

7459

I N S E N A T E

May 3, 2016

Introduced by Sens. STEWART-COUSINS, LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT establishing the Yonkers city school district joint schools construction and modernization act; and to amend the education law and the public authorities law, in relation to implementing such joint schools construction and modernization act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 "the Yonkers city school district joint schools construction and modern-
3 ization act".
4 S 2. Legislative findings and declaration of need. The legislature
5 finds that Yonkers schools have a growing population yet the average age
6 of the school buildings in Yonkers is seventy-five years with the oldest
7 building at one hundred nineteen years old; nine are over ninety-seven
8 years old and most are past their useful life and in need of extensive
9 refurbishment. The age of buildings in Yonkers is significantly over
10 the sixty-five years average age of schools in New York State. Even by
11 maximizing the debt borrowing under existing constitutional and statuto-
12 ry limits Yonkers city is unable to finance modernization of its facili-
13 ties at a reasonable rate as needs are far greater than the availability
14 of capital. The city school district's facilities are landlocked in
15 highly dense urban neighborhoods lacking proper school bus loops,
16 athletic facilities and other essential school amenities required for
17 the safe and proper administration of an educational institution, and
18 while Yonkers city has invested significant capital, deterioration of
19 building stock outpaces the district's ability to repair it.
20 The legislature further finds that such deterioration of the schools
21 and inability to expand school sites to provide even a modicum of
22 customary facilities and amenities to students is a serious impediment
23 to learning and teaching. If the quality of education in the city is to
24 be improved, existing schools must be rehabilitated and reconstructed
25 and new city schools must be built. This will include the retirement of

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14978-03-6

old facilities which will be replaced by more efficiently operating buildings with better use of space. Renovations shall result in facilities more conducive to current education requirements and shall be equipped to operate at lower maintenance costs with improved energy efficiency.

The city of Yonkers' student population has been rising, especially with students with special needs and students with English as a second language. Yonkers' increased enrollment has required overuse of available classroom space for regular instruction and resulted in a shortage of libraries, art rooms, music rooms, computer rooms and other common school facility elements. Construction of new facilities will allow for reallocation of classroom space to essential specialized uses. However the city's fiscal limitations magnify the inability to maintain existing aging facilities or provide new facilities to accommodate the increasing student populations. Yonkers is unable to pursue a modernization program without special legislation as was provided to the Buffalo, Rochester and Syracuse city school districts. As a result the city of Yonkers has an immediate need for special legislation providing for new school buildings and a joint schools construction and modernization program patterned after the mechanism for funding received by or related to the Buffalo, Rochester and Syracuse school districts.

The legislature further finds that as a result of the foregoing, legislation granting certain new or additional authority to the city and the city school district of the city of Yonkers as set forth in such legislation is necessary, which authority should enable both parties to better, more economically and more innovatively manage the acquisition, design, construction, financing, operation, and maintenance of new educational facilities.

S 3. Definitions. As used or referred to in this act:

(a) "Capital improvement plan" shall mean the city school district's ongoing, annually updated five-year capital financing plan for the construction and reconstruction of facilities, the acquisition and replacement of equipment and the completion of other long-term capital projects undertaken and financed by the issuance of general obligation bonds by the city on behalf of the city school district pursuant to existing state law applicable to all school districts.

(b) "City" shall mean the city of Yonkers.

(c) "City school district" shall mean the city school district of the city of Yonkers acting by and through the board of education of the city school district of the city of Yonkers.

(d) "City council" shall mean the city council of the city of Yonkers.

(e) "Commissioner" shall mean the commissioner of education of the state of New York.

(f) "Compliance officer" shall mean an independent compliance firm with an in-depth knowledge base and breadth of experience conducting minority and women-owned business enterprise (MWBE) and disadvantaged business enterprise (DBE) utilization compliance monitoring for public contracts within New York state including school districts and auditing contractors and subcontractors in construction and reconstruction projects like those to be undertaken and contracted for by the YJSC board pursuant to this act. Such firm shall support the facilities modernization program by developing and implementing an MWBE/DBE Utilization Master Plan for the governance of all project contracts to ensure compliance with all federal, State, and local laws, rules, and regulations as applicable.

(g) "Comptroller" shall mean the comptroller of the state of New York.

(h) "Joint schools construction and modernization plan" or "joint schools construction and modernization program" shall mean the comprehensive, strategic plan developed by the city school district as described in section five of this act.

