of such provisions failed to state a cause of action predicated on violation of due process. *Id.*

Under now-repealed provision of this section, in computing basic account standard reimbursement fraction in the case of a school district, teaching unit should have been based only upon enrolled public school pupils and could not be based upon all pupils residing in district attending public, parochial and private schools. 1959 Op. Atty. Gen. No. 18.

Department of Public Instruction need not calculate actual instruction expense as required by this section prior to making its first semi-annual payment to school districts for school year 1958-9 under § 25-2517 of this Title, where districts have not been able to furnish department with supporting data in time to allow necessary calculations to be made prior to October and November payment dates, but may calculate and make this payment on basis of actual amounts paid to school districts for preceding school year; however, calculation of actual instruction expense must be made before second payment in order that amounts paid will not exceed amount payable under formula provided by § 25-2502 of this Title. 1958 Op. Atty. Gen. No. 150.

**3. Purpose**

Goal of section 25-2502 of this title and this section is to equalize education opportunity and to remove such opportunity from dependence upon student's status or status. *O'Donnell v. Casey*, 405 A.2d 1006, 45 Pa.Cmwlth. 394, 1979.

School district may contract with private, nonreligious school for vocational education programs; and pupils attending such a program are enrolled in public school for average daily membership purposes and may be included for reimbursement computations. 1947 Op. Atty. Gen. No. 21.

## (E) REIMBURSEMENTS BETWEEN SCHOOL DISTRICTS

## § 25—2501. Tuition charges for pupils of other districts

A school district or vocational school district receiving elementary or high school pupils or vocational or other extension education pupils who are residents of another school district or another vocational school district shall compute the tuition charges as follows:

[See main volume for text of (1) and (2)]

(3) High School Tuition Charge. Add the salaries of supervisors, principals, clerks, assistants and teachers employed in the receiving district's high schools, the district's contribution to the retirement fund and social security contribution fund on behalf of teachers, supervisors and principals employed in the district's high schools, the cost of textbooks and supplies of the second class used in the district's high schools incurred for the school year immediately preceding, and divide the sum so obtained by the total number of pupils in average daily membership in the receiving district's high schools during the school year immediately preceding. The quotient so obtained shall be designated as the "instruction cost per high school pupil." Add to the instruction cost per high school pupil the overhead cost per pupil and a rental charge of eighteen dollars (\$18) per pupil for the use of the receiving district's school plant. For the school years 1952-1953 and 1953-1954 only, but not thereafter, deduct from the amount so obtained the per pupil State appropriation on account of high school teaching units. The cost so determined shall be the "tuition charge per high school pupil." Upon the request of the receiving district, the "tuition charge per high school pupil" shall be computed separately for pupils attending junior high school and pupils attending senior high school. As amended 1963, July 25, P.L. 281, § 1.

Effective July 1, 1963.

[See main volume for text of (4) and (5)]

(6) Institution tuition charge. When the public school district administers and delivers the educational services required by this act to a child referred to an institution, pursuant to a proceeding under 42 Pa.C.S. Ch. 63 (relating to Juvenile Matters), at the institution itself, the tuition to be charged to the district of residence of such child shall be one and one-half times the amount determined in accordance with clauses (1) through (5), but not to exceed the actual cost of the educational services provided to such child.

Added 1982, Dec. 17, P.L. 1378, No. 316, § 9, *imd.* effective.

Section 2 of the act of 1963 provided: "This act shall take effect July 1, 1963."

1. In general

Tuition rate calculation under this section for first year of operation of a

union or merged school district should be based in part upon the combined overhead cost for combined operation of component district during previous year. 1959 Op. Atty. Gen. No. 171.

## § 25—2503. Certification of pupils admitted from other districts; monthly payments

1. In general

Where receiving district certifies admission of pupils to sending district and sending district neither assents nor dissents at such time to payment of tuition for such pupils, superintendent of public instruction may deduct such tuition from any monies due sending district and pay said sum on account of unpaid tuition to receiving district. 1959 Op. Atty. Gen. No. 176.

List of names of non-residents in attendance at schools of receiving district, classes they are attending, and amount of tuition due monthly for each pupil based upon data for preceding year of operation of receiving school district is type of certification which will satisfy provisions of this section. *Id.*

## § 25—2504. Deductions from state appropriations

1. In general

Where a resident pupil attends high school in a receiving district at the expense of a sending district, superintendent of public instruction is authorized to withhold appropriations of sending district and pay same over to receiving district on account of unpaid tuition. 1959 Op. Atty. Gen. No. 175.

Where receiving district certifies admission of pupils to sending district and

sending district neither assents nor dissents at such time to payment of tuition for such pupils, superintendent of public instruction may deduct such tuition from any monies due sending district and pay said sum on account of unpaid tuition to receiving district. *Id.*

This section permits superintendent of public instruction to deduct only for tuition charges incurred during immediate past school year of operation. *Id.*

## (F) SCHOOL BUILDING RENTALS AND SINKING FUND CHARGES

## § 25—2572. State public school building authority and municipality authority and nonprofit corporation leases heretofore approved

(a) The Commonwealth shall pay annually to each school district erecting or sharing in the erection of a building or buildings or providing educational equipment under the provisions of the State Public School Building Authority Act<sup>1</sup> for every lease or contract entered into or approved by the Superintendent of Public Instruction prior to August 26, 1953, and to each school district which shall have entered into a lease approved by the Department of Public Instruction prior to August 26, 1953, with a municipality authority or with a non-profit corporation, for the rental of a school building or buildings or providing educational equipment, an amount to be determined by multiplying the school district's capital account reimbursement fraction computed for the year 1967 or aid ratio whichever is larger by the annual rental charge as fixed by the State Public School Building Authority, or by the annual rental or share thereof provided for under its lease with such municipality authority or non-profit corporation, as the case may be.

(b) The Commonwealth shall pay annually to each school district erecting or sharing in the erection of a building or buildings under the provisions of the State Public School Building Authority Act for every lease approved by the Department of Public Instruction on or after August 26, 1953, but prior to March 22, 1956, and to each school district which shall have entered into a lease approved by the Department of Public Instruction on or after August 26, 1953, but prior to March 22, 1956, with a municipality authority or with a non-profit corporation for the rental of a school building or buildings, an amount to be determined by multiplying the school district's capital account reimbursement fraction computed for the year 1967 or aid ratio whichever is larger by that portion of the annual rental charge or share thereof provided for under its lease with the State Public School Building Authority or municipality authority or non-profit corporation, as the case may be, sufficient during the period of the lease to pay the cost of acquiring or constructing the school buildings, the cost of acquiring the land upon which the school buildings are situate and the interest on such cost. As amended 1968, June 12, P.L. 192, No. 96, § 7.

<sup>1</sup> Section 791.1 et seq. of this title.

Budget and effective date provisions amendment to that act, see note under 1968 amendatory act, with the 1969 section 11-142 of this act.

## § 25—2574. Approved reimbursable rental for leases hereafter approved and approved reimbursable sinking fund charges on indebtedness

[See main volume for text of (a)]

(b) For new school buildings the approved building construction cost shall be the lesser of

[See main volume for text of (1) and (2)]

(3) The provisions of clause (2) of subsection (b) hereof shall apply to all school building projects for which the general construction contract is awarded prior to July 1, 1966, and for approved school building projects for which a lease was approved by the Department of Public Instruction prior to July 1, 1966. For school buildings for which the general construction contract is awarded subsequent to July 1, 1966, and for approved school building projects for which the general construction contract was awarded but for which a lease was not approved by the Department of Public Instruction prior to July 1, 1966, the product of the rated pupil capacity as determined by the Department of Public Instruction at the time the project is approved and (i) two thousand three hundred dollars (\$2300) in the case of elementary schools, (ii) three thousand dollars (\$3000) in the case of secondary schools, (iii) an amount in the case of combined elementary-secondary schools obtained by multiplying the rated elementary pupil capacity by two thousand three hundred dollars (\$2300) and the rated secondary pupil capacity by three thousand dollars (\$3000) and dividing the sum by the total rated pupil capacity.

Added 1966, Feb. 1, P.L.(1965) 1642, § 13, as amended 1968, June 12, P.L. 192, No. 96, § 8.

(c) For additions or alterations to existing buildings approved building construction cost shall be the lesser of

*[See main volume for text of (1) and (2)]*

(3) The provisions of clause (2) of subsection (c) hereof shall apply to all school building projects for which the general construction contract is awarded prior to July 1, 1966, and for approved school building projects for which a lease was approved by the Department of Public Instruction prior to July 1, 1966. For school buildings for which the general construction contract is awarded subsequent to July 1, 1966, and for approved school building projects for which the general construction contract was awarded but for which a lease was not approved by the Department of Public Instruction prior to July 1, 1966, the difference obtained by subtracting the appraisal value of the existing building from the product of rated pupil capacity of the altered or expanded building as determined by the Department of Public Instruction at the time the project is approved and (i) two thousand three hundred dollars (\$2300) in the case of elementary schools (ii) three thousand dollars (\$3000) in the case of secondary schools, (iii) an amount in the case of combined elementary-secondary schools obtained by multiplying the rated elementary pupil capacity of the altered or expanded building by two thousand three hundred dollars (\$2300) and the rated secondary pupil capacity of the altered or expanded building by three thousand dollars (\$3000) and dividing the sum by the total rated pupil capacity of the altered or expanded building.

Appraisal value shall be the valuation made immediately before the additions or alterations are begun by three competent appraisers, one appointed by the school authorities, one by the Superintendent of Public Instruction, and the third by the other two.

Added 1966, Feb. 1, P.L.(1965) 1642, § 13, as amended 1968, June 12, P.L. 192, No. 96, § 8.

*[See main volume for text of (c.1), (c.2) and (d)]*

(e) For area vocational-technical school and technical institute projects leased subsequent to July 1, 1964, by or for lease to a board of school directors authorized to operate such a school, the Department of Public Instruction shall calculate an approved reimbursable rental charge.

For area vocational-technical school and technical institute projects constructed or purchased subsequent to July 1, 1964, by a board of school directors authorized to operate such a school, the Department of

Public Instruction may calculate an approved reimbursable sinking fund charge.

Approved reimbursable rental or sinking fund charge shall consist of that part of the annual rental or sinking fund attributable to:

(1) Cost of acquiring land and preparing it for use to the extent that such costs are deemed reasonable by the Department of Public Instruction and the interest on such cost of acquisition, cost of preparation and the cost of sewage treatment and the interest on such costs.

(2) Machinery, apparatus, furniture and equipment and all other necessary expenses and interest charges, but excluding architects' fees in excess of six percent of the construction cost.

The approved building construction cost and the interest on such construction cost shall not exceed the product of the rated full-time pupil capacity, as determined by the Department of Public Instruction at the time the project is approved and two thousand two hundred dollars (\$2,200).

The provisions of the foregoing paragraph shall apply to all school building projects for which the general construction contract is awarded prior to July 1, 1966, and for approved school building projects for which a lease was approved by the Department of Public Instruction prior to July 1, 1966. For school buildings for which the general construction contract is awarded subsequent to July 1, 1966, and for approved school building projects for which the general construction contract was awarded but for which a lease was not approved by the Department of Public Instruction prior to July 1, 1966, the approved building construction cost and the interest on such construction cost shall not exceed the product of the rated full-time pupil capacity, as determined by the Department of Public Instruction at the time the project is approved, and three thousand seven hundred dollars (\$3700).

The Department of Public Instruction shall not approve the expenditure of any funds borrowed or obtained by the sale of bonds by any authority, nonprofit corporation, profit corporation, company or individual for construction of area vocational-technical schools or technical institutes for bleachers, athletic field, lighting equipment or apparatus used to promote and conduct interscholastic athletics.

Added 1963, Aug. 14, P.L. 1065, No. 463, § 16, as amended 1966, Feb 1 P.L. (1965) 1642, § 13; 1968, June 12, P.L. 192, No. 96, § 8.

(f) For the purchase of any building, reimbursement shall be computed in the same manner as for constructed school buildings and approved building cost shall be the lesser of

(1) The cost of purchasing the site and structure and the cost of approved renovations including appropriate fixtures and equipment, or

(2) For the purchase of any building (i) the product of the rated pupil capacity as determined by the Department of Education at the time the purchase is approved and (i) one thousand one hundred dollars (\$1,100) in the case of elementary schools, (ii) one thousand seven hundred dollars (\$1,700) in the case of secondary schools, and (iii) an amount in the case of combined elementary-secondary schools obtained by multiplying the rated elementary pupil capacity by one thousand one hundred dollars (\$1,100) and the rated secondary pupil capacity by one thousand seven hundred dollars (\$1,700) and dividing the sum by the total rated pupil capacity; and (ii) in the case of renovation of any building including appropriate fixtures and equipment, reimbursement shall be (i) one thousand two hundred dollars (\$1,200) for elementary schools, (ii) one thousand three hundred dollars (\$1,300) for secondary schools, and (iii) for combined elementary-secondary schools an amount obtained by multiplying the rated elementary capacity

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by one thousand two hundred dollars (\$1,200) and the secondary pupil capacity by one thousand three hundred dollars (\$1,300). Added 1972, June 1, P.L. 325, No. 89, § 4, *imd. effective*.

Budget and effective date provisions of 1965 amendatory act, with the 1969 amendment to that act, see note under section 11-1112 of this act.

1. Construction and application  
Failure of school district to obtain appraisal of existing school building be-

fore construction of addition was barred its receipt of reimbursement from Department of Education after construction of school addition. *School Dist. v. Pittsburgh v. Com., Dept. of Ed., 41 A.2d 230, 63 Pa.Cmwlth. 39, 1961, affirmed 451 A.2d 412.*

#### § 25-2574.1 Payments on account of building site costs

Whenever any school district acquires a site for a school building in advance of its need and in accordance with a long range master plan for school building construction approved by the Department of Public Instruction to the extent that the cost of the acquisition shall be deemed reasonable by the Department of Public Instruction, the Commonwealth shall pay, in the year of such acquisition, fifty per cent (50%) of the reimbursement due the district under applicable laws in force at that time for the cost of acquisition; the balance due the district on account of the original approved site acquisition cost shall become part of the approved reimbursable rental or sinking fund charge at the time the school building project is approved and shall be subject to such applicable laws as may be in effect at that time. If such site is not thereafter used by the district for school building purposes, the amounts paid to the district under this section shall be returned to the Commonwealth. As amended 1965, Oct. 21, P.L. 601, § 58.

*Amendment 1966, Jan. 26, P.L. (1965) 1591, § 1, see § 25-2574.1, post*

#### § 25-2574.1 Payments on account of building site costs

Whenever any school district acquires a site for a school building in advance of its need and in accordance with a long range master plan for school building construction approved by the State Board of Education to the extent that the cost of the acquisition shall be deemed reasonable by the Department of Public Instruction, the Commonwealth shall pay, in the year of such acquisition, one hundred percent (100%) of the reimbursement due the district under applicable laws in force at that time for the cost of acquisition. If such site is not thereafter used by the district for school building purposes, within a period of ten years from date of purchase, the amounts paid to the district under this section shall be returned to the Commonwealth by the district within two years of the end of such ten year period of non-use. If such amounts are not so returned within such two year period, Commonwealth moneys due and payable to the district by the Department of Public Instruction as a subsidy or reimbursement for any purpose shall first be withheld in the amount of the moneys owed the Commonwealth by the district under this section and credited as returned in full hereunder before any part of such Commonwealth reimbursement or subsidy is paid to the district. As amended 1966, Jan. 26, P.L. (1965) 1591, § 1.

*Amendment 1965, Oct. 21, P.L. 601, § 58, see § 25-2574.1, ante.*

#### Reimbursement

Section 3 of Act 1966, Jan. 26, P.L. (1965) 1591, provided: "The Commonwealth shall pay all of the reimbursement due the school district for such sites heretofore or hereafter acquired including payments not heretofore made."

This section was amended twice at the 1965 regular session of the General Assembly. Neither of the amendments referred to the other. Both of the amendments are set out in the text.  
See 1 Pa.C.S.A. § 1952.

1. Construction and application  
Under some circumstances, foresight can properly be a major motive in presently acquiring land needed for future expansion. In re School Dist. of Pittsburgh, Allegheny County, 211 A.2d 42, 440 Pa. 646, 1968.

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#### § 25-2574.2 Approved reimbursable annual rental for leases of buildings and facilities for school use

For extended leases of buildings and facilities for school use authorized under the provisions of section 703.1 which have been approved by the Secretary of Education, the Department of Education shall calculate an approved reimbursable annual rental charge.

Approved reimbursable annual rental for such approved leases of building facilities constructed for school use shall be the lesser of (1) the product of the annual rental payable under the provisions of the approved lease agreement times the ratio of the pupil scheduled area to the architectural area, or (2) the product of the rated pupil capacity as determined by the Department of Education at the time of initial lease times one hundred sixty dollars (\$160) for elementary schools, two hundred twenty dollars (\$220) for secondary schools, or two hundred seventy dollars (\$270) for area vocational-technical schools.

Annual approved rental payable for approved leases of existing facilities altered for school use shall be the lesser of (1) the product of the annual rental payable under the provisions of the approved lease agreement times the ratio of the pupil scheduled area to the architectural area, or (2) the product of the rated pupil capacity, as determined by the Department of Education at the time of initial lease, times one hundred twelve dollars (\$112) for elementary, one hundred fifty-four dollars (\$154) for secondary, or one hundred eighty-nine dollars (\$189) for area vocational-technical schools.

1949, March 10, P.L. 30, § 2574.2, added 1972, Dec. 6, P.L. 1445, No. 323, § 2, *imd. effective*.

1 Section 7-703.1 of this title.

Cross References  
Approval of lease agreements, see 1  
7-731.1 of this title.

Lease of buildings, payment on account of approved rental, see § 25-2573.2 of this title.  
Power to lease buildings, see § 6-631, 7-703.1 of this title.

#### § 25-2575. Payments on account of leases hereafter approved and on account of sinking fund charges on indebtedness for school buildings hereafter constructed

(a) The Commonwealth shall pay annually to each school district erecting or sharing in the erection of a building or buildings under the provisions of the Public School Building Authority Act,<sup>1</sup> the Municipality Authority Act,<sup>2</sup> section 758 of the Public School Code of 1949,<sup>3</sup> or section 791 of the Public School Code of 1949,<sup>4</sup> on account of buildings for which the lease is approved on or after March 22, 1956, or through the incurring of indebtedness by the issuance of general obligation bonds on account of buildings for which the general construction contract is awarded on or after March 22, 1956, an amount to be determined by multiplying the district's capital account reimbursement fraction computed for the year 1967 or old ratio whichever is larger by the approved reimbursable rental or approved reimbursable sinking fund charge.

(b) The Commonwealth shall pay, annually, to each school district which constructs, purchases or leases with the approval of the Department of Public Instruction an area vocational-technical school building or technical institute building or which shares in the construction, purchase or lease of such building or buildings under provisions of the Public School Building Authority Act, the Municipality Authority Act, section 758 of the Public School Code of 1949, or section 791 of the Public School Code of 1949, or other agency, or through the incurring of indebtedness by the issuance of general obligation bonds, an amount to be determined by multiplying the district's old ratio or fifty per cent, whichever is more, by the approved reimbursable rental approved re-

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indemnifiable sinking fund charge multiplied by the district's proportionate share of such rental sinking fund charge.

As amended 1963, Aug. 14, P.L. 1065, No. 463, § 17; 1968, June 12, P.L. 192, No. 96, § 9.

- <sup>1</sup> Section 791 of this title.
- <sup>2</sup> 51 P.S. § 301 (1961), 371, 374.
- <sup>3</sup> Section 7-758 of this title.
- <sup>4</sup> Section 7-791 of this title.

Budget and effective date provisions amendment to that act, see note under of 1968 amendatory act, with the 1969 section 11-112 of this title.

§ 25-2575.1 Payments on account of building costs

The Commonwealth shall pay to any school district making a preliminary payment on account of the approved building construction cost as authorized by section 783<sup>1</sup> or by clause (4) of section 790<sup>2</sup> or by clause (5) of section 791 of this act,<sup>3</sup> an amount determined by multiplying the district's capital account reimbursement fraction computed for the year 1967 or aid ratio whichever is larger by the amount of the payment made by the school district.

Whenever any school district provides the full payment on account of approved building construction cost without incurring debt, or without assuming a lease, the Commonwealth shall pay to such school district an amount determined by multiplying the district's capital account reimbursement fraction computed for the year 1967 or aid ratio whichever is larger by the amount of the payment made by the school district.

The payment required by this section shall be made for the year in which the school district made its payment on account of the approved building construction cost.

As amended 1966, Jan. 26, P.L.(1965) 1591, § 2; 1968, June 12, P.L. 192, No. 96, § 10.

- <sup>1</sup> Section 7-783 of this title.
- <sup>2</sup> Section 7-790 of this title.
- <sup>3</sup> Section 7-791 of this title.

Cross References

Budget and effective date provisions of 1968 amendatory act, with the 1969 amendment to that act, see note under section 11-112 of this title.

A. In general

Failure of school district to obtain appraisal of existing school building be-

fore construction of addition was begun barred its receipt of reimbursement from Department of Education after construction of school addition. *School Dist. of Pittsburgh v. Com., Dept. of Ed.*, 137 A.2d 530, 65 Pa.Cmwlth. 39, 1961, affirmed 151 A.2d 112.

§ 25-2575.2 Payments on account of approved rental for leases of buildings and facilities for school use

The Commonwealth shall pay, annually, for the school year 1972-73 and each school year thereafter to each school district which leases with the approval of the Department of Education buildings and facilities for school use under the provisions of section 703.1,<sup>1</sup> an amount to be determined by multiplying the district's aid ratio by the approved reimbursable annual rental.

In the case of districts eligible under density factor the minimum annual payment shall be no less than fifty per centum (50%) of the approved reimbursable annual rental.

1949, March 10, P.L. 30, § 2575.2, added 1972, Dec. 6, P.L. 1445, No. 323, § 2, *Imd.* effective.

- <sup>1</sup> Section 7-703.1 of this title.

Cross References

Approval of lease agreement, see § 7-731.1 of this title.

Approved reimbursable annual rental for leases of buildings, see § 7-703.1 of this title.

Lease agreements, approval, see § 7-701.1 of this title.

Lease of buildings for school use, see § 7-703.1 of this title.

Power to lease buildings, see §§ 6-601, 7-701.1 of this title.

Index to Notes

Construction and application 1  
Time 2

1. Construction and application

School district with an approved lease signed between December 6, 1972, and June 30, 1974, is entitled to reimbursement. 1974 Op. Atty. Gen. No. 5.