(i) "MWBE/DBE utilization master plan" shall be a plan prepared by the compliance officer to the satisfaction of the YJSC board to meet disparity as established by existing state studies.

(j) "Person" shall mean a municipality or other governmental body, a public corporation or an authority, a private corporation, a limited liability company or partnership, or an individual.

(k) "Program manager" shall mean an independent program management firm that has been selected by the city and the city school district through the request for proposal process to oversee the implementation of the joint schools construction and modernization plan to assist it in: (1) developing and implementing procedures for the projects undertaken and contracted for by the city school district or the YJSC board; (2) reviewing plans and specifications for projects; (3) developing and implementing policies and procedures to utilize employment resources to provide sufficient skilled employees for such projects, including developing and implementing training programs, if required; (4) managing such projects; and (5) providing such planning, design, financing, and other services as may be appropriate to implement one or more construction or reconstruction projects pursuant to this act.

(l) "Project" shall mean (1) work at an existing school building site that involves the design, reconstruction, or rehabilitation of all or a portion of an existing school building for its continued use as a school of the city school district, which may include an addition to existing school buildings for such continued use and which also may include (i) the construction or reconstruction of athletic fields, playgrounds, and other recreational facilities for such existing school buildings, and/or (ii) the acquisition and installation of all equipment necessary and attendant to and for the use of such existing school buildings and/or (2) the acquisition of land for new school buildings and athletic fields, playgrounds and other recreations facilities; and/or (3) construction of up to three new school buildings and land acquisition from the city or private parties which also may include (i) the construction or reconstruction of athletic fields, playgrounds, and other recreational facilities for such new school buildings and (ii) the acquisition and installation of all equipment necessary and attendant to and for the use of such new school buildings; and/or (iii) the acquisition of additional real property by the city to facilitate the project. For purposes of this act, the term "construction" shall include all work related to construction, demolition, reconstruction, excavation, rehabilitation, repairs, renovations, alterations, or improvements.

(m) "Project labor agreement" shall mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trades labor organization establishing the signatory unions as the collective bargaining representatives for all persons who will perform work on the project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

(n) "YJSC board" or "board" shall mean the Yonkers joint schools construction board, a joint instrumentality of the city and the city school district, acting for and on behalf of the city and the city school district.

(o) "SED" shall mean the state education department.

(p) "Related party" means: (1) any member, officer or employee of the board, or any other person who exercises the powers of members, officers or employees over the affairs of the board; (2) any relative of any individual described in paragraph one of this subdivision; or (3) any entity in which any individual described in paragraphs one and two of this subdivision has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

(q) "Related party transaction" means any transaction, agreement or any other arrangement in which a related party has a financial interest and in which the board is a participant.

S 4. Yonkers joint schools construction board. (a) For the benefit of the city of Yonkers and the inhabitants thereof, a board to be known as the Yonkers joint schools construction board, and sometimes referred to as the YJSC board, is hereby established for the accomplishment of the purposes specified in this act. The YJSC board shall conduct meetings as often as deemed necessary to accomplish its purposes, but not less than quarterly.

(b) (1) The board shall be composed of nine voting members: one of whom, sitting ex officio, shall be the mayor of Yonkers; one of whom shall be the president of the Yonkers board of education; one of whom shall be the superintendent of the Yonkers city school district; one of whom shall be the designee of the Yonkers council of Parent Teach Associations; two of whom shall be Yonkers city council designees of whom one shall be from the majority and one from the minority; and three of whom shall be jointly designated by the mayor and the superintendent of the city school district, but shall be not employed by the city or the school district. In selecting designees to serve on the board, preference shall be granted to those with expertise or experience in school construction, school financing, and education policy. The members of the board shall serve without salary, but each member shall be reimbursed for actual and necessary expenses incurred in the performance of such member's official duties as a member of the board. To ensure flexibility and continuity, the mayor and/or the superintendent may from time to time designate and authorize their chief of staff, chief financial officer, or other designee to attend and vote in their stead.

(2) Notwithstanding any inconsistent provision of any general, special or local law, ordinance, resolution or charter, no officer, board of trustees, member or employee of the state, any city, county, town or village, any governmental entity operating any public school or college, any school district or any other public agency or instrumentality which exercises governmental powers under the laws of the state, shall forfeit his or her office or employment by reason of his or her acceptance of appointment as a member, officer or employee of the YJSC board, nor shall service as such member, officer or employee of the YJSC board be deemed incompatible or in conflict with such office or employment, except for the three board members who were jointly appointed by the mayor and the superintendent of the city school district.

(3) Except for the mayor of Yonkers, the president of the Yonkers board of education and the superintendent of the city school district, the remaining members of the board shall be independent members. The official or officials having the authority to appoint or remove such remaining members shall take such actions as may be necessary to satisfy this requirement and further, shall consider the prospective diversity of the members of the board when making their determinations to appoint

1 any member. For purposes of this section, an independent member is one
2 who: (i) is not, and in the past two years has not been employed by the
3 board, the city or the school district; (ii) is not, and in the past two
4 years has not been, employed by an entity that received remuneration
5 valued at more than fifteen thousand dollars for goods and services
6 provided to the board, the city or the school district or received any
7 other form of financial assistance valued at more than fifteen thousand
8 dollars from the board, the city or the school district; (iii) is not a
9 relative of an executive officer or employee in an executive position
10 with the city of Yonkers or the Yonkers city school district or a member
11 of the Yonkers city council or the Yonkers board of education; and (iv)
12 is not, and in the past two years has not been, a lobbyist registered
13 under a state or local law and paid by a client to influence the manage-
14 ment decisions, contract awards, rate determinations or any other simi-
15 lar actions of the board, the city or the school district.

16 (4) Notwithstanding any other provision of any general, special or
17 local law, municipal charter or ordinance to the contrary, board
18 members, officers and employees of the board shall file annual financial
19 disclosure statements with the county board of ethics for the county in
20 which the board has its primary office pursuant to article 18 of the
21 general municipal law.

22 (c) A majority of the whole board shall constitute a quorum for the
23 transaction of any business or the exercise of any power of the board.
24 No action shall be taken by the board except pursuant to a favorable
25 vote of at least a majority of the whole board participating in a meet-
26 ing at which such action is taken.

27 (d) The board shall be effective upon filing with the secretary of
28 state a certificate of organization indicating that its organizational
29 meeting has been held and its conflict of interest policy has been
30 adopted and shall continue after the tenth anniversary of its date of
31 organizational meeting during any period when bonds or notes are
32 outstanding.

33 (e) Except as otherwise limited by this act, the YJSC board shall have
34 the following powers and responsibilities in addition to those specially
35 conferred elsewhere in this act, subject only to agreements with bond-
36 holders:

37 (1) to make plans and studies necessary, convenient or desirable for
38 the effectuation of the purposes and powers of the board and to prepare
39 recommendations in regard thereto;

40 (2) to make use of existing studies, surveys, plans, data and other
41 material in the possession of the city, the city school district, or any
42 person in order to avoid duplication of effort;

43 (3) to enter into cooperative agreements with the state, any state
44 agency, the city, or the city school district for any lawful purposes
45 necessary or desirable to effect the purposes of this act upon such
46 terms and conditions as shall be determined to be reasonable;

47 (4) to develop and maintain the joint schools construction and modern-
48 ization plan for so long as the projects authorized pursuant to this
49 act, are yet to be undertaken; and

50 (5) to do all things necessary, convenient or desirable to carry out
51 its purposes and for the exercise of the powers granted in this act.

52 (f) (1) The board shall adopt a conflict of interest policy to ensure
53 that its directors, officers and employees act in the city's and city
54 school district's best interest and comply with applicable legal
55 requirements, including but not limited to the requirements set forth in
56 subdivision (g) of this section.

1 (2) The conflict of interest policy shall include, at a minimum, the
2 following provisions: (i) a definition of the circumstances that consti-
3 tute a conflict of interest; (ii) procedures for disclosing a conflict
4 of interest to the board; (iii) a requirement that the person with the
5 conflict of interest not be present at or participate in board deliber-
6 ation or vote on the matter giving rise to such conflict, provided that
7 nothing in this subdivision shall prohibit the board from requesting
8 that the person with the conflict of interest present information as
9 background or answer questions at a board meeting prior to the commence-
10 ment of deliberations or voting relating thereto; (iv) a prohibition
11 against any attempt by the person with the conflict to influence improv-
12 properly the deliberation or voting on the matter giving rise to such
13 conflict; (v) a requirement that the existence and resolution of the
14 conflict be documented in the board's records, including in the minutes
15 of any meeting at which the conflict was discussed or voted upon; and
16 (vi) procedures for disclosing, addressing, and documenting related
17 party transactions in accordance with subdivision (g) of this section.