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2. Time

Department of Education may not reimburse school district for lease of building for school use if such lease is for a period of time of less than five years. 1971 Op. Atty. Gen. No. 5.

Department of Education may reimburse school district for lease which was in effect on December 6, 1972, and is scheduled to run, or renegotiated to run, five or more years from Dec. 6, 1972. *Id.*

§ 25-2576. Approval of Department of Public Instruction

(a) No payment shall be made to any school district on account of any lease entered into with the State Public School Building Authority or any municipality authority or nonprofit corporation under section 758 of this act<sup>1</sup> or any profit or nonprofit corporation, partnership, association or person under section 791 of this act<sup>2</sup> or on account of sinking fund charges on indebtedness for school buildings unless such lease or sinking fund charge is approved by the Department of Public Instruction. Except as hereinafter provided, the Department of Public Instruction may give its approval to any lease heretofore or hereafter entered into and to any payments on account of sinking fund charges on indebtedness for school buildings if it shall find in the case of all school districts, except school districts of the first class, first class A and second class which are not part of a county-wide plan, that the leased project or the project for which the indebtedness is incurred, is in conformance with county-wide plans prepared by the county board of school directors and approved pursuant to the standards of the State Board of Education for the orderly development of improved attendance areas and administrative units and for the improved housing of public schools in the Commonwealth, and in the case of all school districts, that the school building will conform with standards and regulations prescribed by the department with respect to educational and architectural design, building materials, fixtures and equipment, location, usefulness for community activities, safety, comfort and convenience, and that the school district or school districts which incur the indebtedness or to which the project is to be leased will have the ability to meet from current revenues the rental or sinking fund charge or their respective shares of rental or sinking fund charge and to defray the cost of their respective shares of the cost of operation and maintenance of the project. As amended 1965, Oct. 21, P.L. 601, § 59.

[See main volume or text of (b) and (c)]

- <sup>1</sup> Section 7-758 of this title.
- <sup>2</sup> Section 7-791 of this title.

§ 25-2577. Limitations on approval of projects for reimbursement purposes

[See main volume for text of (a)]

(a.1) Repealed. 1966, Feb. 1, P.L.(1965) 1642, § 16, effective June 30, 1968.

(b) The Department of Public Instruction shall determine reimbursement eligibility of all projects including projects submitted for approval prior to the effective date of this act in the order of date of filing of applications for project approval with the department, except that in the case of applications for area vocational-technical schools, the department may grant priority to such applications in the order in which said applications are received and process them immediately. If a delay in departmental processing of any application on file is occasioned by the applying school district, the department shall proceed to determine reimbursement eligibility of projects next in order, except that in the event of an emergency due to fire, flood, orders from the Department of Labor and Industry to close school buildings or parts thereof where such school buildings or parts thereof are determined to be irreparable and are closed finally by the Department of Labor and Industry, or an act of God, which causes undue hardship beyond the control of the applying school district, the

For Title 24, Consolidated Statutes, see Appendix following this Title

department may grant priority over the eligibility of projects submitted prior to the emergency application; Provided, however, That in cases where priority is granted due to closed schools or parts thereof by orders of the Department of Labor and Industry, the approved reimbursable costs of such projects shall not be included within the aggregate for projects already undertaken or to be undertaken as provided in subsection (a) of this section. As amended 1963, Aug. 14, P.L. 1065, No. 463, § 19.

<sup>1</sup> Enrolled bill omitted "vocational".

[See main volume for text of (c)]

Prior to repeal, subsection (a.1) of this section was added by Act 1963, Aug. 14, P.L. 1065, No. 463, § 18, and amended by Acts 1966, Feb. 1, P.L. (1965) 1642, § 7, and 1968, Jan. 29, P.L. 51, No. 14, § 1. As last amended it provided that

the Department of Public Instruction might approve, for capital reimbursement purposes, area vocational-technical school and technical institute projects not to exceed a total of forty million dollars in any fiscal year.

### § 25-2578. Payments

[See main volume for text of (a)]

(b) All payments due school districts by the Commonwealth on account of obligations to the State Public School Building Authority, sinking fund charges, or rentals under leases with municipality authorities, nonprofit corporations or profit or nonprofit corporations, partnerships, technical schools, shall be paid to the intermediate unit operating the associations or persons for building or educational equipment for area school. School districts not originally parties to an agreement with the State Public School Building Authority or a lease with a municipality authority, a nonprofit corporation or a profit or nonprofit corporation, partnership, association or person for buildings or educational equipment for an area technical school but later electing to participate in the operation of the school and agreeing to pay a part of the annual payments due under the agreement or lease shall be entitled to payments by the Commonwealth to the same extent as though they had originally been parties to the agreement or lease. The amount thereof shall be paid to the intermediate unit. No payments shall be made on account of obligations or rentals for buildings or educational equipment for area technical schools unless the schools conform to plans approved by the State Board for Vocational Education.

As amended 1970, Jan. 14, P.L. (1969) 468, § 84, effective July 1, 1970.

### § 25-2578.1 Payments to school districts because of density factor

Beginning with the school year 1965-1966 and in each school year thereafter, to districts eligible under the density factor, payments on leases or sinking fund charges shall be no less than fifty percent (50%) of the approved reimbursable rental or sinking fund charge for a school building project. Such payments shall be made annually, semi-annually or as may otherwise be required by the terms of any agreement entered into by the school district with the approval of the Superintendent of Public Instruction.

1949, March 10, P.L. 30, art. XXV, § 2578.1, added 1966, Feb. 1, P.L. (1965) 1642, § 14. As amended 1968, June 12, P.L. 192, No. 96, § 11.

#### Cross References

Budget and effective date provisions of 1968 amendatory act, see note under section 11-1142 of this title.

### (H) ADDITIONAL PAYMENTS

§ 25-2501. Repealed. 1980, Feb. 1, P.L.(1965) 1642, § 16, effective June 30, 1988

### § 25-2502. Guaranteed payment

(a) The Secretary of Education shall, for each school district, determine the sum of the following subsidies payable in 1967-1968: instruction, as defined in section 2502.1 supplemental payments, tuition, minimum reimbursements as defined in section 2503.1 and extension education. The sum of such subsidies shall be divided by the weighted average daily membership of all pupils during 1966-1967 to determine an amount per pupil.

In 1967-1968, and in each school year thereafter, each school district shall receive from the Commonwealth an amount which is the greater of (a) the amount per pupil determined for 1966-1967 according to the preceding paragraph times the weighted average daily membership applicable to the year for which payment is being made, or (b) the amount as determined in accordance with subsections (d) and (e) of section 2502 of this act.

(b) The Secretary of Education shall, for each school district, determine the sum of the following subsidies payable in 1971-1972: payments on account of instruction under subsections (d) and (e) of section 2502 or subsection (a) of this section, whichever is applicable; payments on account of low actual instruction expense under subsection (g) of section 2502. The sum of such subsidies shall be divided by the weighted average daily membership of the district's pupils for the school year 1970-1971 to determine an amount per weighted average daily membership.

In 1972-1973 and in each school year thereafter, each school district shall receive from the Commonwealth an amount which is the greater of (a) the amount per weighted average daily membership determined for 1970-1971 according to the preceding paragraph for the district or its components times the weighted average daily membership applicable to the year for which payment is being made, or (b) the amount as determined in accordance with subsections (d) and (e) of section 2502 of this act.

(c) In the event that a district is eligible under the density or sparsity fraction, there shall be added to its payment, as determined above, an amount determined by multiplying the aid ratio or by three hundred seventy-five thousandths (.375), whichever is greater times expenditures in excess of four hundred dollars (\$400) per weighted average daily membership, up to a maximum of, for the school year 1966-1967 one hundred dollars (\$100), for the school year 1967-1968 one hundred fifty dollars (\$150), for the school year 1968-1969 two hundred dollars (\$200), for the school year 1969-1970 and each school year thereafter two hundred fifty dollars (\$250) and times the weighted average daily membership; Provided, however, a district eligible for added payment under the density or sparsity fraction may, in lieu of the above payment, elect for any school year to have added to its payment, and the Commonwealth shall add to its payment, on account of excess expenditures per weighted average daily membership in excess of four hundred dollars (\$400) a sum of thirty dollars (\$30) per weighted average daily membership.

1949, March 10, P.L. 30, art. XXV, § 2592, added 1966, Feb. 1, P.L. (1965) 1642, § 16. As amended 1967, June 30, P.L. 166, § 1; 1972, Dec. 29, P.L. 1732, No. 373, § 2, *lmd.* effective.

<sup>1</sup> Section 25-2502 of this title.

## GROUNDS AND BUILDINGS

## VALIDATION SALES

## § 872c. Validation of sales without proper notice and properly fixing terms and conditions

Whenever any board of school directors shall have heretofore sold any unused and unnecessary lands and buildings by public auction or sealed bids the sale of which is authorized under the provisions of the school laws of the Commonwealth, and such board of school directors has received the purchase price, then such sale shall be valid and binding on the school district, and all deeds or conveyances given by the school district for any such lands and buildings are hereby ratified, confirmed and validated, and such purchasers and their respective heirs, successors and assigns shall hold and may convey such titles and estates indefeasibly as to any rights of the school districts therein, notwithstanding the fact that the notice of the public auction or sealed bid sale was not published in the legal newspaper in the county, or by posting of handbills, nor over the exact period of time prescribed by law in one or more newspapers of general circulation published within the county or the school district and notwithstanding the fact that the terms and conditions of said sales were not fixed by the board of school directors in the motion or resolution authorizing said sales: Provided, That notice of such public auctions or invitation for sealed bids was published in one or more newspapers of general circulation published within the county or the school district for at least three times before the date fixed for said sales, each time being in a different week, and providing that the terms and conditions of said sales were fixed by the board of school directors prior to the holding of such sales, and providing also that all the other requirements of law concerning the authorization, advertising and holding of such sale have been complied with.

As amended 1963, April 2, P.L. 15, § 1; 1967, Dec. 14, P.L. 745, § 1; 1974, July 3, P.L. 430, No. 150, § 1, *imd.* effective.

1974 Amendment: Provisions of section extended to include sales through sealed bids.

Library references  
Schools and School Districts §§ 66, 74  
C.J.S. Schools and School Districts  
§§ 251, 255 et seq., 263,  
P.L.E. Schools §§ 62, 58.

## ASSISTANCE TO THIRD AND FOURTH CLASS DISTRICTS

§§ 778 to 782. Repealed. 1968, Aug. 13, P.L. 699, § 1.

## PUBLIC SCHOOL BUILDING AUTHORITY

## Cross References

Community college, eligibility for participation in the State Public School Building Authority Act, see section 5214 (h) of this title.

## § 701.1 Short title

## Repealed in Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (4) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 23, P.L. 183.

For Title 24, Consolidated Statutes, see Appendix following this Title

## § 701.2 Definitions

The following terms whenever used or referred to in this act shall have the following meanings, except in those instances where the context clearly indicates otherwise:

[See main volume for text of (a) to (f)]

(g) "School building" shall mean, but shall not be limited to, any structure used or useful for schools and playgrounds, including facilities for physical education, and any community college building; 1967, July 18, P.L. 175, § 1.

(g.1) "Local sponsor" shall mean a school district or a county, municipality, township or a county board of school directors, or any combination of school districts, counties, municipalities, townships or county boards of school directors which participate in the establishment and operation of a community college; Added 1967, July 18, P.L. 175, § 1.

(g.2) "Community college" shall mean a public college or technical institute as established under the act of August 24, 1963 (P.L. 1132), known as the "Community College Act of 1963";<sup>1</sup> Added 1967, July 18, P.L. 175, § 1.

(g.3) "Board of trustees" shall mean the board of trustees of a community college; Added 1967, July 18, P.L. 176, § 1.

(g.4) "Community college building" shall mean any facility or structure used or useful for a community college, the furnishings and equipment thereof and any land or interest in land related thereto; Added 1967, July 18, P.L. 175, § 1.

[See main volume for text of (h)]

(i) "Present Worth Method" shall mean the semiannual rate, compounded semiannually, necessary to discount to present worth as of the date of the bonds or notes the amounts payable on each interest payment date and on each stated maturity or earlier mandatory redemption date so that the aggregate of such amounts will equal the purchase price offered therefor exclusive of interest accrued to the date of delivery. The present worth interest cost shall be stated in terms of an annual percentage rate and shall be that rate of interest which is twice the semiannual rate so ascertained.

Added 1982, Dec. 17, P.L. 1372, No. 314, § 1, *imd.* effective.

<sup>1</sup> Section 5201 et seq. of this title.

## Repealed in Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (4) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 23, P.L. 183.

## § 701.3 State Public School Building Authority

The Governor, the State Treasurer, the Auditor General, the Superintendent of Public Instruction, the Secretary of Property and Supplies, the President pro tempore of the Senate, the Speaker of the House of Representatives, the minority leader of the Senate, the minority leader of the House of Representatives, and their respective successors in office are hereby created a body corporate and politic, constituting a public corporation and governmental instrumentality by the name of the "State Public

For Title 24, Consolidated Statutes, see Appendix following this Title

School Building Authority." The President pro tempore of the Senate and minority leader of the Senate and the Speaker of the House of Representatives and minority leader of the House of Representatives may designate any member of the Senate or House, respectively, to act in their stead to serve at the discretion of the respective President pro tempore or minority leader and Speaker of the House of Representatives or minority leader. Said members of the Authority shall be entitled to no compensation for their services as members but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

The President pro tempore of the Senate and the Speaker of the House of Representatives, the minority leader of the Senate and the minority leader of the House of Representatives, shall continue as members of the Authority until their respective successors in office assume such office, regardless of whether or not they shall have ceased to be members of the Senate or the House of Representatives.

As amended 1963, June 21, P.L. 16<sup>1</sup>, § 1; 1969, Nov. 20, P.L. 305, § 1.

The act of 1969 authorized legislative members to designate other legislators to act in their stead.

#### Repeated in Part

Act 1947, July 5, 1947, P.L. 1217 is repeated insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (4) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.

#### Index to Notes

Construction and application 1  
Validity ½

#### ½. Validity

Legislature could create State Public School Building Authority to aid Department of Instruction in administering public school system. *Itupe v. State Public School Bldg. Authority*, 245 P. Supp. 726, D.C. 1965.

1. Construction and application  
State Public School Building Authority created for purpose of maintaining

public school buildings for use as public schools, as part of public school system of state under jurisdiction of Department of Public Instruction, was in constructing sanitary treatment plant and providing it for school building a governmental instrumentally charged with performance of governmental function, and as such, immune from liability of its agents or employees. *Itupe v. State Public School Bldg. Authority*, 245 P. Supp. 726, D.C. 1965.

The State School Building Authority is an agency of the Commonwealth. *Kilno v. State Public School Bldg. Authority*, 78 Dauph. 121, 1963.

#### § 791.4 Purposes and general powers

The Authority is created for the purpose of acquiring, financing, refinancing, constructing, improving, furnishing, equipping, maintaining and operating buildings for public school and educational broadcasting facilities for use as a part of the public school system of the Commonwealth of Pennsylvania under the jurisdiction of the Department of Education. The Authority also shall have for its purpose the acquiring, financing, refinancing, construction, improvement, furnishing, equipping, maintenance and operation of community college buildings.

As amended 1963, Aug. 24, P.L. 1191, § 1; 1967, July 18, P.L. 175, § 2; 1982, Dec. 17, P.L. 1372, No. 314, § 2, *Imd. effective*.

The Authority is hereby granted and shall have and may exercise all the powers necessary or convenient for the carrying out of the aforesaid purposes, including but without limiting the generality of the foregoing, the following rights and powers:

[See main volume for text of (a) to (g)]

(h) To fix, alter, charge and collect rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority or

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projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, not provided for by appropriation by the Commonwealth, or otherwise, the acquiring, financing, refinancing, construction, improvement, repair, equipping and furnishing, maintenance and operation of projects and its facilities and properties, the payment of the principal of, and interest, on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

As amended 1982, Dec. 17, P.L. 1372, No. 314, § 3, *Imd. effective*.

(i) To borrow money for the purpose of financing or refinancing the cost of any project, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations (hereinafter called "bonds"), of the Authority, and to secure the payment of such bonds, or any part thereof, by pledge or deed of trust of all, or any of its revenues, rentals and receipts, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds, whether issued or to be issued as the Authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof;

As amended 1982, Dec. 17, P.L. 1372, No. 314, § 3, *Imd. effective*.

[See main volume for text of (j)]

(j.1) To enter into contracts with the board of school directors of any school district, the members of which school board are members of any nonprofit community corporation having a Federal Communications Commission license for educational broadcasting stations, for the purpose of acquiring, financing, refinancing, constructing, improving, furnishing, equipping, maintaining and operating these facilities as a part of the public school system of the Commonwealth of Pennsylvania.

Added 1963, Aug. 24, P.L. 1191, § 2. As amended 1982, Dec. 17, P.L. 1372, No. 314, § 3, *Imd. effective*.

[See main volume for text of (k) to (m)]

(n) To do all acts and things necessary or convenient to carry out the powers granted to it by this act 1 or any other acts;

Provided, further, That all contracts between the Authority and school districts shall be conditioned upon the preparation of general plans for the orderly development of improved attendance areas, and administrative units and for the improved housing of the public schools of the Commonwealth. These plans shall be prepared cooperatively by local, county and State school authorities, in accordance with standards and regulations prescribed by the Department. The Department shall have authority and its duty shall be to review all construction projects to determine:

Provided, however, That the Authority shall have no power, at any time or in any manner, to pledge the credit or taxing power of the Commonwealth or any of its school districts or local sponsors or boards of trustees of community colleges, nor shall any of its obligations or debts be deemed to be obligations of the Commonwealth, or any of its school districts or local sponsors or boards of trustees of any community college, nor shall the Commonwealth or any of its school districts or local sponsors or boards of trustees of any community college be liable for the payment of principal or interest on such obligations;

As amended 1967, July 18, P.L. 175, § 3.

(1) The extent to which they conform to general county and State plans;

(2) The amount of improvement to be brought about in attendance areas and administrative units;

(3) The adequacy of the proposed building with respect to educational design, location, usefulness for community activities, safety, comfort and convenience;

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(4) The ability of the local school district or districts to amortize the cost of the project, and to defray the cost of operation and maintenance.

No contract shall be executed between the Authority and school district without the specific written approval of the Department, 1917.

Provided further, That all contracts between the Authority and local sponsors and/or boards of trustees of community colleges and/or the Department of Public Instruction shall be conditioned upon any approval of the State Board of Education or the Department of Public Instruction required by the act of August 24, 1963 (P.L. 1132), known as the "Community College Act of 1963."<sup>2</sup>

Added 1967, July 18, P.L. 175, § 4.

<sup>1</sup> Section 391.1 et seq. of this title.

<sup>2</sup> Section 6701 et seq. of this title.

#### Repealed in Part

*Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (3) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 23, P.L. 184.*

#### Supplementary Index to Notes

Construction and application 1½  
Contracts 3

#### 1½. Construction and application

State Public School Building Authority created for purpose of maintaining public school buildings for use as public schools, as part of public school system of state under jurisdiction of Department of Public Instruction, was in constructing sanitary treatment plant and providing it for school building, a governmental instrumentally charged with performance of governmental function, and as such, immune from liability of its agents or employees. *Rupe v. State Public School Bldg. Authority*, 215 F Supp. 726, D.C. 1965.

#### 2. Actions

A school building authority is not a "political subdivision" within meaning of Pa.R.C.P. No. 2103, 42 Pa.C.S.A. that an action against a political subdivision may be brought only in county in which such subdivision is located. *Adamson Co., Inc. v. H. B. Benson & Sons, Inc.*, 396 A.2d 907, 10 Pa.Cswith. 140, 1979.

Even though this section provides that state public school building authority could "be sued," in the absence of any clearer legislation to the contrary, the authority was immune from provisions of borough ordinance requiring owners of improved property to connect with borough's sewer system. *Borough of Hummelstown v. Lower Dauphin School Dist.*, 357 A.2d 727, 21 Pa.Cswith. 486, 1976.

#### 3. Contracts

Electrical contractor was not precluded from recovering for additional work done pursuant to determination by the state public school building authority as to which of two electrical contractors was obligated under contract to install certain wiring, despite contention that resolution of the dispute was a discre-

tionary governmental act which could not be overturned absent a showing of fraud, collusion or bad faith; neither this section nor 42 Pa.C.S.A. § 6110 provided the authority with such discretion. *State Public School Bldg. Authority v. W. M. Anderson Co.*, 410 A.2d 1329, 49 Pa.Cswith. 420, 1980.

Where written authorization from contracting governmental authority was required before contractor could recover for additional work performed, contractor was not required to perform such work absent required authorization and contractor was entitled to recover any damages suffered by him as result of authority's delay in providing written authorization. *Dick Corp. v. State Public School Bldg. Authority*, 365 A.2d 663, 27 Pa.Cswith. 498, 1976.

Commonwealth Court's scope of review of decision of board of arbitration of claims granting partial relief to contractor on his claim for damages under contract with state public school building authority was limited, and Court would affirm board's order unless it was not in accordance with law or findings of fact were not supported by substantial evidence. *Id.*

Where, by terms of contract with governmental body, written orders for additional work are required, contractor cannot recover for extra work without compliance with contractual provisions. *Id.*

A contract involving a governmental agency can only be valid when it has been executed in accordance with the provisions of the statute authorizing its execution. *Kline v. State Public School Bldg. Authority*, 78 Dauph. 121, 1963.

The authority's liability on its contract could not exceed the total contract price. *Id.*

Where painting the arches and purlins, which had become discolored and damaged was an integral part of work being done, although not covered by the contract, Authority was entitled to enter into a special contract with respect to such painting. *Id.*

#### § 701.5 Contracts to lease and leases from authority

Any school district or districts within the Commonwealth shall have power and authority, with the approval of the Superintendent of Public Instruction, to enter into contracts with the Authority to lease as lessee from the Authority any school building, and the furnishings and equipment thereof constructed or improved by the Authority, for a term, with respect to each not exceeding forty (40) years, at such rental or rentals as may be determined by the Authority, and upon the execution of a contract or contracts for the construction of, or during the period of construction of, or upon the completion of said school building and the furnishings and equipment thereof, the school district or districts shall have power and authority, with the approval of the Superintendent of Public Instruction, to lease as lessee any school building and the furnishings and equipment thereof, for a term, with respect to each not exceeding forty (40) years, at such rental or rentals as may be determined by the Authority.