18 (3) The conflict of interest policy shall require that prior to the
19 filing of the certificate of organization, and annually thereafter, all
20 members of the board shall complete, sign and submit to the county board
21 of ethics for the county in which the board has its primary office
22 pursuant to article eighteen of the general municipal law a written
23 statement identifying, to the best of the member's knowledge, any entity
24 of which such member is an officer, director, trustee, member, owner
25 (either as a sole proprietor or a partner), or employee and with which
26 the board has a relationship, and any transaction in which the board is
27 a participant and in which the member might have a conflicting interest.
28 The policy shall require that each board member annually resubmit such
29 written statement. The county board of ethics shall provide a copy of
30 all completed statements to each board member.

31 (4) If the board has complied substantially with section 2824 and
32 subdivision 3 of section 2825 of the public authorities law, it shall be
33 deemed in compliance with this subdivision.

34 (5) Nothing in this subdivision shall be interpreted to require the
35 board to adopt any specific conflict of interest policy not otherwise
36 required by this subdivision or any other law or rule, or to supersede
37 or limit any requirement or duty governing conflicts of interest
38 required by any other law or rule.

39 (g) (1) The board shall not enter into any related party transaction
40 unless the transaction is determined by the board to be fair, reasonable
41 and in the board's best interest at the time of such determination. Any
42 member, officer or employee who has an interest in a related party tran-
43 saction shall disclose in good faith to the board the material facts
44 concerning such interest.

45 (2) With respect to any related party transaction in which a related
46 party has an substantial financial interest, the board, shall: (i) prior
47 to entering into the transaction, consider alternative transactions to
48 the extent available; (ii) approve the transaction by not less than a
49 majority vote of the entire board; and (iii) contemporaneously document
50 in writing the basis for the board's approval, including its consider-
51 ation of any alternative transactions.

52 (3) SED may bring an action to enjoin, void or rescind any related
53 party transaction or proposed related party transaction that violates
54 any provision of this section or was otherwise not reasonable or in the
55 best interests of the board at the time the transaction was approved, or
56 to seek restitution, and the removal of members or officers, or seek to

1 require any person or entity to: (i) account for any profits made from
2 such transaction, and pay them to the board; (ii) pay the board the
3 value of the use of any of its property or other assets used in such
4 transaction; (iii) return or replace any property or other assets lost
5 to the board as a result of such transaction, together with any income
6 or appreciation lost to the board by reason of such transaction, or
7 account for any proceeds of sale of such property, and pay the proceeds
8 to the board together with interest at the legal rate; and (iv) pay, in
9 the case of willful and intentional conduct, an amount up to double the
10 amount of any benefit improperly obtained.

11 (4) No related party may participate in deliberations or voting relat-
12 ing to a related party transaction in which he or she has an interest;
13 provided that nothing in this section shall prohibit the board from
14 requesting that a related party present information as background or
15 answer questions concerning a related party transaction at a board meet-
16 ing prior to the commencement of deliberations or voting relating there-
17 to.

18 (h) Notwithstanding any other provision of any general, special or
19 local law, municipal charter or ordinance to the contrary, for the
20 purposes of title 2 of article 1 of the public authorities law the board
21 shall be considered a local authority.

22 S 5. Joint schools construction and modernization plan; project costs.

23 (a) The superintendent, in consultation with the Yonkers board of educa-
24 tion, shall submit to the YJSC board a comprehensive draft plan recom-
25 mending and outlining the projects for phase one it proposes to be
26 undertaken pursuant to this act. The YJSC board shall consider the plan
27 in developing a comprehensive joint schools construction and moderniza-
28 tion plan recommending and outlining the projects it proposes to be
29 potentially undertaken pursuant to this act. The comprehensive joint
30 schools construction and modernization plan shall include:

31 (1) an estimate of total costs to be financed, not to exceed five
32 hundred twenty-three million dollars (\$523,000,000), plus such addi-
33 tional amount of bonds, notes and other obligations necessary to provide
34 for a debt service reserve fund and to pay reasonable costs of issuance,
35 a proposed financing plan, a proposed method of financing, terms and
36 conditions of the financing, and estimated financing costs (calculated
37 on a net interest cost basis). The plan shall address what specific
38 options would be used to ensure that sufficient resources exist to cover
39 the local share of any such project cost on an annual basis;