The board of trustees of a community college, with the approval of the department, and the department, with the approval of the Governor, each shall have the power and authority to enter into contracts with the Authority to lease, as lessee, from the Authority any community college building constructed, improved, maintained and operated by the Authority, for a term, with respect to each, not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority, and upon execution of a contract or contracts for the construction of or during the period of construction of, or upon the completion of said community college building, the board of trustees or the department shall have power and authority, with further approval of the department in the case of the board of trustees, or the Governor, in the case of the department, to lease, as lessee, from the Authority any such community college building for a term with respect to each not exceeding thirty (30) years, at such rental or rentals as may be determined by the Authority.

When any community college building is leased by the Authority to the department, the department shall have power and authority, with the approval of the Governor, to sublease such community college building to the board of trustees of the community college for which said community college building was constructed or improved, upon such terms and conditions as shall be agreed to, and the board of trustees of a community college, with the approval of the department, shall have the power and authority to sublease, as sublessee, from the department, any community college building leased by the Authority to the department.

There shall be included in the annual budget of a community college as prepared by each board of trustees which has entered into such a lease or sublease an amount equal to the annual amount of such rentals. Rentals payable by the department shall be payable out of current revenues of the Commonwealth of Pennsylvania; in pursuance thereof, the subleases from the department shall provide that rental payments thereunder shall be paid directly to the Authority or its assigns. Rentals payable to the department or its assigns pursuant to subleases, as provided above, shall be considered capital expenses for the purpose of reimbursement or payment by the Commonwealth as provided in the act of August 24, 1963 (P.L. 1132), known as the "Community College Act of 1963."<sup>2</sup>

In all cases where the board of trustees of a community college fails to pay or provide for the payment of any rental or rentals due the department or its assigns for any period in accordance with the terms of any sublease of a community college building entered into between the department, as lessor, and the board of trustees, as sublessee, the State Superintendent of Public Instruction shall notify such board of trustees and local sponsor of its obligation and shall withhold out of any

State appropriation that may be due to such community college on behalf of the local sponsor an amount equal to the amount of rental or rentals owing by such board of trustees to the department or its assigns, and shall apply such amount toward such rental or rentals due the department or its assigns.

Any lessee or sublessee of a community college building, as provided herein, shall have the power and authority to pay for operation and maintenance of such community college building.

As amended 1967, July 18, P.L. 175, § 5.

<sup>1</sup> Enrolled bill omitted "and".

<sup>2</sup> Section 6201 et seq. of this title.

#### Repealed In Part

*Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (4) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.*

#### § 701.0 Purposes and powers; bonds

(a) The bonds of the Authority, hereinabove referred to and authorized to be issued, shall be authorized by resolution of the board, and shall be of such series, bear such date or dates, mature at such time or times, not exceeding forty (40) years from their respective dates, bear interest at such rate or rates payable semi-annually, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges, be payable in such medium of payment, and at such place or places, be subject to such terms of redemption, at such prices not exceeding one hundred five per centum of the principal amount thereof, and be entitled to such priorities in the revenues, rentals or receipts of the Authority as such resolution or resolutions may provide. The interest on bonds issued shall be paid during the term for which the bonds were issued. The bonds shall bear the facsimile signatures of the Governor and the President of the Authority, together with a facsimile of the corporate seal and the manual signature of the secretary and treasurer in attestation thereof, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the Authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that any of the aforesaid persons signing such bonds or whose facsimile signature shall be upon the bonds or coupons shall have ceased to hold their respective offices at the time when such bonds shall actually be delivered.

Said bonds shall be sold as the Authority shall determine, at private sale or to the highest responsible bidder or bidders after public notice by advertisement; the notice shall contain a general description of the bonds, the manner, place and time of the sale, or the time limit for the receipt of proposals, the name of the officer to whom bids or proposals shall be delivered, and a statement of the terms and conditions of sale, which shall include a statement of the highest net interest cost or highest interest cost computed by the Present Worth Method, whichever is specified, acceptable to the Authority. For the purposes of this section, net interest cost shall be determined by ascertaining the total amount of interest payable with respect to the bonds, computed from the date of the bonds to the stated maturity dates thereof, plus the amount of any discount from the principal amount of the bond or less the amount of any premium in excess of the principal amount of the bonds. Pending the preparation of the definitive bonds, interim receipts may be issued to the purchaser or purchasers of such bonds, and may contain such terms and conditions as the Authority may determine.

For Title 24, Consolidated Statutes, see Appendix following this Title

Such bonds are hereby made securities in which all officers of the State and its political subdivisions and municipal officers and administrative departments, boards and commissions of the Commonwealth, all banks, bankers, savings banks, trust companies, saving and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may properly and legally invest any funds, including capital, belonging to them or within their control, and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with, and received by, any State or municipal officers or agency of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

As amended 1968, May 17, P.L. 124, No. 65, § 1; 1969, Oct. 22, P.L. 277, § 1; 1982, Dec. 17, P.L. 1372, No. 314, § 4, *imd. effective.*

#### [See main volume for text of (b) and (c)]

The act of 1969 increased the rate of interest on bonds to seven per centum for one year beginning on Oct. 22, 1969. Act 1970, July 14, P.L. 485, No. 165, § 1 (72 P.S. § 4051), as amended by Act 1971, June 29, P.L. 183, No. 21, § 1, and Act 1972, Oct. 2, P.L. 881, No. 205, § 1, authorizes the removal of limits imposed upon rates of interest and interest costs permitted to be paid upon bonds, obligations and indebtedness issued by the Commonwealth or its agencies or instrumentalities or authorities, or by local political subdivisions or their agencies or authorities, during the period commencing July 1, 1970, and ending June 30, 1974.

#### Repealed In Part

*Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (4) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.*

#### § 701.0a Refunding Bonds

The Authority is hereby authorized to provide, by resolution of the board, for the issuance of refunding bonds for the purpose of refunding any bonds of the Authority issued under the provisions of this act and then outstanding, either by voluntary exchange with the holders of such outstanding bonds or to provide funds to redeem and retire such outstanding bonds, with accrued interest, and any premium payable thereon at maturity or at any call date. The issuance of such refunding bonds, the maturities and other details thereof, the rights of the holders thereof, and the duties of the Authority in respect to the same, shall be governed by the foregoing provisions of this act in so far as the same may be applicable. Refunding bonds may be issued by the Authority to refund bonds originally issued or to refund bonds of the Authority previously issued for refunding purposes. Notwithstanding the provisions of section 6(a) of this act,<sup>1</sup> refunding bonds for bond issues closed by the Authority during calendar year 1975 may be sold at private sale, without advertisement or competitive bidding, for such price or prices as the Authority shall determine.

As amended 1977, Dec. 9, P.L. 273, No. 88, § 1, *imd. effective.*

<sup>1</sup> Section 791.6, subsec. (a) of this title.

§ 701.0b. Repealed. 1982, Dec. 17, P.L. 1372, No. 314, § 5, *imd. effective.*

The repealed section, which derived and was added by Act 1969, Oct. 22, P.L. from Act 1947, July 6, P.L. 1217, § 6.2, 277, § 2, related to term bonds.

For Title 24, Consolidated Statutes, see Appendix following this Title

§§ 701.7 to 701.9

## Repealed in Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (1) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 184.

## § 701.10 Competition in award of contracts

If any project or any portion thereof, or any improvement thereof, shall be constructed pursuant to a contract, and the estimated cost thereof exceeds four thousand dollars (\$4,000), such contract shall be awarded to the lowest responsible bidder after advertisement for bids once a week for three weeks in at least one newspaper of general circulation in the county where the project or improvement is located. The authority may make rules and regulations for the submission of bids and the construction or improvement of any project or portion thereof. No contract shall be entered into for construction or improvement of any project or portion thereof, or for the purchase of materials, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the Authority, and in an amount fixed by the Authority, for the faithful performance of the contract, and such contract shall be accompanied by an additional bond for the protection of those who furnish labor and material, for such amount and subject to the same terms and conditions as recommended by The Administrative Code of one thousand nine hundred twenty-nine, as amended, on contracts entered into by the Department of General Services for the erection of buildings. All construction contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished and services rendered, for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the Authority to construct any project or portion thereof or any addition, betterment or extension thereto, directly by the officers, agents and employees of the Authority, or otherwise than by contract.

Subject to the aforesaid, the Authority may (but without intending by this provision to limit any powers of such Authority), enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof as the Authority may deem desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof.

Every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (No. 3), known as the "Steel Products Procurement Act."

As amended 1978, Oct. 4, P.L. 1024, No. 227, § 1, effective in 60 days; 1981, Dec. 22, P.L. 564, No. 164, § 1, effective in 60 days.

171 P.S. § 51 et seq.  
73 P.S. § 1881 et seq.

## Repealed in Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set

For Title 24, Consolidated Statutes, see Appendix following this Title

forth in Const. art. VIII, § 7(a) (1) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 184.

Supplementary Index to Notes  
Limitations 2

## 1. Construction and application

Contractor, which entered low bid for construction of school building as result of its unilateral mistake in omitting approximate \$120,000 item from bid and which neither effectively informed Building Authority of reason for mistake in preparing bid nor effectively withdrew bid before bids were opened by authority, which had no knowledge of omission, in its main office, was not entitled to rescission of contract. *Madany v. State Public School Bldg. Authority*, 204 A.2d 276, 417 Pa. 39, 1965.

Attempt of contractor to withdraw bid on school construction after discovery of omission of item from bid, by telegram simply requesting withdrawal, without mentioning omission and without any additional attempt to contact authority in that regard, did not effectively withdraw bid, where contractor had been supplied with instruction permitting withdrawal only upon personal appearance with written request prior to time set for opening. *Id.*

Instructions to bidders on works contracts with regard to submission and withdrawal of bids and failure to give bonds or to execute contracts within time specified were material part of a contract. *Id.*

Reasonable regulations that protect interest of bidders on public contracts and the public interest and that are consonant with contract law will be upheld. *Id.*

Orderly procedure of making an offer, particularly in regard to public contracts, requires care that bidders as well as the public interest be protected. *Id.*

Under subcontractor's performance bond given to school authority and providing that surety would save harmless, protect, and indemnify obligee against all loss, damage and expense by reason of principal's failure to comply with contract on subcontractor's default, surety was not itself obligated to perform the contract. *Van Cor, Inc. v. American Cas. Co. of Reading, Pa.*, 204 A.2d 267, 417 Pa. 408, 1965.

Terms of subcontract and specifications between school authority and subcontractor became a part of subcontractor's performance bond as issued by surety. *Id.*

Section 1296 of Title 53 providing that no supplier to a subcontractor can sue on the bond given by the contractor in performance of a contract with a department or agency of the commonwealth, unless he has given notice of his claim within 30 days after the labor or materials are furnished, does not apply to an action brought under the State Public School Building Authority Act of July 5, 1947, P.L. 1217, as amended (section 791.1 et seq. of this title), under which suits on performance bonds may be brought within one year from the time the cause

of action accrued. *Cook-Anderson Co. v. Maryland Cas. Co.*, 12 D. & C.2d 620, 24 Weaver 65, 1967.

In action by a subcontractor against the principal and its surety on a bond for material sold to another subcontractor in connection with a housing authority contract, where the bond attached as an exhibit to the complaint provides recovery subject to this section, defendant's preliminary objections in the nature of a demurrer on the ground the suit was brought more than one year after the claim accrued will be overruled, since the one-year limitation applies only to a suit on the construction contract, whereas the action between the subcontractor and the surety is governed by section 638 of Title 71 in which there is no limitation of action. *Mercer County Housing Authority v. Madany Bros.*, 40 D. & C.2d 73, 1966.

Instructions to bidders, adopted by the authority under its statutory power to make rules and regulations for the submission of bids, must be strictly complied with. *Yost Blec. Co. v. State Public School Bldg. Authority*, 36 D. & C.2d 631, 83 Dauph. 295, 1965.

The State Public School Building Authority properly rejected low bid of plaintiff to perform electrical work on a school building project where plaintiff's bid proposal was not personally signed by him as required by instructions to bidders adopted by authority and where, in addition, authority of person who actually signed proposal was not made known at or before opening of bids. *Id.*

Fact that bid bond was personally signed by plaintiff was immaterial since it is bid proposal itself—not bid bond—which constitutes the essential document which would be capable of acceptance by authority. *Id.*

Where plaintiff, who was not a subcontractor, supplied materials to the job which were damaged, plaintiff's complaint against the surety company was not subject to demurrer. *Mechanical Insulation Co. v. J. Mercellus & Co.*, 36 D. & C.2d 163, 14 Bucks 223, 1965.

Where painting arches and purlins, which had become discolored and damaged, was an integral part of work being done, although not covered by the contract, Authority was entitled to enter into a special contract with respect to such painting. *Kilne v. State Public School Bldg. Authority*, 78 Dauph. 121, 1963.

This section limits suits in connection with performance of the contract to one year, but does not appear to so limit suits by furnishers of labor and material. A party, moreover, may be estopped or held to have waived the benefit of the limitation if he has deceptively induced the other to withhold filing suit. *State Public School Bldg. Authority v. National Union Fire Ins. Co.*, 26 Fay.L.J. 28, 1964.

## 2. Limitations

The limitation of action provision of this section refers to suits against the surety on the bond and not to suits under the contract. *Hampden Engineering Corp. v. Transamerica Co.*, 121 P.L.J. 334, 1972.

For Title 24, Consolidated Statutes, see Appendix following this Title

A material supplier's claim against the contractor's surety under a labor and material bond is barred by the lim-

itation of action provided for in this section one year after the cause of action accrues. Id.

§§ 701.11 to 701.13

Repealed In Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (3) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.

Notes of Decisions under Repealed Sections

SECTION 701.11

1. Construction and application  
Where plaintiffs, who brought equitable action against state public school building authority to enjoin continuing trespasses upon their property, were alleging tortious conduct, plaintiffs were

properly requesting equitable relief for continuing trespass and did not have to proceed in eminent domain. *Scherbick v. Community College of Allegheny County*, 418 A.2d 791, 63 Pa. Cmwlth. 456, 1980.

§ 701.14 Exemption from taxation

Repealed In Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (3) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.

Law Review Commentaries

Uneasy law of real estate tax exemptions in Pennsylvania. Cyril A. Fox, Jr. (1977) 39 D.PILL. L. REV. 175.

1. Construction and application

State Public School Building Authority created for purpose of maintaining public school buildings for use as public schools, as part of public school system

of state under jurisdiction of Department of Public Instruction, was in constructing sanitary treatment plant and providing it for school building a governmental instrumentally charged with performance of governmental function, and as such, immune from liability of its own agents or employees. *Hupe v. State Public School Bldg. Authority*, 245 P.Supp. 726, D.C.1965.

§§ 701.15, 701.10

Repealed In Part

Act 1947, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (3) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.

§ 701.17 Transfer of projects to school districts or other lessees or sublessees

When the Authority shall have finally paid and discharged all bonds, including refunding bonds, together with all interest due thereon, which were issued for the purpose of financing the cost of construction of a project and shall have paid any and all other charges and obligations incurred in connection with such project, the Authority may (subject to the terms of any agreements, leases or indentures of trust concerning the operation, financing and disposition of such project) convey such project to the school district or school districts or board of trustees of any community college to which such project was leased or subleased. As amended 1967, July 18, P.L. 175, § 6.

For Title 24, Consolidated Statutes, see Appendix following this Title

Repealed In Part

Act 1937, July 5, 1947, P.L. 1217 is repealed insofar as it authorizes the incurring of Commonwealth debt subject to the limitation set forth in Const. art. VIII, § 7(a) (3) or is otherwise inconsistent with Act 1968, July 20, P.L. 550, No. 217 (72 P.S. § 3920.1 et seq.), known as the "Capital Facilities Debt Enabling Act," as amended by Act 1969, July 24, P.L. 183.

COUNTY SUPERINTENDENT AND ASSISTANTS

STENOGRAPHERS AND EQUIPMENT

§ 1027. Telephone, stenographer, office supplies and suitable space

Cross References

For other provisions covering the subject matter of this section, enacted earlier at the same session of the General Assembly, see sections 10-1010 and 10-1041 of this title.

Office rooms, see section 10-1039 of this title.  
Telephones and typewriter, see sections 10-1040, 10-1041 of this title.

§ 1028. Selection of stenographers; compensation

Cross References

For other provisions covering the subject matter of this section, enacted earlier at the same session of the General Assembly, see sections 10-1029 and 10-1041 of this title.

Selection and compensation of stenographer, see sections 10-1040, 10-1041 of this title.

§ 1028.1 Superintendent's budget; approval; payments; second class counties

Cross References

Telephone and typewriter, see sections 10-1040, 10-1041 of this title.

CERTIFICATION OF TEACHERS

Cross References

Professional standards and requirements for certification, see section 12-1261 et seq. of this title.

See, also, § 12-1201 et seq. of this title.  
Rules and Regulations  
Changes in certification, see 22 Pa. Code §§ 49.51, 49.52.

§ 1224. Elementary and secondary schools; certification and registration

The Department of Public Instruction shall provide for the registration of persons qualified to teach in elementary and secondary schools of this Commonwealth which are accredited by the Department of Public Instruction as conforming to the official standards promulgated by the State Board of Education. As amended 1963, Aug. 13, P.L. 649, § 1.

Title of Act:

An Act to regulate the certification and the registration of persons qualified to teach in accredited elementary and secondary schools in this State; imposing certain duties upon the Department of Public Instruction and the

State Board of Education; defining violations; providing penalties, and for appeal to the court of common pleas of Dauphin County. 1931, May 29, P.L. 210, as amended 1963, Aug. 13, P.L. 649, § 1.

§ 1225. Powers and duties of Department of Public Instruction

The Department of Public Instruction shall have the power, and its duty shall be—

{See main volume for text of (a)}

(b) To certify as qualified to practice the art of teaching in such schools any applicant eighteen (18) years of age, of good moral character, not

For Title 24, Consolidated Statutes, see Appendix following this Title



## § 3448. —Approval of projects

(a) Each school district which has voted funds in a specific amount, or issued bonds, to construct a new school plant, or make extensive additions or alterations to its existing school plant or to acquire pre-existing buildings, school facilities or relocatable units to house adequately or educate its pupils, or to conserve energy through a retrofit, and desires to avail itself of funds herein provided, shall make application in writing to the state board for approval of the project. If the voters of one or more municipalities which are served by an academy serving as a public high school and conducted by a board of trustees not less than two-thirds of whom are appointed by the selectmen of a town or the city council of a city as provided in section 3447 of this title, vote as a unit to approve a project in a specific amount for the construction, additions, alterations, or acquisitions, the board of trustees, if they have voted, appropriated, or otherwise have available funds in a specific amount for the project and if they desire to make available to the academy funds herein provided, shall also make application to the state board for state aid under this section. When the state board finds that the project is urgently needed, that the retrofitted building meets energy conservation standards adopted by the state energy office and department of education and that the proposed type, kind, quality, size and estimated cost of the project are suitable for the proposed curriculum and meet all other lawfully established standards and requirements so as to serve most effectively the largest number of pupils in any specified area, and that arrangements have been made for the supervision of actual construction by persons competent in the building trades; and the district or academy agrees 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; and the district or academy has adequately provided for the financing of the remainder of the project, the state board shall award thirty per cent of the cost of the project. Nothing in this section shall be construed to require a multi-purpose room, auditorium, gymnasium, or other type of room not deemed necessary to maintain a standard curriculum, in any proposed school building nor may the board require that a gymnasium constituting part of the school plant be on land contiguous to the land where the main school building is located as long as the gymnasium is within a reasonable distance thereof so as to permit adequate supervision by the faculty of activities therein. For the purpose of

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which has voted funds in a specific amount to construct a new school plant, or make additions to its existing school plant or to its school facilities or relocatable units, to relocate its pupils, or to conserve energy, may avail itself of funds herein provided in writing to the state board for the voters of one or more municipalities or academies serving as a public high school or academy of trustees not less than two-thirds of the electors of a town or the city council under section 3447 of this title, vote as a unit to determine the amount for the construction, additions, or alterations, the board of trustees, if they have otherwise available funds in a specific amount, if they desire to make available to the school district or academy, shall also make application to the state board under this section. When the state board determines that the retrofitted building meets the minimum standards adopted by the state board of education and that the proposed estimated cost of the project are submitted to the board and meet all other lawful requirements so as to serve most effectively the needs of the community in any specified area, and that arrangements for the supervision of actual construction by the contractor and building trades; and the district or academy shall be responsible for school instruction for any high school building as described by the board who may elect to the school district or academy has adequately provided for the remainder of the project, the state board may require that a percentage of the cost of the project shall be construed to require a multi-purpose room, or other type of room not deemed to be a part of the standard curriculum, in any proposed project. The state board require that a gymnasium construction shall be on land contiguous to the land on which the building is located as long as the gymnasium is located there so as to permit adequate space for the conduct of activities therein. For the purpose of

the award the cost of construction of the additional buildings for area vocational centers and for retrofitting to conserve energy shall include any amounts derived from federal sources; the cost of construction of any other facilities shall not include amounts derived from federal sources. The cost of the award shall also include the cost of preliminary land test on the accepted project required under chapter 151 of Title 10. Upon satisfactory proof that the project for which an award has been made is under construction, the state board shall certify the award to the commissioner of finance who shall thereupon issue his warrant for the payment of one-half of the award, and after the project has been fully completed and the cost thereof has been audited by the board, the state board shall certify the remainder of the award that shall be due to the district or academy to the commissioner of finance who shall thereupon issue his warrant for the payment thereof.

(b) The state board shall also award each year to each school district or academy as defined in subsection (a) of this section which has voted or which votes at a meeting of the school district under a separate article included in the warning for such meeting to appropriate funds or to issue bonds to finance projects approved under subsection (a) of this section or section 3449 of this title, twenty per cent of the interest and principal accrued or paid on indebtedness for these projects during that year. The state board may require each district to submit such proof of payment on its obligations as the state board considers necessary. It shall not make an award under this subsection unless a school district otherwise entitled to an award claims payment within three months after the end of the fiscal year.

(c) Upon the sale by a school district of any item, building or relocatable unit, for which 30 percent state construction aid was awarded under subsection (a) of this section, the school district shall refund to the state 30 percent of the sale price, but in no event shall the sum refunded be in excess of the amount of the original state construction aid grant for the purchase of the item, building, or relocatable unit. All refunds shall be added to the appropriation for school construction aid, and if no appropriation exists for that purpose, to the general fund.

(d) No school district shall receive any state general aid unless the school district complies with subsection (c).