40 (2) information concerning the number of buildings to be constructed
41 or reconstructed to the satisfaction of SED;

42 (3) a district wide technology plan and a description of related inci-
43 dental expenses;

44 (4) information concerning the potential persons to be involved in the
45 financing and such persons' roles and responsibilities;

46 (5) estimates on the design, construction, reconstruction and rehabil-
47 itation costs by project, any administrative costs for potential
48 projects, and an outline of the timeframe expected for completion of
49 each potential project;

50 (6) direction to the program manager in the implementation of the
51 plan;

52 (7) any proposed amendments to the city school district's five year
53 capital facilities plan submitted in accordance with subdivision 6 of
54 section 3602 of the education law, the regulations of the commissioner
55 and the provisions of this section; and

1 (8) a diversity plan, in compliance with section eleven of this act,
2 to develop diversity goals, including appropriate community input and
3 public discussion, and develop strategies that would create and coordi-
4 nate any efforts to ensure a more diverse workforce for the projects.
5 The MWBE/DBE utilization master plan should address accountability for
6 attainment of the diversity goals, what forms of monitoring would be
7 used, and how such information would be publicly communicated. Prior to
8 the development of the comprehensive joint schools construction and
9 modernization plan, the YJSC board and district shall hold not less than
10 one public hearing per school site to ensure sufficient public input and
11 allow for significant public discussion on school building needs in such
12 city, with at least one such hearing to be held in each neighborhood
13 potentially impacted by a proposed project and in each neighborhood from
14 which the majority of students impacted reside. The hearing must be
15 widely publicized, including, but not limited to, social media distrib-
16 ution by the board of education and the YJSC board. The Yonkers joint
17 schools construction board shall submit the components of such plan
18 described in paragraph one of this subdivision to the comptroller, along
19 with any other information requested by the comptroller, for his or her
20 review and approval.

21 (b) The aggregate amount of project costs authorized and undertaken
22 pursuant to this act as phase one shall not exceed five hundred twenty-
23 three million dollars (\$523,000,000), plus such additional amount of
24 bonds, notes and other obligations necessary to provide for a debt
25 service reserve fund and to pay reasonable costs of issuance, unless
26 otherwise authorized by law. Due to the urgent need to address increased
27 enrollment, phase one shall consist of construction of up to three new
28 schools along with critical infrastructure system replacements at the
29 existing schools to maintain safe operation of the existing schools
30 until future renovations are made as part of the joint schools
31 construction and modernization plan. Such infrastructure system replace-
32 ment will be coordinated so that the work remains in place and is incor-
33 porated into the future renovation of the schools.

34 (c) Notwithstanding the provisions of any other general, special, or
35 local law to the contrary, for purposes of undertaking projects author-
36 ized pursuant to this act, the YJSC board is hereby authorized to plan,
37 and for state building aid calculation purposes, SED is hereby author-
38 ized to permit the YJSC board to undertake projects that utilize a maxi-
39 mum cost allowance approach determined on a city school district wide
40 basis at ninety-eight percent (98%) of approved costs rather than on an
41 individual building basis.

42 S 6. Project eligibility. To be eligible for selection as a project to
43 be undertaken pursuant to this section, such project shall be included
44 by the city school district in its joint schools construction and
45 modernization plan as a special section of the district's five-year
46 capital facilities plan that is required pursuant to subdivision 6 of
47 section 3602 of the education law and the regulations of the commission-
48 er. The facilities modernization plan and any portions of such plan
49 relating to such projects, including any amendments thereto, shall have
50 the contents required in the regulations of the commissioner and shall
51 be submitted to the commissioner for approval. Notwithstanding anything
52 to the contrary in this section, the city school district may elect to
53 finance a project under its ongoing capital improvement plan pursuant to
54 the powers and authority granted to all school districts in the state or
55 as part of the joint schools construction and modernization plans pursu-
56 ant to the special powers and authority granted to the city school

1 district and the YJSC board by this act. Commencing on the effective
2 date of this section, the city school district shall create and maintain
3 a written schedule listing each project undertaken, certified to annual-
4 ly by the city's commissioner of finance, which schedule shall identify
5 each project and its cost and formally designate such project as being
6 undertaken pursuant to either the joint schools construction and modern-
7 ization plan or the capital improvement plan.