(e) In emergency situations, as determined by the commissioner, the commissioner of education may grant local school districts 30

percent capital construction aid up to \$3,000.00 for a maximum project cost of \$10,000.00 other provisions of this section notwithstanding.—1953, No. 256, § 2; amended 1957, No. 295, § 2; 1959, No. 134, eff. April 24, 1959; No. 239, eff. June 10, 1959; No. 323 (Adj. Sess.), § 8(a), (b); 1961, No. 49, § 1, eff. April 4, 1961; 1963, No. 213, § 2, eff. June 29, 1963; No. 220, § 2; 1965, No. 174, § 1; 1967, No. 150, § 2; 1967, No. 176; 1969, No. 124, § 1, eff. July 1, 1967; 1969, No. 298 (Adj. Sess.), § 9, eff. July 1, 1969; 1971, No. 20, eff. March 16, 1971; 1979, No. 83, § 2; 1979, No. 298 (Adj. Sess.), § 141, eff. May 9, 1980; 1981, No. 170 (Adj. Sess.), § 9, eff. April 19, 1982.

#### HISTORY

Revision note. References to "finance director" in subsec. (a) changed "commissioner of finance" to conform references to new title and reorganization of state government. See § 2201 et seq. of Title 3.

Reference to "auditor of accounts" changed to "finance director" pursuant to 1959, No. 323 (Adj. Sess.), § 8(b).

Amendments—1981 (Adj. Sess.). Subsection (d): Inserted "general" before "state" and "aid", deleted "pursuant to sections 3469-3470 of this title" after and substituted "subsection (c)" for "the provisions of section 3448 of this title".

—1979 (Adj. Sess.). Subsection (e): Added.

—1979. Subsection (a): Inserted "or to conserve energy through retrofitting" following "educate its pupils" in the first sentence, "that the retrofitted building meets energy conservation standards adopted by the state energy office" following "department of education" following "urgently needed" in the third sentence and "and for retrofitting to conserve energy" following "area vocational centers" in the fifth sentence.

—1971. Subsection (a): Added the sixth sentence.

—1969. Amended section generally.

—1969 (Adj. Sess.). Subsection (a): Amended generally.

Subsection (b): Amended generally.

Subsection (c): Added.

Subsection (d): Added.

—1967. Act No. 176 amended this section generally, apparently with reference to Act No. 150, which also amended the section generally to read as amended in the 1968 Replacement edition of this volume. After 1967, all amendments amended the version of the section created by Act No. 176. Prior to 1967, the section, which was derived from 1953, No. 256, § 2, had been amended 1957, No. 295, § 2; 1959, No. 134; 1959, No. 239; No. 323 (Adj. Sess.), § 8(b); 1961, No. 49, § 1; 1963, No. 213, § 2; No. 220, § 2; and 1965, No. 174, § 1.

Effective date of 1969 amendment. 1969, No. 124, § 2, provided: "Sections [which amended § 3448] and 2 [this section] of this act shall take effect on July 1, 1967. Any school district or academy which is entitled to aid by virtue of the retroactive effect of this act shall be allowed three months from the date of passage of this act to apply for such aid."

aid up to \$3,000.00 for a maximum  
 provisions of this section notwith-  
 § 2; amended 1957, No. 295, § 2; 1959,  
 No. 239, eff. June 10, 1959; No. 323  
 1961, No. 49, § 1, eff. April 4, 1961;  
 No. 29, 1963; No. 220, § 2; 1965, No. 174  
 1967, No. 176; 1969, No. 124, § 1, eff.  
 1968 (Adj. Sess.), § 9, eff. July 1, 1970;  
 1971; 1979, No. 83, § 2; 1979, No. 206  
 May 9, 1980; 1981, No. 170 (Adj. Sess.)

## HISTORY

"finance director" in subsec. (a) changed to  
 conform references to new title and reorganiza-  
 tion act, 201 et seq. of Title 3.  
 "accounts" changed to "finance director" pursuant  
 to Act No. 170 (Adj. Sess.).

Subsection (d): Inserted "general" before  
 pursuant to sections 3469-3470 of this title" there-  
 in. Section (c) for "the provisions of section 3448(c)"

Section (e): Added.

Inserted "or to conserve energy through retrofit-  
 ting" in the first sentence, "that the retrofitted build-  
 ings shall meet the standards adopted by the state energy office  
 following "urgently needed" in the third sentence  
 "to conserve energy" following "area vocational

the sixth sentence.

Generally.

Section (a): Amended generally.  
 generally.

Amended this section generally, apparently with  
 which also amended the section generally to read as  
 present edition of this volume. After 1967, all  
 section created by Act No. 176. Prior to  
 from 1953, No. 256, § 2, had been amended  
 No. 134; 1959, No. 239; No. 323 (Adj. Sess.); 1961,  
 No. 213, § 2; No. 220, § 2; and 1965, No. 174;  
 amendment, 1969, No. 124, § 2, provided: "Section  
 and 2 [this section] of this act shall take effect  
 district or academy which is entitled to aid by  
 this act shall be allowed three months from the  
 date for such aid."

Award for prepayment of debts due July 1, 1967. 1969, No. 123, § 1, eff.  
 April 23, 1969, provided: "Any school district which paid interest or principal  
 on debts due July 1, 1967, prior to the due date thereof, shall be entitled to an  
 award of twenty percent of the principal and interests so paid, under provi-  
 sion of 16 V.S.A. § 3448(b). Such payment shall be made notwithstanding that  
 the claim is made more than three months after the end of the fiscal year."

Prospective repeal of 1981, No. 170 (Adj. Sess.). For provision relating to  
 prospective repeal of 1981, No. 170 (Adj. Sess.), which amended this section,  
 see note under § 3441 of this title.

## ANNOTATIONS

Approval of projects, 1, 2  
 Approval by board, 1  
 Approval by voters, 2

Furnishing of instruction by dis-  
 trict, 3-5  
 Allocation of costs, 5  
 Designation of service area, 4  
 Generally, 3

1. Approval of projects—Approval by board. Notwithstanding deletion, by  
 amendments to this section, of word "contemplated" before "project" in  
 sentence, intent of legislature with respect to high degree of supervisory  
 responsibility and control by board of education from very beginning of every  
 project has not changed, and board has no authority to approve projects unless  
 application is made prior to their commencement. 1960 Op. Atty. Gen. 77.

Board of education has no authority to approve projects under this section  
 unless application is made prior to commencement of construction. 1956 Op.  
 Atty. Gen. 115.

Where a building site had been purchased and prepared, but construction  
 had not begun, approval of the project could be granted, and state aid allowed,  
 and no aid would be available as to costs already incurred. 1972 Op. Atty. Gen.  
 17.

Portion of project completed after date that application therefor was  
 received in department of education could lawfully be made basis of an award  
 under this section, notwithstanding board of education did not act on appli-  
 cation until some later date. 1954 Op. Atty. Gen. 124.

Portion of project completed prior to date of application received under  
 this section fell into category of project completed or partially completed  
 under § 3449 of this title and could not lawfully be made basis of an  
 award by board of education under this section. Id.

2. Approval by voters. This section requires vote by legal voters of town  
 school district on an article which specifies what is to be constructed and  
 the amount to be spent therefor, which article has been properly warned.  
 1966 Op. Atty. Gen. 115.

Town district must vote to approve total project and appropriate funds for  
 that purpose in order to qualify under this section as legislative branch of  
 district does not have such authority over school district funds for new proj-  
 ect in absence of vote authorizing same by voters. 1954 Op. Atty. Gen. 145.

3. Furnishing of instruction by district—Generally. A district getting aid  
 under this section should furnish complete high school instruction to students  
 attending it from such area as may be prescribed by board of education. 1956  
 Op. Atty. Gen. 109.

4. Designation of service area. The board, in prescribing area to be serv-  
 ed, must take into consideration (1) the estimated numbers of future stu-  
 dents, (2) the capacity of the plant, and (3) the probable life of the facility,  
 and the agreement should generally specify the maximum number of students

which the municipality might be required to accommodate and the period during which such accommodation should be furnished. 1956 Op. Atty. Gen. 109.

A school municipality should not be required to accept pupils from areas beyond the effective capacity of the contemplated educational plant, first consideration going to pupils of the municipality in question and agreement should cover only the period of normal life expectancy of the contemplated facility. Id.

5. —Allocation of costs. The board, in prescribing an area from which a union high school district must agree to accept pupils as the condition to receipt of construction aid, may stipulate that such district pay all capital and instructional costs. 1958 Op. Atty. Gen. 80.

§ 3448a. —Inclusion of amounts derived from private sources

Amounts derived from private sources and used for school construction commenced after June 10, 1959, shall be included in the cost of construction for the purpose of state aid awards. 1959 Op. Atty. Gen. No. 49, § 2, eff. April 4, 1961.

§ 3448b. —Employment practices

In the construction of any public school buildings local capital and labor shall be utilized whenever possible.—1971, No. 232 (74th Sess.), § 2, eff. April 5, 1972.

§ 3449. —Award, completed construction

Each incorporated school district or town school district which, since July 1, 1947, has completed an approved new school building or has made extensive additions or major alterations in its existing school plant, which additions or alterations have been approved by the state board of education and which other projects would not come under the provisions of sections 3447-3456 of this title, shall be entitled to and be awarded aid and assistance under such sections on the basis of twenty percent of the following portions of the cost of construction: twenty-twentieths for projects completed or partially completed in 1953; nineteen-twentieths for projects completed in 1952; eighteen-twentieths for projects completed in 1951; seventeen-twentieths for projects completed in 1950; sixteen-twentieths for projects completed in 1949; fifteen-twentieths for projects completed in 1948; and fourteen-twentieths for projects completed in 1947. For the purposes of such award the cost of construction shall not include any amounts derived from federal or private sources. Upon application by such school district the state board of education shall audit the cost of said projects, additions or alterations and shall make its award thereon and

required to accommodate and the period should be furnished. 1956 Op. Atty. Gen.

it be required to accept pupils from outside of the contemplated educational plant within the limits of the municipality in question and the period of normal life expectancy of the

board, in prescribing an area from which it is to accept pupils as the condition to stipulate that such district pay all capital expenditures. Gen. 80.

Amounts derived from private sources and used for school construction on or after June 10, 1959, shall be included in the computation of state aid awards.—1961

#### Practices

Public school buildings local capabilities should be made as complete as possible.—1971, No. 232 (Adj. Sess.)

#### Construction

A school district or town school district which has completed an approved new school plant or has made additions or major alterations in its old school plant which additions or alterations have been approved by the board of education and which otherwise comply with the provisions of sections 3447-3456 of this title shall be awarded aid and assistance under this section in the amount of twenty percent of the following fractions: twenty-twentieths for projects completed in 1953; nineteen-twentieths for projects completed in 1954; eighteen-twentieths for projects completed in 1955; seventeen-twentieths for projects completed in 1956; sixteen-twentieths for projects completed in 1957; fifteen-twentieths for projects completed in 1958; and fourteen-twentieths for projects completed in 1959. For the purposes of such award, the amount shall not include any amounts derived from state aid awards. Upon application by such school district, the board of education shall audit the cost of said plant and shall make its award thereon and shall

certify such award to the commissioner of finance who shall thereupon issue his warrants for the payment thereof. For this purpose there is hereby appropriated from the unappropriated surplus the sum of \$500,000.00 plus such additional sums as may be necessary from the bond issue authorized by section 3447 of this title.—1953, No. 256, § 3; 1959, No. 328, § 8(a), (b).

#### HISTORY

Revision note. Reference to "finance director" changed to "commissioner of finance" to conform reference to new title and reorganization of state government. See § 2201 et seq. of Title 3.

Reference to "auditor of accounts" changed to "finance director" pursuant to 1959, No. 328 (Adj. Sess.), § 8(b).

#### ANNOTATIONS

Approval of projects by board, 2  
Construction with other laws, 1

Supervision of use of funds by board, 3

1. Construction with other laws. Legislative branch of a district could legally apply funds awarded to it under this section toward payment of the portion of a local share of a project for which state aid was sought under § 3442 of this title. 1954 Op. Atty. Gen. 145.

2. Approval of projects by board. The board of education could lawfully make an award under this section for all construction completed or partially completed in 1953 which "otherwise would not come under the provisions of sections 3447-3456 of this title. 1954 Op. Atty. Gen. 133.

There is complete lack of authority for the state board of education to consider any proposal for reimbursement except as to those municipalities specifically mentioned in sections 3447-3456 of this title, namely, school districts, incorporated school districts, or union high school districts and this section does not even include union high school districts. 1954 Op. Atty. Gen. 131.

3. Supervision of use of funds by board. Once an award is made and received under this section any responsibility of state board of education for assuring legality of use within school district of funds received ceases to exist, other than general supervisory duties of board and commissioner, etc. 1954 Op. Atty. Gen. 145.

#### § 3450. —Appeal

Any municipal corporation or academy as defined in section 3447 of this title aggrieved by an order, allocation or award of the state board of education may, within thirty days, appeal therefrom to the superior court in the county in which the project is located.—1953, No. 256, § 4; amended 1963, No. 220, § 3.

#### HISTORY

Revision note. Reference to "court of chancery" changed to "superior court" pursuant to 1971, No. 135 (Adj. Sess.), § 236(d) and 1973 (Adj. Sess.), § 3. See notes under §§ 71 and 219 of Title 4.

## PART 4. ADVANCED EDUCATION

*Chapter 87. Scholarship and Student Loan Program*

## SUBCHAPTER 5. STUDENT LOAN PROGRAM

## NEW SECTION

2869. Loan cancellation.

*Subchapter 5. Student Loan Program*

## 2862. Rules and regulations

(c) The rules and regulations may provide that educational loans guaranteed, made, financed, serviced or otherwise administered by the corporation are exempt from the interest rate and charges limitations in sections 41a and 42 of Title 9.—Amended 1983, No. 76, § 2.

Revision note. In subsec. (c), "sections 41a and 42 of Title 9" was substituted for "9 V.S.A. §§ 41a and 42" to conform language to V.S.A. style. 1983 amendment. Subsection (c): Added.

## § 2869. Loan cancellation

(a) Loans obtained under this subchapter may be partially or completely cancelled and forgiven, for a borrower who is employed for a complete academic school year as a full-time certified teacher:

- (1) in a Vermont elementary or secondary school which is approved by the state board of education; and
- (2) in the subject area of mathematics, science, or computer science during a year when there is a critical shortage of certified teachers in that area.

(b) Annually the board shall determine, after consultation with the commissioner, whether a critical shortage of certified teachers exists in each of the subject areas of mathematics, science and computer science.

(c) The board shall determine the amount of loan to be cancelled for each complete academic year of teaching service. The amount so cancelled for each year shall not exceed 25 percent of the original principal amount plus any accrued interest.—Added 1983, No. 76, § 1.

## PART 6. FINANCING; SCHOOL FUNDS AND PROPERTIES

*Chapter 123. State Aid*

§ 3117. School building construction—State bonds; city as school district

§ 3448. —Approval of projects

(a) Each school district which has voted funds in a specific amount, or issued bonds, to construct a new school plant, or make extensive additions or alterations to its existing school plant or to acquire pre-existing buildings, school facilities or relocatable units, to house adequately or educate its pupils, or to conserve energy through a retrofit, and desires to avail itself of funds herein provided, shall make application in writing to the state board for approval of the project. If the voters of one or more municipalities which are served by an academy serving as a public high school and conducted by a board of trustees not less than two-thirds of whom are appointed by the selectmen of a town or the city council of a city as provided in section 3447 of this title, vote as a unit to approve a project in a specific amount for the construction, additions, alterations, or acquisitions, the board of trustees, if they have voted, appropriated, or otherwise have available funds in a specific amount for the project and if they desire to make available to the academy funds herein provided, shall also make application to the state board for state aid under this section. When the state board finds that the project is urgently needed, that the retrofitted building meets energy conservation standards adopted by the state energy office and department of education and that the proposed type, kind, quality, size and estimated cost of the project are suitable for the proposed curriculum and meet all other lawfully established standards and requirements so as to serve most effectively the largest number of pupils in any specified area, and that arrangements have been made for the supervision of actual construction by persons competent in the building trades; and the district or academy agrees 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; and the district or academy has adequately provided for the financing of the remainder of the project, the state board shall award thirty percent of the cost of the project. Nothing in this section shall be construed to require a multi-purpose room, auditorium, gymnasium, or other type of room not deemed necessary to main-

tain a standard curriculum, in any proposed school building nor may the board require that a gymnasium constituting part of the school plant be on land contiguous to the land where the main school building is located as long as the gymnasium is within a reasonable distance thereof so as to permit adequate supervision by the faculty of activities therein. For the purpose of the award the cost of construction of the additional buildings for area vocational centers and for retrofitting to conserve energy shall include any amounts derived from federal sources; the cost of construction of any other facilities shall not include amounts derived from federal sources. The cost of the award shall also include the cost of preliminary land test on the accepted project required under chapter 151 of Title 10. Upon satisfactory proof that the project for which an award has been made is under construction, the state board shall certify the award to the commissioner of finance who shall thereupon issue his warrant for the payment of one-half of the award, and after the project has been fully completed and the cost thereof has been audited by the board, the state board shall certify the remainder of the award that shall be due to the district or academy to the commissioner of finance who shall thereupon issue his warrant for the payment thereof. Notwithstanding the foregoing, the state board may approve projects as eligible for an award subject to the availability of legislative appropriations. The state board shall award thirty percent of the cost of the project only to the extent of available legislative appropriations. Thereafter, projects approved in a prior fiscal year but not given an award shall be funded first. The order of awards shall be based upon the date of final approval by the state board except in cases classified by the state board as emergencies.

—Amended 1983, No. 94, § 9(b).

1983 amendment. Subsection (a): Added the last four sentences.

## TITLE SEVENTEEN

### *Elections*

#### *Chapter 43. Qualification and Registration of Voters*

##### *Subchapter 1. Qualifications of Voters*

##### § 2122. Residence; special cases; checklist

(b) A person may have his name on the checklist only in the town of which he is a resident. For the purpose of this chapter, "resident" shall mean a person who is domiciled in the town as evidenced by an intent to maintain a principal dwelling place in the town indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent. If a person removes to another town with the intention of remaining there indefinitely, he shall be considered to have lost his residence in the town in which he originally resided even though he intends to return at some future time. A person may have only one residence at a given time.—Amended 1983, No. 90, § 1, eff. April 29, 1983.

1983 amendment. Subsection (b): Substituted "chapter" for "section" following "purpose of this" in the second sentence.

##### *Subchapter 2. Registration of Voters*

##### § 2150. Removing names from checklist

(d) Except as provided in subsection (a) of this section, a board of civil authority shall only remove a name from the checklist in accordance with the following procedure:

(3) If after conducting its inquiry the board of civil authority is unable to locate a voter whose name is on the checklist, or if the inquiry reveals facts indicating that the voter may no longer be eligible to vote in the municipality or has not voted in any election within the last four years, the board of civil authority shall send a written notice to the voter. The notice shall be sent to the most recent known address of the voter, notifying the voter that, unless he

CHAPTER 28A.47

SCHOOL PLANT FACILITIES AID—BOND ISSUES

Section	
28A.47.050	Statement of intent.
28A.47.055	Definitions.
28A.47.060	Duties of state board of education.
28A.47.070	Basis of state aid for school plants.
28A.47.073	Modernization of existing school facilities.
28A.47.075	Portable buildings or classrooms.
28A.47.080	Applications for aid—Rules and regulations—Recommendations.
28A.47.090	Manual—Contents—Preparation and revision.
28A.47.100	State superintendent to assist districts and state board
28A.47.120	Federal grants—Rules and regulations.
28A.47.130	1949 bond issue for school plant facilities—Form, term, sale, etc.
28A.47.140	1949 bond issue for school plant facilities—Proceeds of bond sale—Deposit.
28A.47.150, 28A.47.160	Repealed.
28A.47.170	1949 bond issue for school plant facilities—Sales tax not exclusive.
28A.47.180	1949 bond issue for school plant facilities—Bonds are legal investment for public funds.
28A.47.210	Investment of current surpluses in public school building construction account and institutional building construction account.
28A.47.220	Investment of current surpluses in public school building construction account and institutional building construction account—Deposit of securities—Duties of treasurer.
28A.47.230	Investment of current surpluses in public school building construction account and institutional building construction account—Investment income credited to account.
28A.47.420	1955 emergency construction of school plant facilities—Bonds authorized—Form, term, etc.—Continuation of levy.
28A.47.425, 28A.47.430	Repealed.
28A.47.435	1955 emergency construction of school plant facilities—Additional allotment authorized—Effect of allocation on future disbursements to district.
28A.47.440	1955 emergency construction of school plant facilities—Additional tax on cigarettes imposed.
28A.47.445	1955 emergency construction of school plant facilities—Legislature may provide additional means of revenue.

Section	
28A.47.450	1955 emergency construction of school plant facilities—Bonds are negotiable, legal investments and security.
28A.47.460	1957 bond issue for construction of school plant facilities—Authorized—Form, term, etc.—Continuation of levy.
28A.47.470	1957 bond issue for construction of school plant facilities—Proceeds from bond sale—Deposit.
28A.47.480	1957 bond issue for construction of school plant facilities—Public school building bond redemption fund—1957—Payment from motor vehicle excise tax and cigarette tax.
28A.47.490	1957 bond issue for construction of school plant facilities—Legislature may provide additional means of revenue.
28A.47.500	1957 bond issue for construction of school plant facilities—Bonds are negotiable, legal investments and security.
28A.47.510	1957 bond issue for construction of school plant facilities—Appropriation from public school building construction account—Purposes—Local responsibility.
28A.47.520	1957 bond issue for construction of school plant facilities—Duties of state board of education.
28A.47.530.	1957 bond issue for construction of school plant facilities—Basis of state aid for school plants.
28A.47.540	1957 bond issue for construction of school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district.
28A.47.560	1957 bond issue for construction of school plant facilities—Modifiable basic or standard plans for school buildings—Rules and regulations.
28A.47.570	1959 bond issue for construction of school plant facilities—Authorized—Form, term, etc.—Continuation of levy.
28A.47.580	1959 bond issue for construction of school plant facilities—Proceeds from bond sale—Deposit—Use.
28A.47.590	1959 bond issue for construction of school plant facilities—Public school building bond redemption fund of 1959—Payment from cigarette tax.
28A.47.600	1959 bond issue for construction of school plant facilities—Legislature may provide additional means of revenue.
28A.47.610	1959 bond issue for construction of school plant facilities—Bonds are negotiable, legal investment and security.
28A.47.620	1959 bond issue for construction of school plant facilities—Appropriation from public school building construction account—Purposes—Local responsibility—Rules and regulations.

## COMMON SCHOOL PROVISIONS

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28A.47.630	1959 bond issue for construction of school plant facilities—Duties of state board of education.
28A.47.640	1959 bond issue for construction of school plant facilities—Basis of state aid for school plants.
28A.47.650	1959 bond issue for construction of school plant facilities—Taxable valuation and percentage of state assistance to be used in determining eligibility for allotment.
28A.47.660	1959 bond issue for construction of school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district.
28A.47.680	1959 bond issue for construction of school plant facilities—Application by district for state assistance—Rules and regulations—Studies and surveys by state board.
28A.47.690	1959 bond issue for construction of school plant facilities—Manual, other materials to guide and provide information to district.
28A.47.700	1959 bond issue for construction of school plant facilities—State board to provide district with consultatory advisory service.
28A.47.710	1959 bond issue for construction of school plant facilities—Modifiable basic or standard plans for school buildings—Rules and regulations.
28A.47.720	1961 bond issue for construction of school plant facilities—Authorized—Form, term, etc.—Continuation of levy.
28A.47.722	1961 bond issue for construction of school plant facilities—Proceeds from bond sale—Deposit—Use.
28A.47.724	1961 bond issue for construction of school plant facilities—Public school building bond redemption fund of 1961—Payment from and prior charge on retail sales tax.
28A.47.726	1961 bond issue for construction of school plant facilities—Legislature may provide additional means of revenue—General credit of state not pledged.
28A.47.728	1961 bond issue for construction of school plant facilities—Bonds are negotiable, legal investment and security.
28A.47.730	1961 bond issue for construction of school plant facilities—Appropriation from public school building construction account—Purposes—Local responsibility—Rules and regulations.
28A.47.732	1961 bond issue for construction of school plant facilities—Duties of state board of education.
28A.47.734	1961 bond issue for construction of school plant facilities—Basis of state aid for school plants.

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28A.47.736	1961 bond issue for construction of school plant facilities—Taxable valuation and percentage of state assistance to be used in determining eligibility for allotment.
28A.47.738	1961 bond issue for construction of school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district.
28A.47.742	1961 bond issue for construction of school plant facilities—Application by district for state assistance—Rules and regulations—Studies and surveys by state board.
28A.47.744	1961 bond issue for construction of school plant facilities—Manual, other materials to guide and provide information to district.
28A.47.746	1961 bond issue for construction of school plant facilities—State board to provide district with consultatory advisory service.
28A.47.748	1961 bond issue for construction of school plant facilities—Modifiable basic or standard plans for school buildings—Rules and regulations.
28A.47.750	1961 bond issue for construction of school plant facilities—Reduction of bond issue, proceeds by amount available from federal funds.
28A.47.760	1963 bond issue for construction of school plant facilities—Authorized—Form, terms, etc.—Continuation of levy.
28A.47.762	1963 bond issue for construction of school plant facilities—Proceeds from bond sale—Deposit—Use.
28A.47.764	1963 bond issue for construction of school plant facilities—Public school building bond redemption fund of 1963—Payment from and prior charge on motor vehicle excise tax.
28A.47.766	1963 bond issue for construction of school plant facilities—Legislature may provide additional means of revenue—General credit of state not pledged.
28A.47.768	1963 bond issue for construction of school plant facilities—Bonds are negotiable, legal investment and security.
28A.47.770	1963 bond issue for construction of school plant facilities—Allotment of funds appropriated from public school building construction account—Duties, rules and regulations, of state board of education.
28A.47.772	1963 bond issue for construction of school plant facilities—Reduction of bond issue, proceeds by amount available from federal funds.
28A.47.774	1963 bond issue for construction of school plant facilities—Submission of proposition as to issuance of bonds—Alternative method in event of

## COMMON SCHOOL PROVISIONS

Section	
28A.47.775	1965 bond issue for construction of school plant facilities-- Authorized--Form, terms, etc.
28A.47.776	1965 bond issue for construction of school plant facilities--Proceeds from bond sale--Deposit--Use.
28A.47.777	1965 bond issue for construction of school plant facilities--Public school building bond redemption fund of 1965--Created--Transfer and payment of funds--Prior charge against sales tax revenues.
28A.47.778	1965 bond issue for construction of school plant facilities--Legislature may provide additional means of revenue.
28A.47.779	1965 bond issue for construction of school plant facilities--Bonds are negotiable, legal investment and security.
28A.47.780	1965 bond issue for construction of school plant facilities--Allotment of funds appropriated from public school building construction account--Local responsibility--Duties, rules and regulations, of state board of education.
28A.47.781	1965 bond issue for construction of school plant facilities--Appropriations from proceeds of bonds.
28A.47.782	1965 bond issue for construction of school plant facilities--Allocation of funds--Authorized--Conditions.
28A.47.783	1965 bond issue for construction of school plant facilities--Referral to electorate.
28A.47.784	1967 bond issue for construction, modernization of school plant facilities--Authorized--Sale, conditions--Form, terms, etc.
28A.47.785	1967 bond issue for construction, modernization of school plant facilities--Common school building construction account--Created--Proceeds from bond sale deposited in--Use.
28A.47.786	1967 bond issue for construction, modernization of school plant facilities--Bonds not general obligation of state--Bonds, interest on, source for payment of--Pledge.
28A.47.787	1967 bond issue for construction, modernization of school plant facilities--Common school building bond redemption fund of 1967--Created--Use--Transfer of funds to--Prior charge against certain common school construction fund moneys.
28A.47.788	1967 bond issue for construction, modernization of school plant facilities--Legislature may provide additional means of revenue--General credit of state not pledged.
28A.47.789	1967 bond issue for construction, modernization of school plant facilities--Bonds are negotiable, legal investment and security.

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28A.47.790	1967 bond issue for construction, modernization of school plant facilities-- Allotment of funds appropriated from common school building construction account or common school construction fund--Local responsibility--Duties, rules and regulations of state board of education.
28A.47.791	1967 bond issue for construction, modernization of school plant facilities--Appropriations to state board of education--Allocation of, limitations.
28A.47.792	1969 bond issue for construction, modernization of school plant facilities--Authorized--Sale, conditions--Form, terms.
28A.47.793	1969 bond issue for construction, modernization of school plant facilities--Proceeds from bond sale deposited in common school building construction account--Use.
28A.47.794	1969 bond issue for construction, modernization of school plant facilities--Bonds not general obligation of state--Bonds, interest on, source of payment of--Pledge.
28A.47.795	1969 bond issue for construction, modernization of school plant facilities--Common school building bond redemption fund of 1967--Use--Transfer of funds to--Prior charge against certain common school construction fund moneys.
28A.47.796	1969 bond issue for construction, modernization of school plant facilities--Legislature may provide additional means of revenue.
28A.47.797	1969 bond issue for construction, modernization of school plant facilities--Bonds are negotiable, legal investment and security.
28A.47.798	1969 bond issue for construction, modernization of school plant facilities--Allotment of funds appropriated from common school building construction account--Local responsibility--Duties of state board of education.
28A.47.799	1969 bond issue for construction, modernization of school plant facilities--Appropriations to state board of education--Allocation of, limitations.
28A.47.7991	Bonds authorized under RCW 28A.47.784 through 28A.47.799 may be refunded--Security.
28A.47.7992	Rescinding authority to issue balance of bonds authorized under RCW 28A.47.792 through 28A.47.799.
28A.47.800	1969 appropriation for construction, modernization of school plant facilities.
28A.47.801	1969 appropriation for construction, modernization of school plant facilities--Allocation by state board--Local school district participation, board rules and regulations.

## COMMON SCHOOL PROVISIONS

### Section

- 28A.47.802 1969 appropriation for construction, modernization of school plant facilities—Allocation, board duties
- 28A.47.803 1969 appropriation for construction, modernization of school plant facilities—Basis of state aid for school plant.
- 28A.47.804 1969 appropriation for construction, modernization of school plant facilities—Taxable valuation and percentage of state assistance to be used in determining eligibility for allotment.
- 28A.47.805 1969 appropriation for construction, modernization of school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district.
- 28A.47.806 1969 appropriation for construction, modernization of school plant facilities—Application by district for state assistance—Studies and surveys by state board
- 28A.47.807 1969 appropriation for construction, modernization of school plant facilities—Manual, other materials to guide and provide information to district.
- 28A.47.808 1969 appropriation for construction, modernization of school plant facilities—State board to provide district with consultatory, advisory service.
- 28A.47.809 1969 appropriation for construction, modernization of school plant facilities—Modifiable basic or standard plans for school buildings.
- 28A.47.810 1969 appropriation for construction, modernization of school plant facilities—Appropriation to be reduced by amount of federal funds made available for school construction except to federally affected areas.
- 28A.47.811 1969 appropriation for construction, modernization of school plant facilities—Permissible allocations.
- 28A.47.820 Board limited when prioritizes construction.
- 28A.47.830 Specific RCW sections enumerated governing allocation and distribution of funds for school plant facilities.

### Cross References

Acquisition of works of art out of moneys appropriated for state assistance for original construction of school plant facility, see, § 28A.58.055.  
Cigarette tax, see § 82.24.010 et seq.  
Fiscal agency, see § 43.80.100 et seq.  
School facilities cost stabilization program, see §§ 28A.03.400 to 28A.03.406 28A.03.409.

### Law Review Commentaries

Constitutionality of taxation for financing Washington public schools; local school district building fund revenues as source for financing the district's educational program 18 Gonzaga L.Rev. 37 (1975).

## SCHOOL PLANT FACILITIES AID 28A.47.055

### 28A.47.050 Statement of intent

It is hereby declared to be the intent of the legislature that the following provisions be enacted for the purpose of establishing and providing for the operation of a program of state assistance to school districts in providing school plant facilities.  
Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.050, eff. July 1, 1970.

### Historical Note

#### Source:

Laws 1947, ch. 278, § 1.  
RRS § 4940-12.  
Former § 28.47.050.

### Library References

Schools ☞ 17.

C.J.S. Schools and School Districts  
§ 18.

### Notes of Decisions

#### I. In general

Applicable constitutional and statutory provisions provide this state with integrated system of agencies for acquisition, construction, financing, administration, supervision, maintenance, and operation of public schools, basic components of system being state and county superintendents, state and county boards and

committees and school districts. State ex rel. DuPont-Fort Lewis School Dist. v. Bruno (1963) 62 Wash.2d 790, 384 P.2d 608.

Use of state aid to assist districts in providing school buildings with radioactive fallout protection. Op. Atty.Gen.1961-62, No. 117.

### 28A.47.055 Definitions

Unless the context indicates otherwise the following words and phrases when used in this chapter shall have the meaning given in this section:

(1) An "educational unit" means one full time certificated employee for one school year; in case of part time employees, each hour's service per day for an entire school year, or one hundred eighty hours, shall equal one-sixth of a unit; and

(2) A "certificated employee" means an employee holding a position requiring a teaching certificate.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.055, eff. July 1, 1970.

### Historical Note

#### Source:

Laws 1953, ch. 282, § 1.  
Laws 1955, ch. 187, § 2.  
Former § 28.41.010.

Library References

Schools  $\Rightarrow$  17.

C.J.S. Schools and School Districts  
§ 18.

28A.47.060 Duties of state board of education

The state board of education shall have the power and it shall be its duty (1) to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school plant facilities; (2) to approve allotments to districts that apply for state assistance whenever the board deems such action advisable and in so doing to give due consideration to the findings, reports, and recommendations of the superintendent of public instruction pertaining thereto; (3) to authorize the payment of approved allotments by warrant of the state treasurer; and (4) in the event that the amount of state assistance applied for exceeds the funds available for such assistance during any biennium, to make allotments on the basis of the urgency of need for school facilities in the districts that apply for assistance and to prorate allotments among such districts in conformity with procedures and regulations applicable thereto which shall be established by the state board.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.060, eff. July 1, 1970

Historical Note

Source:

Laws 1947, ch. 278, § 2.  
RRS § 4940-13.  
Former § 28.47.060.

Library References

Schools  $\Rightarrow$  47.

C.J.S. Schools and School Districts  
§§ 86 to 91.

Notes of Decisions

I. Fallout shelters

Use of state aid to assist districts radioactive fallout protection. Op in providing school buildings with Atty.Gen.1961-62, No. 117.

28A.47.070 Basis of state aid for school plants

The amount of state assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The board of directors of the district shall determine the total cost of the proposed project, which cost may include the

cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architect's fees, and a reasonable amount for contingencies and for other necessary incidental expenses: *Provided*, That the total cost of the project shall be subject to review and approval by the state board of education.

(2) The superintendent of public instruction shall (a) ascertain the assessed valuation of the district adjusted to fifty percent of the true and fair value in money of the taxable property in the district in accordance with the ratio of assessed valuation to actual valuation fixed by the state board of equalization for the county to which the district belongs; and (b) compute the ratio of the aforesaid assessed valuation of the district to the number of educational units approved prior thereto by the state board of education for allotment to the district of funds receivable under the provisions of RCW 28A.47.050 through 28A.47.120: *Provided*, That this number of units may be increased by the aforesaid officer for the use thereof specified in this chapter, upon the finding by said officer that completion of the proposed project will provide facilities for additional units and that such additional units will be needed to serve the school population of the district.

(3) The ratio of the assessed valuation of the district to the number of educational units thereof, computed in the manner hereinabove provided for, shall then be used in determining the percentage of state assistance for the district in accordance with the following table:

Ratio of assessed valuation to number of educational units	Percentage of state assistance
\$ 28,570 or less to 1	75.0%
30,000 to 1	73.9
35,000 to 1	70.2
40,000 to 1	66.7
45,000 to 1	63.3
50,000 to 1	60.0
55,000 to 1	56.9
60,000 to 1	53.8
65,000 to 1	50.9
70,000 to 1	48.1
75,000 to 1	45.5
80,000 to 1	42.9

Ratio of assessed valuation to number of educational units	Percentage of state assistance
\$ 85,000 to 1 .....	40.1%
90,000 to 1 .....	37.9
95,000 to 1 .....	35.6
100,000 to 1 .....	33.3
105,000 to 1 .....	31.1
110,000 to 1 .....	29.0
115,000 to 1 .....	27.0
120,000 to 1 .....	25.0
130,000 to 1 .....	21.2
140,000 to 1 .....	17.6
150,000 to 1 .....	14.3
160,000 to 1 .....	11.1
170,000 to 1 .....	8.1
180,000 to 1 .....	5.3
190,000 to 1 .....	2.6
200,000 to 1 .....	—

(4) The approved cost of the project determined in the manner herein prescribed times the percentage of state assistance derived as provided for herein shall be the amount of state assistance to the district for the financing of the project: *Provided*, That need therefor has been established to the satisfaction of the superintendent of public instruction: *Provided further*, That additional state assistance may be allowed if it is found by the superintendent of public instruction that such assistance is necessary in order to meet (a) a school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden and excessive past or clearly foreseeable future increase in school population, and other conditions similarly emergent in nature; or (b) a special school housing burden imposed by virtue of the admission of nonresident students into parental schools or into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1955, and without benefit of the state assistance provided for in RCW 28A.47.050 to 28A.47.120, inclusive, the construction of a needed school building project or projects approved in conformity with the requirements of chapter 28A.47 RCW, after having first applied for and been denied state assistance because of the inadequacy of state funds avail-

ble for the purpose; or (d) conditions similar to those defined under (a), (b), and (c) hereinabove, creating a like emergency.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.070, eff. July 1, 1970.

Historical Note

Source:

Laws 1947, ch. 278, § 3.  
Laws 1949, ch. 108, § 1.

RRS § 4940-14.

Laws 1955, Ex.Sess., ch. 3, § 8.  
Former § 28.47.070.

Cross References

Bond issue for assistance in school plant facilities, see § 28A.47.130.

Library References

Schools ⇨ 19(1).

C.J.S. Schools and School Districts  
§§ 19, 21.

28A.47.073 Modernization of existing school facilities

Whenever funds are appropriated for modernization of existing school facilities, the state board of education is authorized to approve the use of such funds for modernization of existing facilities, modernization being limited to major structural changes in such facilities and, as necessary to bring such facilities into compliance with the handicapped access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706<sup>1</sup>) and rules implementing the act, both major and minor structural changes, and may include as incidental thereto the replacement of fixtures, fittings, furnishings and service systems of a building in order to bring it up to a contemporary state consistent with the needs of changing educational programs. The allocation of such funds shall be made upon the same basis as funds used for the financing of a new school plant project utilized for a similar purpose.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.073, eff. July 1, 1970.

Amended by Laws 1980, ch. 154, § 17, eff. April 1, 1980.

<sup>1</sup> So in original; probably should read "Sec. 791".

Historical Note

The 1980 amendment, in the first sentence, preceding "appropriated" deleted "specifically" and inserted "and, as necessary to bring such facilities into compliance with the handicapped access requirements of section 504 of the federal rehabilitation acts of 1973 (29 U.S.C. Sec. 706) and rules implementing the act, both major and minor structural changes,".

Purpose—Effective date—Savings—Disposition of certain funds—Severability—Laws 1980, ch. 154: See Historical Note preceding § 82.45-010.

Source:

Laws 1967, Ex.Sess., ch. 21, § 1.  
Former § 28.47.073.

## 28A.47.073 COMMON SCHOOL PROVISIONS

### Library References

Schools  $\hookrightarrow$  73.

C.J.S. Schools and School Districts  
§§ 252, 262.

## 28A.47.075 Portable buildings or classrooms

State matching funds shall not be denied to any school district undertaking any construction, repairs or improvements for school district purposes solely on the ground that said construction, repairs and improvements are in connection with portable buildings or classrooms

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.075, eff. July 1, 1970

### Historical Note

#### Source:

Laws 1953, ch. 158, § 1.  
Former § 28.47.075.

### Library References

Schools  $\hookrightarrow$  70, 71.

C.J.S. Schools and School Districts  
§§ 256, 257.

## 28A.47.080 Applications for aid—Rules and regulations—Recommendations

All applications by school districts for state assistance in providing school plant facilities shall be made to the superintendent of public instruction in conformity with rules and regulations which shall be prescribed by the state board of education. Studies and surveys shall be conducted by the aforesaid officer for the purpose of securing information relating to (1) the kind and extent of the school plant facilities required and the urgency of need for such facilities in districts that seek state assistance, (2) the ability of such districts to provide capital outlay funds by local effort, (3) the need for improvement of school administrative units and school attendance areas among or within such districts, and (4) any other pertinent matters. Recommendations respecting action on the aforesaid applications shall be submitted to the state board of education by the superintendent of public instruction together with such reports of the findings, studies, and surveys made by said officer as may be required by the state board.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.080, eff. July 1, 1970.

## SCHOOL PLANT FACILITIES AID 28A.47.090

### Historical Note

#### Source:

Laws 1947, ch. 278, § 4.  
RRS § 4940-15.  
Former § 28.47.080.

### Library References

Schools  $\hookrightarrow$  19(1).

C.J.S. Schools and School Districts  
§§ 19, 21.

## 28A.47.090 Manual—Contents—Preparation and revision

It shall be the duty of the superintendent of public instruction, in consultation with the Washington state department of social and health services, to prepare, and so often as he deems necessary revise, a manual for the information and guidance of local school district authorities and others responsible for and concerned with the designing, planning, maintenance, and operation of school plant facilities for the common schools. In the preparation and revision of the aforesaid manual due consideration shall be given to the presentation of information regarding (1) the need for cooperative state-local district action in planning school plant facilities arising out of the cooperative plan for financing said facilities provided for in RCW 28A.47.050 through 28A.47.120; (2) procedures in inaugurating and conducting a school plant planning program for a school district; (3) standards for use in determining the selection and development of school sites and in designing, planning, and constructing school buildings to the end that the health, safety, and educational well-being and development of school children will be served; (4) the planning of readily expansible and flexible school buildings to meet the requirements of an increasing school population and a constantly changing educational program; (5) an acceptable school building maintenance program and the necessity therefor; (6) the relationship of an efficient school building operation's service to the health and educational progress of pupils; and (7) any other matters regarded by the aforesaid officer as pertinent or related to the purposes and requirements of RCW 28A.47 through 28A.47.120.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.090, eff. July 1, 1970.  
Amended by Laws 1979, ch. 141, § 36, eff. March 27, 1979.

### Historical Note

The 1979 amendment, in the first sentence, inserted "social and" and inserted "services".

#### Source:

Laws 1947, ch. 278, § 5.  
RRS § 4940-16.  
Former § 28.47.090.

## Library References

Schools ☞ 47.

C.J.S. Schools and School Districts  
§§ 86 to 91.**28A.47.100** State superintendent to assist districts and state board

The superintendent of public instruction shall furnish (1) to school districts seeking state assistance under the provisions of RCW 28A.47.050 through 28A.47.120 consultatory and advisory service in connection with the development of school building programs and the planning of school plant facilities for such district, and (2) to the state board of education such service as may be required by the board in the exercise of the powers and the performance of the duties vested in and required to be performed by the board under the provisions of RCW 28A.47.050 through 28A.47.120.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.100, eff. July 1, 1974

## Historical Note

## Source:

Laws 1947, ch. 278, § 6.  
RRS § 4940-17.  
Former § 28.47.100.

## Library References

Schools ☞ 47.

C.J.S. Schools and School Districts  
§§ 86 to 91.**28A.47.120** Federal grants—Rules and regulations

Insofar as is permissible under acts of congress, funds made available by the federal government for the purpose of assisting school districts in providing school plant facilities shall be made available to such district in conformity with rules and regulations which the state board of education shall establish.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.120, eff. July 1, 1970.

## Historical Note

## Source:

Laws 1947, ch. 278, § 8.  
RRS § 4940-19.  
Former § 28.47.120.

## Library References

Schools ☞ 17.

C.J.S. Schools and School Districts  
§ 18.

## Notes of Decisions

## I. In general

Applicable constitutional and statutory provisions, including this section, provide this state with integrated system of agencies for acquisition, construction, financing, administration, supervision, maintenance, and operation of public schools, basic components of system being state and county superintendents, state and county boards and committees and school districts. State ex rel. DuPont-Fort Lewis School Dist. v. Bruno (1963) 62 Wash.2d 790, 384 P.2d 608.

School system of this state must operate in public interest, not only in providing adequate and effective academic training to children, but also in achieving most effective and efficient investment of public funds; and while there exists great degree of local autonomy in investment of local funds, such autonomy must yield to interests of system as whole and constitutional obligation of state to maintain such system. Id.