8 S 7. Determination of projects. (a) Upon approval by the commissioner
9 of the YJSC board's joint schools construction and modernization plan,
10 the YJSC board may select projects to be undertaken pursuant to this
11 section, as provided for in such approved joint schools construction and
12 modernization plan. After the board has selected a new project and plans
13 and specifications for such project have been prepared and approved by
14 the board, which are consistent with the approved comprehensive plan,
15 the board shall deliver such plans and specifications to the commission-
16 er for his or her approval. After approval by the commissioner, the
17 plans and specifications shall be returned to the board. All such spec-
18 ifications shall detail the number of students the completed project is
19 intended to serve, the site description, the types of subjects to be
20 taught, the types of activities for school, recreational, social, safe-
21 ty, or other purposes intended to be incorporated in the school building
22 or on its site and such other information as the board and the commis-
23 sioner shall deem necessary or advisable.

24 (b) The YJSC board, upon receipt of such approved plans and specifica-
25 tions for a project may enter into contracts for such project, as
26 described in section eight of this act.

27 S 8. Contracts. Notwithstanding the provisions of any general,
28 special, or local law or judicial decision to the contrary:

29 (a) (1) The YJSC board is hereby authorized and empowered to enter
30 into contracts, leases, rental agreements, installment purchase
31 contracts or other arrangements relating to the design (pursuant to the
32 approved plans and specifications), construction, reconstruction, reha-
33 bilitation, equipping, financing or managing of one or more projects
34 undertaken pursuant to this section with any person, upon such terms and
35 conditions and for such consideration and for such terms and duration,
36 not to exceed thirty years, as may be agreed upon by the board and such
37 person notwithstanding the provisions of any other general, special, or
38 local law to the contrary, relating to the length, duration, and terms
39 of contracts that the city or the city school district may enter into,
40 as set forth in subdivision (e) of this section. The district program
41 manager shall establish reasonable guidelines or limits on incidental
42 costs to assure that to the greatest extent possible such costs for each
43 project do not exceed the state's maximum incidental cost allowance, in
44 order to maximize efficient use of state building aid.

45 (2) Notwithstanding any other provision of law to the contrary, the
46 YJSC board shall submit estimated project costs for the projects author-
47 ized pursuant to paragraph five of subdivision (a) of section five of
48 this act after the completion of schematic plans and specifications for
49 review by the commissioner. If the total project costs associated with
50 such projects exceed the sum of the estimated individual approved cost
51 allowance of each building project by more than the lesser of fifty-two
52 million dollars (\$52,000,000) or ten percent of the approved costs, and
53 the city school district has not otherwise demonstrated to the satisfac-
54 tion of the SED the availability of additional local shares for such
55 excess costs, then the YJSC board shall not proceed with the preparation
56 of final plans and specifications for such projects until the projects

1 have been redesigned or value-engineered to reduce estimated project
2 costs so as not to exceed the above cost limits.

3 (3) Notwithstanding any other provision of law to the contrary, the
4 YJSC board shall submit estimated project costs for the projects author-
5 ized pursuant to paragraph five of subdivision (a) of section five of
6 this act after the completion of fifty percent of the final plans and
7 specifications for review by the commissioner. If the total project
8 costs associated with such projects exceed the sum of the estimated
9 individual approved cost allowance of each building project by more than
10 the lesser of fifty-two million dollars (\$52,000,000) or ten percent of
11 the approved costs, and the city school district has not otherwise
12 demonstrated to the satisfaction of the SED the availability of addi-
13 tional local share for such excess costs, then the YJSC board shall not
14 proceed with the completion of the remaining fifty percent of the plans
15 and specifications for such projects until the projects have been rede-
16 signed or value-engineered to reduce estimated project costs so as not
17 to exceed the above cost limits.

18 (b) A contract entered into between the board, or other entity author-
19 ized by this act, and any person pursuant to this section may be awarded
20 either pursuant to public bidding in compliance with section 103 of the
21 general municipal law or, in order to foster major investment in exist-
22 ing school buildings or new school buildings and to deliver quality
23 products and services that are beneficial to the city school district
24 and the public it serves, on the basis of factors other than cost alone,
25 including, but not limited to, adherence to facility design, quality and
26 durability or materials, energy efficiency, incorporating systems and
27 approaches which provide maximum facility value using the best current
28 development, construction, leasing, and financing techniques available,
29 and maximization of state building aid, and such a contract may be
30 entered into pursuant to the following provisions of this section for
31 the award of a contract based on evaluation of proposals submitted in
32 response to a request for proposals prepared by or for the board;
33 provided, however, that contracts or agreements involving construction
34 which are not awarded in compliance with section 103 of the general
35 municipal law must include a project labor agreement in accordance with
36 paragraph (f) of this subdivision. If a project labor agreement is not
37 performed on the project, all construction contracts must be awarded
38 pursuant to sections 101 and 103 of the general municipal law.