**28A.47.130** 1949 bond issue for school plant facilities—Form, term, sale, etc.

For the purpose of furnishing funds for state assistance in providing public school plant facilities under the provisions of RCW 28A.47.050 through 28A.47.120, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1960, general obligation bonds of the state of Washington in the sum of forty million dollars, or so much thereof as shall be required to finance the program herein set out, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of three percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds.

Added by Laws 1969, Ex.Sess., ch. 223, § 28A.47.130, eff. July 1, 1970.

## Historical Note

## Source:

Laws 1949, ch. 229, § 1.  
Former § 28.47.130.

(7) **SUMMER AVERAGE DAILY MEMBERSHIP EQUIVALENT.** "Summer average daily membership equivalent" is the sum of all summer classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, divided by 1,080.

(8) **MEMBERSHIP.** (a) "Membership" is the sum of the current membership and the declining enrollment increment, if any.

(b) "Current membership" for any school district is the sum of pupils enrolled as reported under s. 121.05 and the summer average daily membership equivalent for classes approved under s. 121.14. Only district resident pupils and pupils enrolled under s. 121.05 (1) (a) 3 and 4 may be counted in computing current membership.

(c) "Declining enrollment increment" for any school district is a number equal to the product of one-half times the difference between the current membership for the current school year and 96.9% of the membership for the prior school year, rounded to the nearest whole number. This paragraph applies only to a school district whose current membership for the current school year is less than 96.9% of its membership for the prior school year.

(9) **EQUALIZED VALUATION.** The "equalized valuation" of a school district is the full value of the taxable property of the territory in the school district as certified for the prior year under s. 121.06 (2).

History: 1977 c. 29 ss. 1081, 1085c, 1085m; 1977 c. 418, 429; 1979 c. 34, 221, 1979 c. 346 s. 5.

**121.006 State aid withheld.** (1) (a) The state superintendent may withhold state aid from any school district in which the scope and character of the work are not maintained in such manner as to meet the state superintendent's approval.

(b) No state aid may be paid in any year under this chapter to a school district which fails to meet the requirements under sub. (2).

(2) Unless the state superintendent is satisfied that the failure to meet the requirements of pars. (a) and (b) was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, every school district shall:

(a) Hold school for at least 180 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, the days to be computed in accordance with s. 115.01 (10).

(b) Employ teachers qualified under s. 118.19.

(c) File all reports as required by state law.

(5) In the event of a school district labor dispute, s. 121.23 shall apply.

History: 1973 c. 90, 157, 1977 c. 26, 1977 c. 29 s. 1097, 1977 c. 178, 203, 206, 273, 447, 1979 c. 22.

**121.007 Use of state aid; exemption from execution.** All moneys paid to a school district under s. 20.255 (1) (cc), (cf), (fg), (fj) and (fs) and (4) (fg) shall be used by the school district solely for the purposes for which paid. Such moneys are exempt from execution, attachment, garnishment or other process in favor of creditors, except as to claims for salaries or wages of teachers and other school employes and as to claims for school materials, supplies, fuel and current repairs.

History: 1977 c. 125 s. 522 (1); 1973 c. 90; 1975 c. 39, 229; 1977 c. 29 s. 1099; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221.

## SUBCHAPTER II

### GENERAL AID

**121.01 Purpose.** It is declared to be the policy of this state that education is a state function and that some relief should be afforded from the local general property tax as a source of public school revenue where such tax is excessive, and that other sources of revenue should contribute a larger percentage of the total funds needed. It is further declared that in order to provide reasonable equality of educational opportunity for all the children of this state, the state must guarantee that a basic educational opportunity be available to each pupil, but that the state should be obligated to contribute to the educational program only if the school district provides a program which meets state standards. It is the purpose of the state aid formula set forth in this subchapter to cause the state to assume a greater proportion of the costs of public education and to relieve the general property of some of its tax burden.

A "uniform" education: reform of local property tax school finance systems through state constitutions. 62 MLR 365.

**121.02 School district standards.** (1) A school district shall meet the following standards under criteria established by the department in compliance with sub. (2).

(a) Every teacher, supervisor, administrator and professional staff member shall hold a certificate, license or permit to teach issued by the department before entering on duties for such position.

(b) It shall provide a planned, continuous in-service program for the professional staff.

Teachers qualified under s.

as required by state law.

of a school district labor contract shall apply.

1977 c. 26; 1977 c. 29 s. 1097; 1979 c. 447; 1979 c. 221

#### State aid; exemption from

monies paid to a school district

(1) (cc), (cf), (fg), (fj) and

shall be used by the school

for the purposes for which paid.

Exempt from execution, attachment or other process in favor

of claims for salaries or

of other school employees and

school materials, supplies, fuel

and

1977 c. 22 (1); 1977 c. 90; 1975 c. 39, 220;

1979 c. 34 s. 2102 (43) (a); 1979 c. 221.

## CHAPTER II

### GENERAL AID

It is declared to be the policy

of the state that education is a state function

and should be afforded from the

property tax as a source of public

education if such tax is excessive, and

if revenue should contribute a

share of the total funds needed. It is

the policy of the state in order to provide reason-

able educational opportunity for all

children, the state must guaran-

tee educational opportunity be

available to all pupils, but that the state should

contribute to the educational

needs of the school district provides a

share of state standards. It is the

policy of the state to assume a greater

share of the costs of public education and

to protect the real property of some of its tax-

paying property.

1977 c. 26; 1977 c. 29 s. 1097; 1979 c. 447; 1979 c. 221

reform of local property tax school

district standards. 62 MLR 565.

district standards. (1) A

school district shall meet the following stan-

dards established by the depart-

ment with sub. (2).

Teacher, supervisor, administrator

or staff member shall hold a cer-

tificate to teach issued by the

department upon entering on duties for such

position.

1977 c. 26; 1977 c. 29 s. 1097; 1979 c. 447; 1979 c. 221

provide a planned, continuous in-

struction of the professional staff.

(c) Provision shall be made for remedial reading services for under-achieving students in grades kindergarten through grade 3.

(d) It shall operate a 5-year-old kindergarten program.

(e) It shall make available guidance and counseling services.

(f) School shall be held and students shall receive actual instruction for at least 180 days, as defined in s. 115.01 (10), less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employees.

(g) Provision shall be made for emergency nursing services.

(h) It shall provide adequate instructional materials, texts and library services which reflect the cultural diversity and pluralistic nature of American society.

(i) It shall make adequate provision for safe and healthful facilities.

(j) Provision shall be made for instruction in elementary and high schools by qualified teachers in health, physical education, art and music.

(2) A school district shall be in compliance with all standards established in this section by July 1, 1975, except as provided in subs. (3) and (4).

(3) Union high school districts are exempt from standards in sub. (1) (c) and (d) but are subject to all other provisions of this section.

(4) Any school district which is completely surrounded by water may meet the requirements of this section by being in substantial compliance with the standards in sub. (1). Annually by August 15, the school district shall submit to the state superintendent for approval a report describing the methods by which the school district intends to substantially comply with the standards. The state superintendent shall allow any such school district maximum flexibility in the school district's substantial compliance plans.

(5) Prior to any finding that a school district is not in compliance with the standards under sub. (1), the state superintendent shall, upon request of the school board, conduct a public hearing in the school district. If the state superintendent, after the hearing, finds that the district is not in compliance with the standards, the state superintendent may develop with the school board a plan which describes methods of achieving compliance. The plan shall specify the time within which compliance shall be achieved. The state superintendent may provide in the criteria established by the department under sub. (1) alternative methods for districts

to comply with each of the standards in this section.

History: 1973 c. 90, 115, 243, 333; 1975 c. 39, 198, 1977 c. 29, 178, 206, 418, 429, 447, 1979 c. 34, 221.

#### 121.05 Budget and membership report.

(1) Annually on or before October 1, the school district clerk shall file with the department a report stating:

(a) The number of pupils enrolled on the 3rd Friday of September of the current year, including:

1. Pupils enrolled concurrently in the school district and in a special education program operated by a county handicapped children's education board and in facilities of the school district;

2. Pupils enrolled in home instruction or any other school district special education program under s. 115.83;

3. Pupils who are residents of one school district who are enrolled in another school district and for whom tuition is paid under s. 115.87 (5) or 121.78; and

4. Pupils who are residents of the school district who are enrolled in special education model schools and for whom tuition is paid under s. 36.25 (19) (b).

(b) The number of teachers employed in the school district on the 3rd Friday of September of the current school year; and

(c) The estimated budget for the current school year which shall be based upon the uniform accounting system prescribed by the department.

(d) In school years 1980-81 to 1984-85, the number of pupils for whom contracts with private education services are entered into under s. 120.13 (26) or 120.49 (15).

(2) In a school district operating its regular school term on a continuous basis, the school district clerk shall add to the number of pupils enrolled on the 3rd Friday of September any pupils who are not then enrolled but are residing in the school district and will become full-time pupils on or before December 31 of the same year.

(3) If a school district is unable to hold school on the 3rd Friday of September, the state superintendent shall designate an alternative membership counting date and may designate an alternative reporting date.

History: 1971 c. 125; 1973 c. 89; 1975 c. 224; 1977 c. 29, 418; 1979 c. 34, 221, 244.

#### 121.06 Determination and certification of

equalized valuation. (1) Annually on or

before October 1, the full value of the taxable

property in each school district, in each part of a

city, village and town in a joint school district

and in each city authorized to issue bonds for school purposes, including territory attached only for school purposes, shall be determined by the department of revenue according to its best judgment from all sources of information available to it and shall be certified by the department to the state superintendent. The valuation certified by the department shall include the adjustments for merchants' stock-in-trade, manufacturers' materials and finished products and livestock under s. 70.57 (5).

(2) The state superintendent shall certify to each school district clerk the appropriate full values certified to the state superintendent under sub. (1).

History: 1973 c. 61, 90; 1977 c. 29 ss. 1084, 1647 (13); 1977 c. 300 s. 8.

### 121.07 General provisions; state aid computation. In this subchapter:

(1) BASIS FOR STATISTICS. (a) The membership and teacher-pupil ratio of the school district on the 3rd Friday in September and the estimated shared cost for the current school year shall be used in computing general aid. In computing general aid, the membership shall not exceed 25 times the number of teachers reported under s. 121.05 (1) (b).

(b) If the school district valuation is increased or decreased due to an alteration in school district boundaries before the 3rd Friday in September, the estimated shared cost for the current school year and the estimated mill levy rate shall be based on the school district equalized valuation of the territory comprising the altered school district.

(c) If an order of school district reorganization is not effective due to litigation until after the 3rd Friday in September but takes effect before April 1 of the current school year, state aid for the reorganized school district for the first year of operation shall be computed after the order takes effect using calculations by the state superintendent of the number of pupils enrolled and teacher-pupil ratio for the territory in the reorganized school district, which shall be made as if the school district had been in existence on the 3rd Friday in September.

(d) At the end of the school year, the department shall adjust state aid payments according to the actual shared cost of the school district for that school year.

(5) SHARED COST. (a) "Shared cost" is the sum of the school district general fund operational cost and annual capital outlay, minus the operational receipts, plus principal and interest payments on long-term indebtedness for the current school year. The sum of principal and interest payments on long-term indebtedness

included in shared cost may not exceed \$90 per member.

(b) The "primary ceiling cost per member" is 110% of the state average shared cost per member for the previous school year, as determined by the state superintendent, except as provided in s. 121.23.

(c) The "primary shared cost" is that portion of a district's shared cost which is less than the primary ceiling cost per member multiplied by its membership.

(d) The "secondary shared cost" is that portion of a district's shared cost which is not included in the primary shared cost.

(7) GUARANTEED VALUATION PER MEMBER. (a) The "primary guaranteed valuation per member" shall be \$166,000 in the 1979-80 school year and \$195,900 thereafter.

(b) The "secondary guaranteed valuation per member" shall be an amount rounded to the nearest \$100 determined by dividing the equalized valuation of the state by the state total membership.

(c) For districts operating only high school grades, the amounts in pars. (a) and (b) shall be multiplied by 3 and rounded to the nearest \$100.

(d) For districts operating only elementary grades, the amounts in pars. (a) and (b) shall be multiplied by 1.5 and rounded to the nearest \$100.

(8) GUARANTEED VALUATION. A school district's primary and secondary guaranteed valuations are determined by multiplying the amounts in sub. (7) by the district's membership.

(10) REQUIRED LEVY RATE. (a) The "required levy rate" is the sum of the rates derived in pars. (b) and (c).

(b) The "primary required levy rate" is the primary shared cost divided by the primary guaranteed valuation.

(c) The "secondary required levy rate" is the secondary shared cost divided by the secondary guaranteed valuation.

History: 1971 c. 125; 1973 c. 61, 90, 190, 333; 1975 c. 39; 1977 c. 29, 178, 418; 1979 c. 34, 221.

### 121.08 Payment of state aids; reductions.

(1) The state shall pay to the school district a sum equal to the amount by which the primary guaranteed valuation exceeds the school district equalized valuation, multiplied by the primary required levy rate and a sum equal to the amount by which the secondary guaranteed valuation exceeds the school district equalized valuation multiplied by the secondary required levy rate.

(2) The aid computed under sub. (1) shall be reduced by the amount by which the school

red cost may not exceed \$90 per primary ceiling cost per member" is the average shared cost per previous school year, as determined by the superintendent, except as provided in s. 121.23.

"primary shared cost" is that portion of the shared cost which is less than the primary cost per member multiplied by the secondary shared cost" is that portion of the district's shared cost which is not the primary shared cost.

**121.06 EQUALIZED VALUATION PER MEMBER.** The primary guaranteed valuation per member shall be \$166,000 in the 1979-80 school year and \$195,900 thereafter.

The secondary guaranteed valuation per member shall be an amount rounded to the nearest dollar determined by dividing the equalized valuation of the state by the state total

of the operating only high school districts in pars. (a) and (b) shall be rounded to the nearest dollar.

The operating only elementary districts in pars. (a) and (b) shall be rounded to the nearest dollar.

**121.07 EQUALIZED VALUATION.** A school district's secondary guaranteed valuation shall be determined by multiplying the primary guaranteed valuation by the ratio of (7) by the district's

**121.08 LEVY RATE.** (a) The "required primary levy rate" is the sum of the rates derived from the primary cost divided by the primary guaranteed valuation.

"secondary required levy rate" is the sum of the rates derived from the secondary cost divided by the secondary guaranteed valuation.

"total required levy rate" is the sum of the rates derived from the primary and secondary costs divided by the primary and secondary guaranteed valuations.

History: 1973 c. 61, 90, 190, 333; 1975 c. 39; 1977 c. 34, 221.

**121.09 Payment of state aids; reductions.**

The state shall pay to the school district an amount by which the primary guaranteed valuation exceeds the school district's equalized valuation, multiplied by the primary required levy rate and a sum equal to the secondary shared cost and the secondary guaranteed valuation of the school district equalized valuation divided by the secondary required

levy rate. The amount computed under sub. (1) shall be rounded to the nearest dollar by which the school

district equalized valuation exceeds the secondary guaranteed valuation, multiplied by the secondary required levy rate. In no case may the amount under this section be less than zero.

History: 1973 c. 90; 1977 c. 29.

**121.085 Supplemental state aid.** (1) The state shall pay to each school district the amount determined by subtracting the amount determined under par. (b) from the amount determined under par. (a):

(a) The amount which would be paid by the state to the school district under this subchapter other than this section if the full value of the taxable property of the territory in the school district were calculated and certified under s. 121.06 with the equalized valuation of any taxable property in a tax incremental district not exceeding its equalized value determined for the purpose of the determination of the tax incremental base of that district under s. 66.46.

(b) The amount to be paid to the school district under this subchapter other than this section with the full value of the taxable property of the school district calculated and certified as provided in s. 121.06.

(2) Equalized valuation of the state for the purpose of calculations under sub. (1) means the full value of taxable property, including value increments under s. 66.46.

History: 1977 c. 418.

**121.10 Special adjustment aids.** (1) If a school district would receive less general aid under s. 121.08 for the current school year than it received as state aid in the previous school year, its general aid for the current school year shall be increased by an amount equal to 50% of the difference between state aid received in the previous school year and the amount computed under s. 121.08 for the current school year.

(2) To be eligible to receive aid under sub. (1) a school district shall meet the following criteria:

(a) Its percentage increase in equalized valuation per member for the current school year from that of the previous school year must be greater than the average percentage increase in equalized valuation per member for the current school year from that of the previous school year for school districts of like organization;

(b) Its equalized valuation must be less than the primary guaranteed valuation for school districts of like organization; and

(c) Its secondary shared cost, if any, must be less than 20% of its primary shared cost, if its equalized valuation exceeds the secondary guaranteed valuation for school districts of like organization.

(3) For the purposes of this section, "state aid" means the sum of the amounts received as general aid under s. 121.08, aids paid under section 1617a of chapter 29, laws of 1977, and aids paid under sub. (1).

(4) If the appropriation under s. 20.255 (1) (fs) in any one year is insufficient to fund the full amount otherwise payable under this section, special adjustment aid payments shall be prorated among the districts entitled thereto.

History: 1977 c. 29, 418.

**121.11 Reimbursement for excess tax base loss.** (1) (a) The state shall pay to each school district the amount computed by multiplying the excess tax base loss under par. (b) by the shared cost levy rate under par. (c), and subtracting the reduction under par. (d).

(b) The excess tax base loss shall be computed by subtracting 5.4% of the equalized valuation of the school district without reduction for fractional assessment under s. 70.57 (5) from the full value within the school district of merchants' stock-in-trade, manufacturers' materials and finished products and livestock without reduction for fractional assessment under s. 70.57 (5), and multiplying the remainder by the percentage of such property not included in the school district equalized valuation under s. 70.57 (5). If this computation results in a negative amount, the excess tax base loss shall be zero.

(c) For purposes of this section, the shared cost levy rate shall be computed by dividing the school district shared cost under s. 121.07 (6), less the amount of general aid determined under s. 121.08 without reduction for fractional assessment under s. 70.57 (5), by the school district equalized valuation without reduction for fractional assessment under s. 70.57 (5).

(d) The product of the excess tax base loss and the shared cost levy rate shall be reduced by the amount received by the school district as a result of the transfer from the personal property tax relief appropriation to general school aid under s. 79.16.

(2) Beginning in the 1979-80 school year, the state shall pay the following percentages of the amount computed under sub. (1):

(a) In 1979-80, 100%.

(b) In 1980-81, 80%.

(c) In 1981-82, 60%.

(d) In 1982-83, 40%.

(e) In 1983-84, 20%.

(3) No aid may be paid under this section after the 1983-84 school year.

History: 1979 c. 34, 221.

**121.135 State aid to county handicapped children's education boards.** If, upon receipt

of the report under s. 115.84, the state superintendent is satisfied that any children enrolled and participating in a special education program provided by a county handicapped children's education board under this subchapter and not counted as pupils enrolled under s. 121.05 are receiving the substantial equivalent of an elementary or high school education from those services, the superintendent shall certify to the department of administration from the appropriation under s. 20.255 (1) (cc) in favor of the county handicapped children's education board providing those services \$88 per pupil enrolled. Enrollment for aid purposes shall be determined in accordance with s. 121.05. Aids payable under this subsection shall take effect with the fiscal year beginning July 1, 1973.

History: 1973 c. 89, 243; 1979 c. 34 s. 2102 (43) (a); 1979 c. 176.

**121.14 State aid for summer classes. (1)**

State aid shall be paid to each district or county handicapped children's education board only for those academic summer classes or laboratory periods for which the state superintendent has given prior review and approval as to the content of such classes or laboratory periods so as to assure that such classes and laboratory periods are only for necessary academic purposes. Recreational programs and team sports shall not be eligible for aid under this section, and pupils participating in such programs shall not be counted as pupils enrolled under s. 121.004 (8) nor shall costs associated with such programs be included in shared costs under s. 121.07 (6).

(2) (a) State aid for summer classes shall be incorporated into the state aid paid for regular classes under this subchapter.

(b) Annually on or before October 1, the school district clerk or chairperson of the county handicapped children's education board shall file with the department a report stating the summer average daily membership equivalent.

History: 1973 c. 89, 90, 243, 333; 1975 c. 39; 1977 c. 29.

**121.15 Payment of state aid. (1)** State aid under s. 121.08 shall be paid to school districts according to the following distribution schedule:

(a) Each school district shall receive 10% of its total aid entitlement in each month from August to February and 30% of its total aid entitlement in June.

(b) For the payments made from August to October, the total aid entitlement for each district shall be estimated based upon the total aid payment in the previous year.

(c) For the payments from November to June, the total aid entitlement for each district shall be computed on the basis of the budget and membership report under s. 121.05.

(d) Any aid adjustment for the previous year required under s. 121.07 (1) (d) shall be made by increasing or decreasing the payment made in June.

(2) No state aid payments may be made to any district until the annual report under s. 120.18 has been filed with the department.

(3) No state aid payments may be made to any district in the months of November to June until the budget and membership report under s. 121.05 is filed with the department.

History: 1977 c. 29 s. 1098; 1977 c. 273; 1979 c. 34.

**121.155 General aid; cost controls.** General aid under this subchapter shall not be paid on expenditures which exceed the maximum budgeted controllable cost under subch. VII.

History: 1977 c. 29.

**121.16 Proration of state aid.** If the appropriation under s. 20.255 (1) (cc) in any one year is insufficient to pay the full amount under s. 121.08, state aid payments shall be prorated among the school districts entitled thereto.

History: 1971 c. 125 s. 522 (1); 1973 c. 90; 1977 c. 29 s. 1100; 1979 c. 34 s. 2102 (43) (a).

**121.17 Use of federal revenue sharing funds.** It is the intent of the legislature that school districts receiving federal revenue sharing funds through the state under this subchapter shall utilize these funds in compliance with the federal revenue sharing requirements as defined in the state and local fiscal assistance act of 1972 (P.L. 92-512), as amended by P.L. 94-488. The department of public instruction shall assure compliance with this section.

History: 1973 c. 90; 1977 c. 29 s. 1101.

**121.23 Payment of aids in school district labor disputes. (1)** In the event that the state superintendent finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (f) as the result of a strike by school district employes, make-up days are authorized to be scheduled but no make-up days are required.

(2) If a school district holds less than 180 days of school as the result of a strike by school district employes, for the purposes of computing general aid, the state superintendent shall compute the school district's primary ceiling cost per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the state superintendent shall:

(a) Determine the amount of shared cost not incurred by the school district because of the strike.

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(b) Determine the amount of shared cost that the school district would have incurred had the strike not occurred.

(c) Divide the amount determined under par. (a) by the amount determined under par. (b).

(d) Multiply the quotient determined under par. (c) by the amount determined under s. 121.07 (6) (b).

(e) Subtract the product determined under par. (d) from the amount determined under s. 121.07 (6) (b).

History: 1977 c. 178; 1979 c. 221 s. 2202 (43).

### SUBCHAPTER III

#### DRIVER EDUCATION AID

**121.41 State aid for driver education programs.** To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades, each county handicapped children's education board which provides the substantial equivalent of a high school education and each vocational, technical and adult education district shall receive \$40 for each pupil of high school age who successfully completes a course in driver education approved by the department, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s. 20.255 (1) (r) is inadequate in any year to provide \$40 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under s. 121.08 is paid.

History: 1971 c. 125 s. 522 (N); 1971 c. 154, 211; 1973 c. 89, 90, 309, 336; 1977 c. 29 s. 1096.

### SUBCHAPTER IV

#### TRANSPORTATION AID

**121.51 Definitions.** In this subchapter:

(1) "School bus" has the meaning designated in s. 340.01 (56).

(2) "School board" has the meaning designated in s. 115.01 (4) and includes any governmental agency transporting children to and from public schools.

(3) "Private school" means any parochial or private elementary or high school in this state offering any academic grades comparable to those described in s. 115.01 (2), including kindergarten.

(4) "Attendance area" is the geographic area designated by the governing body of a private school as the area from which its pupils

attend and approved by the school board of the district in which the private school is located. If the private school and the school board cannot agree on the attendance area, the state superintendent shall, upon the request of the private school and the board, make a final determination of the attendance area. The attendance areas of private schools affiliated with the same religious denomination shall not overlap.

History: 1975 c. 120.

"The attendance areas of private schools affiliated with the same religious denomination shall not overlap," is not construed as mere surplusage, for although it adds no special restrictive ban on overlapping in that such restriction is inherent in the whole concept of "attendance areas," it makes the phrase "affiliated with the same religious denomination" the test of affiliation in a single school system rather than operation by a single agency or set of trustees or religious order within a particular religious denomination. State ex rel. Vanko v. Kahl, 52 W (2d) 206, 188 NW (2d) 460.

See note to Art. I, sec. 18, citing Holy Trinity Community School v. Kahl, 82 W (2d) 139, 262 NW (2d) 210.

**121.52 Vehicle, operator and driver requirements.** (1) (a) Rules governing the design, construction, inspection and operation of school busses adopted by the secretary of transportation under s. 110.06 (2) shall by reference be made part of any contract for the transportation of pupils.

(b) The school board may adopt additional rules, not inconsistent with law or with rules of the secretary of transportation or the state superintendent, for the protection of the pupils or to govern the conduct of the person in charge of the motor vehicle used for transportation of pupils for compensation.

(2) (a) All drivers of motor vehicles owned by the school district and used for the transportation of pupils shall be under written contract with the school board of the district.

(b) The owner or lessee of all privately owned motor vehicles transporting pupils for compensation shall be under written contract with the school board of the district for which such transportation is provided.

(c) The form of contract shall be prescribed by the department and shall provide that all parties to the contract are subject at all times to rules adopted by the secretary of transportation under s. 110.06 (2) and by the department.

(3) (a) If the contract is made under sub. (2) (b), the contract shall provide that the owner or lessee require his bus drivers, as a condition of employment, to take a physical examination, including a chest X-ray or tuberculin test, and to submit the physical examination report to the school board. If the reaction to the tuberculin test is positive, a chest X-ray shall be required. Freedom from tuberculosis in a communicable form is a condition of employment as a bus driver. Additional physical examinations shall be required thereafter at intervals determined

## Financing Public School Facilities in the 80's

RICHARD G. SALMON  
and  
STEPHEN B. THOMAS

**D**UE TO escalating interest, energy, and construction costs, the difficulty of passing bond elections, and the nationwide demand to reduce taxation, many school districts face severe financial difficulties. Less affluent areas cannot fund an adequate educational program. As a result, low teacher salary schedules, shortened school years, and poorly maintained school buildings have become all too common across the country.

Although efforts to reform school finance have been numerous (either due to legislative enactment or court order), few have resulted in significant equalization for maintenance and operation expenditures, while yet fewer have dealt with building needs or the inability of local districts to support capital projects. In light of this dilemma, state and local funding options for the construction of public school facilities are reviewed in this paper. In addition, the current status of state-assisted capital funding programs and anticipated difficulties in obtaining current and future funding are discussed.

### FINANCING CAPITAL FACILITIES: LOCAL OPTIONS

Prior to the twentieth century, financing of public school facilities was the total responsibility of local governments. The schools were an integral part of American frontier life, and the actual construction of the buildings often proved to be one of the year's biggest social events. Initially, public school facilities were financed by private donations of sites and materials and erected by volunteer workers. Later, special local property taxes were levied in order to finance needed construction. By the latter part of the nineteenth century, communities found it necessary to borrow funds, and state legis-

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latures enacted laws which permitted school districts to issue bonds for school construction.<sup>1</sup>

Bonding became popular during the twentieth century with most capital projects financed almost totally from long-term general obligation bonds to be retired with revenue generated from local property taxes. This resulted in school construction being related more to assessed valuation of property than to building needs. Wealthy school districts were allowed to "have their cake and eat it too (that is, provide higher quality facilities while paying lower taxes), while poor districts, by contrast, had no cake at all."<sup>2</sup> Regardless of their tax effort, poor districts were unable to generate the necessary funds for major construction or remodeling projects, nor for the far greater costs of maintenance and operation. A few districts possessed a property base adequate to provide sophisticated athletic facilities, golf courses, swimming pools, air conditioning, auditoriums, and learning resource centers, while many districts struggled to maintain even minimally adequate school buildings. The location of power plants, oil and gas fields, railroads, and industry played a significant role in determining which school districts (and which children) would be provided adequate-to-substantial school facilities.<sup>3</sup>

The disparities so evident in the early twentieth century still exist today. Even though the inequities are well recognized, most states are still reluctant to accept the major responsibility for financing school facilities. As a result, school districts are forced to seek other alternatives for obtaining needed funds. In essence, local school districts are faced with one (or a combination) of the following four choices: current revenues; reserve funds, bonding, and shared facilities.

### CURRENT REVENUES

Often referred to as "pay-as-you-go" financing, the ability to finance the construction of school facilities from current revenues is an alternative available only for a large or affluent school system.<sup>4</sup> The annual yield of dedicated taxes can be used to produce revenue to pay for a school building if a district has a sufficiently large tax base.

1. W. Munfo: Barr, K. Forbis Jordan, C. Cole Hulston, Wendell J. Peterson, and William R. Wilkerson, *Financing Public Elementary and Secondary School Facilities in the United States*, Special Study Number Seven, National Educational Finance Project (Bloomington, IN: School of Education, Indiana University, 1970), p. 25.

2. *Serrano v. Priest*, 487 P.2d 1211 (1971), cert. denied 432 U.S. 507 (1971).

3. Stephen B. Thomas and Scot H. Edington, "The History and Reform of Financing School Facilities," *Texas Tech Journal of Education* 7, no. 3 (Fall 1980):198.

4. Barr et al., *Financing Public Elementary and Secondary School Facilities*, p. 127.

This method eliminates interest payments, bond attorney fees, and election costs. Such plans, however, do not produce adequate revenue in most school districts to finance school plant construction because of the relatively low assessed valuation and tax rates. Some districts used this plan of financing school facilities in the past, but found it impractical in recent years because of increased construction and interest costs.<sup>5</sup> Additionally, it is argued that the use of current revenue for financing capital facilities results in (1) the creation of tax friction between taxpayers and governmental agencies, and (2) the failure to realize the economic advantages of borrowing in periods of inflation.

#### RESERVE FUNDS

Some states permit school districts to accumulate tax funds for the purpose of funding the construction of future school facilities. The reserve building funds are kept separate from the school district's current operating funds and are commonly financed by special tax levies. Generally, state laws stipulate that the funds can be invested only under very controlled conditions, resulting in interest yields that normally do not keep pace with inflation.

One major criticism of building reserve plans concerns the "benefits received principle." Taxpayers who are taxed for the purpose of obtaining new school facilities may not necessarily be living in the district when the resulting buildings are constructed and ready for use. If bonds are sold before construction and then repaid during the life and use of the building, this principle seems to be satisfied (that is, those paying for the building benefit from its use).<sup>6</sup>

Other critics are concerned with the possibility of diverting reserve funds to purposes other than those intended and the rigid legal and accounting procedures which must be followed. Also, although reserve funds and current operating funds usually are financed and maintained separately, the taxpayer is only concerned with the total cost of the school district budget. Consequently, the higher tax rates required to finance the reserve building funds may create taxpayer resistance and result in a reduction of the current operating budget.<sup>7</sup>

There are advantages to the use of the reserve fund option. After sufficient funds have been accumulated, the project can be constructed without the delays and expenses associated with gaining voter

approval for the issuance of bonds. And, debt service charges are avoided and legal restrictions on taxing or debt limitations will not interfere with the project.<sup>8</sup> Reserve building funds are used by many districts, but currently provide only a relatively small amount of the total funds used for public school construction.

#### GENERAL OBLIGATION BONDS

Bonding is the most common of all local alternatives for financing capital outlay and debt-service expenditures. The taxpayers must give their approval for the district to issue long term bonds to acquire the necessary funds for the construction of schools or a major remodeling project. A bond is merely a written financial instrument issued by a corporate body to borrow money with the time and rate of interest, method of principal repayment, and the term of debt clearly expressed. Bonds are municipal in nature and may be term (all bonds maturing at the same time) or serial (bonds maturing at intervals over a period of time). Most school bonds are serial in an attempt to limit interest costs. Furthermore, most are "general obligation" (secured by the issuer's pledge of full faith, credit, and taxing power). In most states, the law carefully regulates such aspects of borrowing as school bond elections, the size of bond denominations, the maximum amount of interest payments, and the length of term of the issue.<sup>9</sup>

In addition to being exempt from federal income tax, one of the most desirable features of municipal bonds is the safety of principal. According to the New York Stock Exchange,

They [municipal bonds] are considered second only to obligations to the Federal Government. During their severest test—The Great Depression—only about 1/5 of 1 percent suffered any loss of principal and less than 2 percent defaulted, that is, failed to pay interest or principal on time. In most of these cases, bondholders eventually received their interest and principal.<sup>11</sup>

Municipal bonds, including general obligation bonds, are normally rated by one of the national rating companies for the purpose

8. K. Fuhls Jordan, *School Business Administration*, 3rd ed. (New York: Ronald Press Company, 1969), p. 205.

9. Stephen B. Thomas and Paul F. Zingales, "Rising Capital Costs and Bond Defaults in the State of Texas," *Texas School Business* 25 (September 1979):4, 14, 30.

10. Dewey H. Stellar, *Managing School Intellectuals* (Danville, IL: Interstate Printers and Publishers, 1967).

11. *Understanding Bonds and Preferred Stocks* (New York: New York Stock Exchange, Inc., August 1978).

5. Thomas and Edgington, "The History and Reform of Financing School Facilities," p. 206.

6. *Ibid.*, p. 206.

7. Percy E. Burtup, *Financing Education in a Climate of Change*, 2nd ed. (Boston, MA: Allyn and Bacon, Inc., 1977), pp. 240-41.

of informing potential purchasers of the relative security of the issue. The rating awarded the school district significantly influences the interest charged the issuer.

The constraints under which school districts operate regarding the issuance of general obligation bonds vary considerably among the states and even among districts in some states. Most states have enacted school district debt limitations in the form of a percentage of locally assessed valuation of real property. Restrictive debt limitations have proved particularly troublesome for those states or school districts that have limited local tax bases. There is also considerable variation among the states regarding the approval process required prior to the sale of general obligation bonds. Some states require a simple majority of those voting at referendum, while other states require more. The lack of uniform property assessment practices and the existence of inequitable tax rates plague some states, while voter-initiated property tax limitations confront other states. Nevertheless, despite the many problems confronting the sale of general obligation bonds, bonding remains the primary option for many districts and the only option for some districts.

#### SHARED FACILITIES

In a few states, school districts and other community agencies may cooperate in building a common, shared facility.<sup>12</sup> This can be accomplished by either initiating the construction and then leasing part of the facility to the other, or by both parties being equally (or on a prorata basis) responsible for the construction and operation of a common facility. This alternative, although appealing when local revenues are inadequate, is seldom available in practice and may lead to complicated legal and fiscal problems. School districts intending to take on such shared obligations should evaluate each alternative before making a commitment that may last thirty or more years.

#### FINANCING CAPITAL FACILITIES: STATE OPTIONS

As noted previously, prior to the twentieth century capital facilities for public elementary and secondary education were financed almost exclusively from local resources. Undoubtedly, some school districts experienced difficulty in providing adequate school facilities before 1900, but no state developed a continuing capital facilities assistance program until Alabama took the initiative in 1901 and established an aid plan for rural schools.<sup>13</sup> Two years later, in 1903,

12. Roe L. Johns and Edgar L. Morsphet, *The Economics and Financing of Education*, 3rd ed. (Englewood Cliffs, N.J.: Prentice-Hall Inc., 1975), p. 278.

Louisiana enacted a state plan in which bonds could be issued for the construction of school facilities in impoverished areas of the state. By 1909, South Carolina was providing state assistance for financing capital facilities serving black rural school children, while Virginia and North Carolina had established modest state loan funds.<sup>14</sup> The following twenty years saw several states implementing matching grants for the purpose of assisting and encouraging school consolidation and in 1927, Delaware took the first major step toward a comprehensive state program.<sup>15</sup>

During the years of the Great Depression and World War II, a shortage of both local and state resources virtually prohibited local school districts from engaging in extensive school building programs. Coupled with the problems of aging facilities, inadequate and insufficient buildings, and a growing desire for more and better school facilities the limited number of state assistance programs were either inadequate, inequitable, or both. A report by Webber in 1941 indicated that of the twelve states that had established various forms of state aid programs for assisting local school districts in financing school facilities, none could be regarded as equitable. Such programs were either "crude and inequitable distribution systems in which the principles of equalization are neither recognized nor applied . . . or else simple devices for loaning money to districts by the state on easy terms."<sup>16</sup>

Shortly after World War II, attention was once again given to the problem of providing the necessary funds for financing public school buildings. According to Johns, Florida, in 1947, became the first state to develop and adopt a plan based on determining the financial resources needed annually for each school district to replace its buildings at the end of their normal life expectancies.<sup>17</sup> Stimulated primarily by the increased demand for school facilities due to the post-War baby boom, many other states enacted various forms of state capital assistance plans. By 1950, approximately twenty states had enacted some form of state aid program for assisting at least some of their local districts in funding school construction.<sup>18</sup>

After 1950, still greater effort was made to encourage state participation in financing needed construction. For many years, school

13. M. David Alexander, "Financing Capital Outlay," *Critical Issues in Educational Finance*, eds. Stephen B. Thomas and Roy M. Lloyd (Charlottesville, VA: Virginia Institute for Educational Finance, 1975), p. 109.

14. Johns and Morsphet, *The Economics and Financing of Education*, p. 279.

15. Gerald D. Webber, *State Equalization of Capital Outlays for Public School Buildings* (Los Angeles, CA: University of Southern California Press, 1941), p. 5.

16. Johns and Morsphet, *The Economics and Financing of Education*, p. 280.

17. *Ibid.*

finance experts had been urging state legislatures to enact a wide assortment of state capital outlay programs.<sup>18</sup> Additional impetus was given to the drive for increased state funding when the United States Office of Education and the University of California at Berkeley cooperated in a national study of state public school capital outlay programs. After analysis of the various state programs had been completed, the researchers recommended, in part, that the states should provide additional leadership and financial resources for comprehensive and efficient public school capital outlay programs.<sup>19</sup>

During the past thirty years, state aid for capital outlay/debt service has become as varied as traditional allocation dimensions for current expenditures. Data from the United States Office of Education (see Table 1) reveal that the following methods of state aid are being used: full state support (three states), percentage-matching (seven states), flat grants (ten states), equalizing grants (fifteen states), state loans (ten states), and authorities (eight state level, nine local level). Allocation criteria are varied and include teacher units (Alabama), area (Georgia), weighted pupils (Kentucky), pupils in average daily attendance (Tennessee), or the like. Sharing and matching grants vary from 20 percent (Vermont) to almost 100 percent (Connecticut); equalization grants deal with a plethora of assessment ratios and millage rates; and state loans range from no interest (California) to 6 percent interest (Arkansas). Fourteen states provide no state aid for facilities (Texas), whereas several others provide for only marginal support. (Note that the sum of the states involved is sixty-seven rather than fifty. Several states were listed in more than one category because their support systems had multiple components; for example, Wisconsin, with state loans and equalizing grants, would count as one state in each group.)

#### COMPLETE STATE SUPPORT

As its name suggests, a complete state support program requires that the funding of capital and debt service expenditures of the public schools be borne by the state; debt service and principal become state debts. The selection of needy districts rests with the state; selection is usually based on age, adequacy, and size of current facilities,

18. Bair et al., *Financing Public Elementary and Secondary School Facilities*, p. 137.  
19. A total of sixteen specific recommendations were made by the researchers. See Estek L. Lindman, Clayton D. Hutchins, Edgar L. Moughet, and Theodore L. Reller, *State Provisions for Financing Public School Capital Outlay Programs* (Washington, D.C.: U.S. Government Printing Office, 1951), p. 136.

TABLE 1  
TYPES OF STATE AIDED CAPITAL OUTLAY  
AND DEBT SERVICE PROGRAMS BY THE  
UNITED STATES, 1978-79

Full State Support	Grants-Aid			Authorities		No State Assistance	
	Equalization	Percentage-Matching	Flat	Local	State		
Florida Idaho Maryland	Alabama Illinois Maine Massachusetts Michigan New Jersey New Mexico New York Pennsylvania Rhode Island Tennessee Utah Washington Wisconsin Wyoming	Alaska Connecticut Delaware Georgia Missouri New Hampshire Vermont	Alabama Georgia Illinois* Indiana Kentucky Missouri Nevada New Jersey South Carolina	Arkansas California* Indiana Michigan Minnesota North Carolina North Dakota Virginia Wisconsin Wyoming*	California Florida Indiana Illinois Iowa Kentucky Massachusetts New York Pennsylvania	Georgia Kentucky Maine Maryland North Dakota Pennsylvania Virginia Wyoming	Arizona Colorado Idaho Kansas Louisiana Montana Nebraska Oregon Ohio Oklahoma South Dakota Texas West Virginia

Source: Esther Tron, Ed., *State Public School Finance Programs, 1978-79* (Washington, DC: United States Office of Education, 1980).  
\*Divided or no school district has met eligibility requirements for participation.

and projected cost of future structures. Need, rather than wealth, determines expenditure.<sup>20</sup>

Only Florida, Hawaii, and Maryland are identified as having implemented complete state support programs. However, it can be argued that none of the three completely meets the criteria of complete state support. Neither Florida nor Maryland fully fund their capital outlay needs; the local school district either supplements state funds, or building needs are not met.<sup>21</sup> Hawaii, which is usually considered to have full state funding of both current and capital expenditures, permits a small local contribution for capital expenditures.

Proponents of complete state support argue that (1) a higher degree of fiscal equalization is achieved within the state because the quality of facilities is not a function of the taxpaying abilities of the local education agencies in the state; (2) state governments normally have access to a greater variety and quantity of resources than do local governments and can avoid the overutilization of a single resource; (3) a state government can develop an allotment mechanism based upon needs which will provide a higher level of efficiency; (4) if it were necessary for the state government to acquire the necessary funds from the issuance of bonds, it is likely that the larger issue would result in overall savings in interest and service charges; and (5) the restrictions placed on state governments are usually not as rigorous as those placed on local governments, and the long delays and costs incurred by local bond referendums would be avoided.

Disadvantages cited by opponents of the complete state support program include (1) additional concentration of power and control of the public schools will become focused at the state level thereby further alienating local citizens from the public schools; (2) the centralization of power will result in uniformity of public school facilities throughout the state, and such facilities will not recognize the unique needs of varying localities; (3) it is likely that a centralization of power in the state will result in less experimentation and innovation of local school facilities and in a high level of mediocrity; and (4) due to a high level of competition for resources at the state level, the construction of urgently needed public school facilities may be unnecessarily delayed.

20. Thomas and Edgington, "The History and Reform of Financing School Facilities," p. 204.

21. L. Dean Webb, *Financing Capital Outlay* (Tucson, AR: Joint Select Committee on the Reform and School Finance of the Arizona Legislature, 1979), pp. 11-18.

*Florida Plan.*<sup>22</sup> Although the state government in Florida does not totally fund capital projects, its procedures are theoretically similar to those of a full state support model. In Florida, the Comprehensive School Construction and Debt Service Program (CSCDS) is designed to fund nearly the total costs of local public school facilities. The annual allocation to each school district is based on (a) projections of the costs of anticipated school plant needs, (b) the five-year debt service needs on voted ad valorem bonds, and (c) the additional resources from specified sources. Projected additional resources are subtracted from projected plant and debt service needs and the expenditure of ad valorem taxes in excess of 10 mills for the past five years is added. The result is the estimated cost of unfunded school plant and debt service needs for each district. The funds are then allocated to the respective districts in proportion to their percentage of the state total of unfunded school plant and debt service needs.

The CSCDS is funded by a trust fund which is comprised of proceeds from the sale of public education bonds, student building fees, capital improvement fees, federal revenue sharing funds appropriated for education facilities, and any other funds.

In addition to CSCDS, Florida allocates aid to local school districts through the Capital Outlay and Debt Service Fund. The allocation formula is based on the 1967-68 school year and varies from \$600 per instruction unit for base units to \$800 per instruction unit for growth units. The number of instruction units is calculated annually by multiplying the number of FTEs in each district by the program cost factors and then dividing by twenty-three (except that all basic program costs shall be one, and the special program cost factors for hospital and home bound part-time and for adult and community service shall be zero).

#### PERCENTAGE-MATCHING: STATE/LOCAL SHARING

The percentage-matching grant is designed to provide a fixed percentage of state support of each facilities project. The fiscal capacity of the local district is not taken into consideration, while the total amount of state assistance varies in accordance with the cost of the project. Equalization is generally not enhanced by such grants, for poor districts cannot afford to support capital projects unless the state percentage becomes substantial.