39 (c) Notwithstanding any provision of this act which allows for alter-
40 native methods of financing or contract delivery or alternative owner-
41 ship arrangements, including projects owned, leased or financed by an
42 industrial development authority, all work performed on any project
43 authorized by this act where all or any portion thereof involves a
44 lease, grant, bond, covenant, debt agreement, permit, contract or agree-
45 ment entered into by the YJSC board or any other entity for
46 construction, demolition, reconstruction, excavation, rehabilitation,
47 repair, renovation, alteration, or improvement shall be deemed public
48 work and shall be subject to and performed in accordance with the
49 provisions of article 8 of the labor law to the same extent and in the
50 same manner as a contract of the state, and compliance with all the
51 provisions of article 8 of the labor law shall be required of any
52 lessee, sublessee, contractor or subcontractor on the project including
53 the enforcement of prevailing wage requirements by the fiscal officer as
54 defined in paragraph e of subdivision 5 of section 220 of the labor law
55 to the same extent as a contract of the state.

1 (d) Every contract entered into by the YJSC board or other authorized
2 entity for a project shall contain a provision that the design of such
3 project shall be subject to the review and approval of the Yonkers board
4 of education and that the design and construction standards of such
5 project shall be subject to the review and approval of the commissioner.
6 In addition, every such contract shall contain a provision that the
7 contractor shall furnish a labor and material bond guaranteeing prompt
8 payment of moneys that are due to all persons furnishing labor and mate-
9 rials pursuant to the requirements of any contracts for a project under-
10 taken pursuant to this section and a performance bond for the faithful
11 performance of the project, which shall conform to the provisions of
12 section 103-f of the general municipal law, and that a copy of such
13 performance and payment bonds shall be kept by the YJSC board and shall
14 be open to public inspection.

15 (e) (1) The YJSC board or other authorized entity may require a
16 contractor awarded a contract, subcontract, lease, grant, bond, covenant
17 or other agreement for a project to enter into a project labor agreement
18 during and for the work involved with such project when such requirement
19 is part of the request for proposals for the project and when it has
20 been determined that the record supporting the decision to enter into
21 such an agreement establishes that it is justified by the interests
22 underlying the competitive bidding laws, and (2) any contract, subcon-
23 tract, lease, grant, bond, covenant or other agreement for projects
24 undertaken pursuant to this act shall not be subject to sections 101 or
25 103 of the general municipal law when the YJSC board or other authorized
26 entity has chosen to require a project labor agreement. This exemption
27 shall only apply to the projects undertaken pursuant to this act and
28 shall not apply to projects undertaken by any other school district or
29 municipality unless otherwise specifically authorized.

30 (f) All contracts entered into by the YJSC board or other authorized
31 entity in excess of three million dollars (\$3,000,000) with respect to
32 any contract for construction, reconstruction, demolition, excavation,
33 rehabilitation, repair, renovation, alteration, or improvement shall
34 require that each contractor and subcontractor shall participate in
35 apprentice training programs registered by the department of labor.
36 Participation in such an apprenticeship program means the contractor or
37 subcontractor: (1) is signatory to a collective bargaining agreement
38 with a labor organization which sponsors an apprenticeship program
39 registered with the department of labor; (2) individually sponsors an
40 apprenticeship program registered by the department of labor; or (3) is
41 signatory to or otherwise bound by a project labor agreement covering
42 the project which provides for the referral of apprentices. In all
43 cases, such apprenticeship program must be specific to the type and
44 scope of work which is being performed.

45 (g) For the purposes of article 15-A of the executive law, YJSC board
46 shall be deemed a state agency as that term is defined in such article
47 and such contracts shall be deemed state contracts within the meaning of
48 that term as set forth in such article.

49 (h) In the event the YJSC board shall cease to exist for any reason
50 whatsoever during the life of such contracts as it has entered into
51 pursuant to this section, such contracts shall remain in full force and
52 effect and the city and city school district shall stand in the place
53 and stead of the board with respect to all rights and obligations under
54 such contracts and with respect to all powers granted to the board by
55 this section; provided, however, that such powers are exercised by the

city school district pursuant to its jurisdiction and the general laws applicable thereto, except as modified by this section.