Advantages usually cited by proponents of the percentage-matching grants include (1) initiation of school construction projects re-

22. Esther Tom, Ed., *State Public School Finance Programs, 1973-79* (Washington, DC: United States Office of Education, 1979).

mains the prerogative of the local school districts, and the building programs can be tailored to meet the needs and desires of the local citizens; (2) the state, through the use of its approval process, can encourage cost-effective construction practices and influence the design and location of school buildings; (3) state assistance would reduce the dependency on local resources; and (4) the economic health and the marketability of municipal bonds for other than school purposes would be enhanced.

Disadvantages usually cited by opponents of the percentage-matching grants include (1) such grants invariably penalize local school districts with limited fiscal capacities to support school building programs (That is, a local school district with high fiscal capacity can obtain sufficient funds to qualify for the state matching funds with relative ease, while a school district with lesser taxpaying ability can obtain the required matching funds only by an extraordinary tax effort by its citizens. Of course, if the state's matching percentage were quite high—50 percent state, 10 percent local—the disqualification effect of the percentage-matching grant would be neutralized, and the percentage-matching would take the characteristics of an equalization grant-in-aid.); (2) in order to guarantee funds for all local school districts with qualifying building projects, it would be necessary for the state to appropriate substantial resources; and (3) school districts with sufficient capital facilities would not be eligible for state assistance, and the citizens would see little direct benefit from their state taxes.

*Vermont Plan.*<sup>23</sup> Vermont attempts to assist local school districts to finance their school building and debt service programs through the use of percentage-matching grants. Upon approval of the state board of education, construction aid is granted on the basis of 30 percent of the cost of the approved projects to union school districts and academies, elementary schools, or other approved schools. However, 75 percent of the costs of new construction, alteration, or addition of special classrooms are borne by the state. The state also pays 20 percent of each school district's yearly payment for principal and interest on bond issues approved for construction.

#### FLAT GRANTS

The flat grant is designed so that the state allocates a fixed amount of funds per unit to the local school district to be used to finance local construction. Some states annually allocate a fixed amount of funds per ADA or ADM while other states allocate a fixed amount per state

23. *Ibid.*

approved project, per teacher, or per square foot regardless of fiscal capacity, effort, or need.

Advantages cited by proponents of the flat grant usually include (1) control of the local school building program generally remains with the local school district; (2) the flat grant does provide some measure of equity since statewide resources are used for funding the flat grant program; (3) state assistance in the form of a flat grant would reduce the dependency of local school districts on the property tax thereby freeing local resources for other governmental purposes; (4) the economic health of the local governments would be strengthened and the marketability of municipal bonds for other school purposes would be enhanced; and (5) the flat grant program can be administered easily due to its simple allocation technique and the ability to accurately anticipate the required funds.

Disadvantages cited by opponents of the flat grant program usually include (1) most programs only supplement the local funds required to finance the school building program, and (2) for those states that annually allocate funds on a per unit basis without consideration of building needs, some school districts receive unneeded funds while others have unfunded capital needs.

*Mississippi Plan.*<sup>24</sup> Mississippi assists local school districts in financing the construction of school facilities through the use of a flat grant. The annual appropriation is based on a flat amount of \$18 per ADA. However, the appropriation is merely credited to the local school district's account, and approval must be gained by the local school district from the State Educational Finance Commission prior to release of the funds. Various factors including district organization, location of school attendance centers, plans and specifications of proposed and existing facilities, desirable consolidation, and method of financing are taken into consideration by the commission before granting approval for release of funds.

Also, if the school district capital outlay and debt service needs exceed the amount credited to its account, the school district may borrow against anticipated flat grant allocations. Unless the state is charged a higher rate for funds, the annual interest rate of 2.5 percent is charged the local school districts for loans. The loans can be repaid from the annual flat grant appropriations, or other available resources, and are not charged against a school district's debt limitation. Loans from the State Public School Building Fund are limited to 75 percent of a school district's anticipated accumulation of the flat grant fund for twenty years.

24. *Ibid.*

## EQUALIZATION AID

The primary purpose of the equalization grant-in-aid is to provide a measure of taxpayer equity within the state. In absence of state support for the construction of public school facilities, taxpayers in school districts with low ability-to-pay are required to make a significantly greater fiscal effort to construct capital facilities than taxpayers in districts with higher fiscal ability. Consequently, equalization grants are designed to inversely allocate revenues (per unit of need) based on fiscal abilities of the local school districts. The variety of equalization grants in use in 1978-79 was extensive, ranging from an annual allocation in the manner of the Strayer-Haig equalization model<sup>25</sup> for current expenses to a varying percentage of state support based on the local school district's relative ability-to-pay.

Advantages cited by proponents of the equalization grants-in-aid usually include (1) comparable public school facilities can be provided throughout the state without the imposition of an excessive local tax burden on districts with low ability-to-pay; (2) since some local contribution is required for participation in most equalization grants-in-aid, the frivolous use of state funds would be curtailed; (3) the reduced dependency on the local property tax for the construction of school facilities would provide local governments with additional resources for other governmental services or tax relief; and (4) the economic health of local governments would be strengthened and the marketability of municipal bonds for other than school purposes would be enhanced.

Disadvantages cited by opponents of equalization grants-in-aid usually include (1) in order to guarantee funds for all school districts, a maximum amount of state resources would have to be dedicated to this purpose while inadequate appropriations would render the program ineffective; (2) a statewide system would not necessarily be responsive to the variation of local needs; and (3) local schools initially might experience difficulty in responding to immediate construction needs.

*New Jersey Plan.*<sup>26</sup> The New Jersey School Building Aid for Debt Service and Budgeted Capital Outlay is designed to compensate school districts for debt service payments of principal and interest on school bonds and other obligations used to finance the construction of local school facilities. In addition, compensation is included for those

25. See, for example, M. David Alexander, Richard G. Salmon, and Van Mueller, *Final Report of the Foundation Program Sub-Study* (Indianapolis, IN: Indiana School Finance Study, 1978), pp. 13-35.

26. *Tren, State Public School Finance Programs, 1978-79.*

capital outlay expenditures which are included in the annual school budget.

The distribution formula used for the allocation of the state's share of current expenses is used for debt service and capital outlay assistance. Specifically, the formula is as follows:

$$\text{(Step 1) State Support Ratio} = 1 - \left( \frac{\text{district's EV per pupil} \div \text{state guaranteed valuation per pupil}}{\text{state guaranteed valuation per pupil}} \right)$$

$$\text{(Step 2) State Support Ratio is multiplied by the total net debt service and budgeted capital outlay for the prebudget year.}$$

If the product is less than zero, no state support will be paid. Budgeted capital outlay used for the calculation of state support shall be the smaller of the budgeted capital outlay for the prebudget year or 1.5 percent of the sum of the current expense and budgeted capital outlay for the prebudget year.

## STATE LOANS

State capital assistance loan funds have been established to provide direct financial assistance to local school districts. Commonly, states have maintained a permanent fund for the purpose of providing low interest loans. Unlike the previous state assistance plans, loans contain the provision that the funds be repaid at a future date. With some exceptions,<sup>27</sup> loans do not take into consideration the relative fiscal capacities of the local school districts and, as a consequence, do not provide for a high degree of fiscal equalization. The aid available from state loan funds is usually modest and states have had to either restrict all districts to a certain amount per approved project or to control the number of eligible districts by implementing certain qualifying criteria.

Advantages cited by proponents of state loan funds usually include (1) the loan fund provides local school districts an economical mechanism for borrowing necessary funds due to the modest interest charged by the state; (2) generally, state loans are not charged against the district's debt limitation, thereby enabling access to additional resources; (3) the time required to acquire funds from state loan

27. Some states have combined the techniques of loan funds and grants-in-aid by implementing Loan-Grants. Loan Grants are designed to assist school districts that cannot make full repayment in a reasonable time period without exacting a burdensome tax effort. In such cases, the state is authorized to cancel the unpaid portion after a certain number of years. See Johns and Murphy, *The Economics and Financing of Education*, pp. 282-84.

funds is usually considerably less than the time required for the sale of bonds; and (4) the state, through the use of its approval process, can use cost effective construction practices and influence the design and location of school buildings.

Disadvantages usually cited by opponents of state loan funds include (1) state loan funds often are extremely limited and serve only as a minor resource in the total local school district building program; (2) fiscal equalization is not enhanced due to limited funds being available at the state level, plus the common practice of permitting all school districts equal access to state loans; (3) the establishment of a modest state loan fund often directs the attention of the legislature away from more fully funding the construction of school facilities; and (4) local control of school construction may be diluted through use of the state approval process required for those school districts seeking state loans.

*Arkansas Plan.*<sup>28</sup> The Revolving Loan Fund provides loans to local school districts for school construction and purchase of capital equipment from three sources:

- (1) A permanent revolving school fund of about \$1,850,000 makes approximately \$350,000 available for loans each year generally for periods of six years. Under special circumstances, loans to school districts for periods up to twenty years may be granted.
- (2) The state board of education can borrow up to \$2 million from the state treasury to finance loans to local school districts.
- (3) And, the state board of education can issue up to \$10 million in state bonds to finance six year loans to local school districts.

The state can loan each school district up to \$100,000 and the local school district is required to levy sufficient taxes to repay the loans and annual interest of 6 percent. The local school district indebtedness, including the loan, cannot exceed 15 percent of the assessed valuation of property unless special approval is obtained to raise the indebtedness level to 18 percent.

#### AUTHORITIES: LEASE-RENTAL FINANCING

Lease-rental financing is another method of supporting the construction of school buildings and has been used in Kentucky, Indiana, Pennsylvania, Maine, and Georgia. An arrangement of this nature involves the development of a nonprofit corporation or building

28. Tison, *State Public School Finance Programs, 1978-79*.

authority which receives a building site from the school district (1) bonds to pay for the construction, and then leases the building to (2) school board (generally for one year at a time). The rentals are renewed yearly until the bonds are amortized at a cost to the school district that does not exceed its budget. After retirement of the bonds, the building often is deeded to the school district. This method usually is employed to avoid the debt ratio requirement (the ratio of a school district's indebtedness to its assessed valuation of property) of states by allowing districts to build beyond their legal debt limit. For that reason, this alternative is not legally permissible in several states.<sup>29</sup>

Advantages cited by proponents of building authorities usually include (1) many of the debt and taxing restrictions on local school districts are imposed by state constitutions which often are difficult to amend; (2) unless prohibited by the state or federal government, a combination of state, local, and federal revenues may be used by the school district to pay the costs of lease rental or lease-purchase agreements with the building authorities; and (3) often, building authorities can be used by the local school district without acquiring voter approval, thereby avoiding building delays and added expense.

Disadvantages usually cited by opponents of building authorities include (1) the enactment of building authorities only ignores the more pressing problem of adequately financing the construction of public school facilities by evading taxing and debt limitations; (2) revenue bonds, with interest rates higher than general obligation bonds, are generally used to finance building authorities; and (3) the right of the taxpayer and citizen to express approval or disapproval often is circumvented by the use of building authorities.

*Kentucky Plan.*<sup>30</sup> The Kentucky School Building Authority provides assistance to local school districts if they (1) levy the maximum general fund tax rate, (2) levy a local tax sufficient to qualify for full participation in the proven equalization fund, (3) have submitted a balanced budget and have no current or projected deficit in either general or capital construction funds, and (4) have completed a facilities survey within the last five years.

The amount of funds for which each school district can qualify is determined through the use of the following formula:

$$MIP = N \times SF \times CSE \times \%$$

29. Thomas and Edlington, "The History and Reform of Financing School Facilities," p. 207.

30. Kentucky Statutes, Sections 157.810, 157.805, 157.810, 157.815, 157.820, 157.825, 157.830, 157.835, 157.840, 157.845, and 157.850, pp. 181-187, 1979.

where MP = maximum participation; N = number of pupils served; SF = square foot per pupil (elementary 70, middle 80, junior high 90, senior high 100); CSF = cost per square foot as determined at least annually by the Kentucky School Building Authority; % = varies from 30 percent for those districts having the highest EV per pupil to 70 percent for those districts having the lowest EV per pupil.

#### CURRENT STATUS AND PROBLEMS

Between 1929-30 and 1976-77 total expenditures for capital outlay and debt service increased from \$18 to \$184 per ADM. Yet, capital outlay accounted for 16 percent of the total expenditure in 1929-30, compared to only 8.3 percent in 1976-77. Interest payments, as a percent of total expenditures, declined from 4.0 percent to 2.8 percent during the same period. Therefore, although school construction and related capital projects increased ten-fold in cost, capital expenditures and debt service together declined from 20 percent of the total costs in 1929-30 to approximately 11.1 percent in 1976-77.<sup>31</sup>

#### BOND ELECTION RESULTS

As noted previously, the primary mechanism used for funding the construction of facilities is the sale of bonds. During fiscal year 1977, 858 school bond elections proposed the sale of \$2.4 billion in public school bonds. Bond issues were approved by the voters in 477 of the 858 elections, a success rate of 55.6 percent.

Between 1964 and 1968, the approval rate of bonds was from a low of 66.6 percent (1967) to a high of 74.7 percent (1965). Since 1969 the range in the approval rate has been 56.8 percent (1969) to 46.3 percent (1975), with an average of 52.1 percent. By the late 1970s, instead of voter approval in approximately three of four bond elections, only one of two could claim success.

#### BORROWING COSTS

The increased cost of borrowing also has expanded the number of districts in need of additional state aid. Interest rates are determined by community type (residential, business, or industrial), current outstanding debt, duration of repayment period, and tax base available for repayment. Accordingly, school districts that sell bonds may face varied interest rates. In 1977, Aaa bonds sold at an average of 4.91 percent, while Aa bonds went for 5.55 percent. These rates vacillated

31. National Center for Education Statistics, *Digest of Education Statistics, 1977-78* (Washington, DC: NCES, 1978), Table 30.31.69, 20170.

as bond security declined; that is, A bonds averaged 5.40 percent, Baa bonds sold for an average of 5.43 percent, and Ba bonds were marketed at 5.39 percent.

School districts were responsible for 81.8 percent of all governmental and special agency bond sales in 1976, although their sales accounted for only 66.4 percent of the dollar volume. State governments sold bonds at an average of 5.61 percent, while school districts averaged 6.36 percent (72 basis points greater—.72 percent). County, city, town, and other authorities ranged from 6.34 percent to 6.76 percent. No agency sold bonds at an average rate lower than the state.<sup>32</sup> Therefore, states with loan programs were generally able to reduce total debt service payments, thereby limiting the significant increases in interest cost.

Although aggregated data are not available for school bond sales since 1977, between 1977 and 1980 Aaa bonds increased in interest rate by 1.01 percent, Aa bonds by .87 percent, A bonds by .23 percent, and Baa bonds by .37 percent.<sup>33</sup> The Federal Reserve Board reported that during 1978, the prime bank rate rose 3.75 percent, while top-rated state and local bonds increased .74 percent.<sup>34</sup> By October of 1979, the prime rate had increased to 11.5 percent with many bankers predicting a 15 percent level by 1980.<sup>35</sup> Their estimates were conservative, for by March 1980, interest rates were at the 20 percent mark, and by the end of that year, rates had climbed over 21 percent.

#### CONSTRUCTION COSTS

Coupled with the high interest rates for bonds are the inflationary costs of school construction. Displayed in Table 2 are average costs per square foot for constructing elementary, middle, and high schools for fiscal years 1975 through 1978. In 1975, the combined average cost per square foot of the three reported types of public school facilities was \$37.93. By 1978, the average cost per square foot had risen to \$50.11, an increase of \$12.18 per square foot, or 32.1 percent. Also note that elementary school costs rose 28.7 percent during the four-year period, while middle and high school costs rose 35.3 and 37.5 percent, respectively. Furthermore, the average cost of all school construction increased 32.1 percent during the period.

32. Richard H. Barr, *Bond Sales for Public School Purposes, 1971-76* (Washington, DC: Department of Health, Education, and Welfare, 1978), p. 5.

33. *Money's Bond Record* through February 1980.

34. "If You're Trying to Borrow Money Now," *U.S. News and World Report* 18 (December 1978):39-80.

35. "Sky-High Interest Rates: Any One in Sight," *U.S. News and World Report* 22 (October 1979):99-100.

TABLE 2  
COST PER SQUARE FOOT FOR THE  
CONSTRUCTION OF PUBLIC SCHOOL  
FACILITIES FOR  
FISCAL YEARS 1975-78

Fiscal Year	Elementary School Costs/Sq. Ft.	Middle School Costs/Sq. Ft.	High School Costs/Sq. Ft.	Average Costs/Sq. Ft.
1975	\$38.57	\$38.76	\$38.65	\$38.93
1976	25.69	47.89	40.24	37.94
1977	44.13	47.89	40.24	44.09
1978	47.48	32.44	50.10	50.11

Source: Paul Abramson, "Educational Construction: A Statistical Summary" (Various Years), *American School and University*, 1978-79.

Due to the high costs of public school construction, it is often better to sell bonds, even at extremely high interest costs than to postpone construction in anticipation of a more favorable bond market. If certain assumptions are made, it is possible for school districts to make the most cost effective decision by using the information displayed in Table 3. The break-even points were prepared by computing the annual borrowing rates for \$1 million at 6, 7, and 8 percent and applying the same repayment amount to various interest rates in order to derive the total interest costs of the bond issuer. For example, it is cost effective to sell bonds for fifteen years at 7 percent rather than wait for the possible lowering of interest rates to 6 percent a year from selling date assuming the inflation rate will be more than 6.8 percent. Accordingly, it is cost effective to sell bonds for twenty-five years at 9 percent rather than wait for the possible lowering of interest rates to 8 percent a year from selling date assuming the inflation rate will be more than 10.9 percent.

#### FISCAL EQUALIZATION LITIGATION

During the last decade, nearly all states have experienced litigation which challenged the manner in which state aid for public elementary and secondary schools was distributed. The lawsuits invariably were filed in both state and federal courts by plaintiffs who resided in districts with limited fiscal capacities to finance public schools. Plaintiffs sought to have the courts declare unconstitutional the system of financing public education in their state and order the restructuring of the state aid distribution formula so that the quality of a child's education was not a function of the wealth of his neighbors.

TABLE 3  
BUILDING CONSTRUCTION: INFLATION RATE  
BREAK-EVEN POINTS WITH CHANGE IN ANNUAL  
BORROWING RATES

Number of Years to Finance	Inflation Rate Break-Even Points with Interest Rate Shift Back to 6 Percent 1 Year Hence from Current Rate.				
	7.0%	8.0%	9.0%	10.0%	11.0%
15	6.8	15.5	20.5	27.7	35.1
20	8.3	18.8	25.5	34.7	44.0
25	9.6	19.8	30.1	40.8	51.8
30	10.9	22.9	34.0	48.0	58.9

Number of Years to Finance	Inflation Rate Break-Even Points with Interest Rate Shift Back to 7 Percent 1 Year Hence from Current Rate.				
	8.0%	9.0%	10.0%	11.0%	12.0%
15	6.4	13.0	19.7	26.7	33.7
20	7.9	16.0	24.4	33.0	41.8
25	9.2	18.8	28.4	38.4	48.8

Number of Years to Finance	Inflation Rate Break-Even Points with Interest Rate Shift Back to 8 Percent 1 Year Hence from Current Rate.			
	9.0%	10.0%	11.0%	12.0%
15	6.2	12.5	19.0	25.7
20	7.4	15.3	23.3	31.4
25	10.9	17.6	26.8	36.1

Source: William R. Wilkerson, Letter to Author, March 19, 1980.

The possibility of the plaintiffs gaining relief through the federal courts ceased with the landmark case, *San Antonio Independent School District v. Rodriguez*.<sup>36</sup> The United States Supreme Court observed that the Texas system was inequitable but that education was not a fundamental interest nor was the property wealth of a school district a suspect classification entitled to strict scrutiny by the courts.

However, several state courts have declared their state school finance programs unconstitutional under their respective state con-

36. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973).

stitutions. Most of the litigation, successful and unsuccessful,<sup>37</sup> has focused on the inequities of the current aid formula rather than the inequities that exist in the manner in which school districts fund the construction of their school facilities. In those states that have experienced successful assaults on state current aid distribution formulas, it is likely that similar litigation will be filed challenging systems of financing public school capital facilities.

#### DECLINING PUPIL POPULATION

Although some of the urgency to build public school facilities has waned for those states and school districts which are experiencing a declining pupil population, there is still a need for the construction of public school facilities. (Only nine states between 1975 and 1978 had growth in their elementary school enrollments while only nineteen had growth in their secondary school enrollments.)<sup>38</sup> In nearly all states, there are districts experiencing significant increases in enrollment. Even those districts with a high rate of pupil decline have shifts in housing patterns which result in a continuing need for space strategically located to serve the pupil population. Additionally, facilities are suffering from old age and need to be either replaced or renovated. (Although not related to declining pupil population, escalating petroleum costs often dictate expensive school building renovation in order to reduce energy expenditures.)

#### VOTER-INITIATED TAX OR SPENDING LIMITATIONS

Spurred by the success of California's Proposition 13, similar efforts have been made in other states either to restrict or reduce governmental spending and taxation. It is likely that such efforts will become common in the foreseeable future. For many school districts, however, the predicted catastrophe is already occurring in regard to the construction of public school facilities. Where tax revolts are threatening, bond ratings are lowered almost immediately resulting in an increase in the interest rate that is demanded by the bond purchaser.

With further increases in the cost of borrowing, many additional districts are prohibited from engaging in the construction of school facilities. Wealthy districts, in many states, have low tax rates and are less likely to experience spending restrictions. Poor districts, however,

37. See, for example, *Robinson v. Cahill*, 503 A.2d 275 (1975) and *Horton v. Mehall*, 332 A.2d 113 (1974).

38. See United States Center for Education Statistics, *Digest of Education Statistics*, annual and unpublished data.

are often forced to maintain high tax rates because fiscal ability (as measured by property value) is low. As a result, wealthy districts continue to build, while poor districts make do with existing (often inadequate) structures.

#### CONCLUSION

Financing school facilities in the 1980s will be a challenge for all school districts. Some will be fortunate to have a sufficiently large tax base from which to work or will be receiving adequate state support to offset a low tax ability. Others will meet the challenge by exerting extraordinary tax efforts, while yet others will forgo initiating or completing capital projects.

Reform attempts for capital outlay will become more common, but will take a back seat to the more pressing problem of providing for the growth in maintenance and operation costs. With spiralling interest rates, declining voter support, increasing construction costs, and the like, the only real hope for low ability districts is state support.