S 9. Program manager. (a) The YJSC board shall utilize the services of a program manager selected by the city and the city school district through the request for proposal process to oversee the implementation of the joint schools construction and modernization plan. Prior to selection, the program manager must demonstrate satisfactory experience in planning, designing, and constructing new and/or reconstructing existing school buildings, public facilities, commercial facilities, and/or infrastructure facilities, and in the negotiation and management of labor contracts and agreements, training programs, educational programs, and physical technological requirements for educational programs.

(b) All contracts entered into by the YJSC board or other authorized entity for projects undertaken pursuant to this section shall be managed by such program manager. The program manager shall also review project schedules, review payment schedules, prepare cost estimates and review for coordination purposes the safety programs of contractors and all training programs, if required. The program manager shall implement procedures for verification by it that all work for which payment has been requested has been satisfactorily completed.

(c) The program manager, and its affiliates or subsidiaries, if any, shall be prohibited from awarding contracts or being awarded contracts for or performing any work other than contemplated for the program manager.

S 10. Requests for proposals for the award of projects. (a) The YJSC board shall consult with the commissioner in creating guidelines to be used in the preparation of individual requests for proposals in connection with projects prior to the development of any requests for proposals by the program manager. Prior to the issuance by the program manager of a request for proposals, the YJSC board shall cause to be published a notice of such issuance in the official newspaper of the city school district, if any, and in at least one newspaper of general circulation in the city. Concurrent with the publication of such notice, a draft request for proposals shall be filed with the YJSC board.

(b) Each proposal shall require the inclusion of the following information relating to each project:

(1) the background and experience of the person including any history of labor violations, and when applicable, the identity and experience of the person's general contractor, heating and plumbing contractor, electrical contractor, and design firm;

(2) the ability of the person to secure adequate financing, if applicable, including the identification of the firm, if any, that will be used for financing the project; and

(3) identification and specification of all direct and indirect costs which would become a charge to the YJSC board, in whatever form, relating to the project and such other information as may be determined to have a material bearing on the ability to evaluate any proposal.

(c) Proposals received in response to a request for proposals shall be evaluated taking into consideration (1) maximization of state building aid, (2) net cost, (3) the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor laws, rules, or regulations and maintaining harmonious labor relations, and the commitment of contractors to

work with minority and women owned business enterprises pursuant to article 15-A of the executive law and disadvantaged business enterprises through subcontractor relationships, and (4) such additional factors set forth in the request for proposals, including, but not limited to, quality and durability of materials, energy efficiency, facility design incorporating systems and approaches which provide maximum facility value at the lowest possible cost for the reconstruction, rehabilitation and equipping, or new construction and equipping, of such projects.

(d)(1) A contract award may be made to any responsible person selected taking into consideration:

(i) maximization of state building aid;

(ii) net cost;

(iii) the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women owned business enterprises pursuant to article 15-A of the executive law and disadvantaged business enterprises through subcontractor relationships; and

(iv) such additional factors set forth in the request for proposals, including, but not limited to, quality and durability of materials, energy efficiency, facility design incorporating systems and approaches which provide maximum facility value at the lowest possible cost for the reconstruction, rehabilitation and equipping, or new construction and equipping, of such projects.

(2) Notwithstanding the provisions of this subdivision, if an award is made to any person whose total proposal does not provide the lowest net cost, the city school district or the YJSC board shall adopt a resolution after a public hearing which includes particularized findings relevant to factors evaluated indicating that the requirements of the city school district or the YJSC board, as applicable, are met by such award and that such action is in the public interest. Any such contract may be a single guaranteed maximum price general contract, utilize a full construction management contract approach, or utilize a turnkey contract approach or any other method deemed advisable in the reasonable judgment of the YJSC board.

S 11. Compliance officer. All contracts entered into by the YJSC board for projects undertaken by this section shall be monitored by a compliance officer. The compliance officer shall have the authority to:

(a) develop, implement, advertise, promote and monitor policies and procedures to utilize and provide sufficient MWBE, DBE and skilled minority employment resources participation opportunities to be followed by prime contractors and subcontractors for such projects; and have access to all proposed bid specifications documentations, records, drawings, blueprints and any other documentation associated with such bid specifications;

(b) support the joint schools construction and modernization plan by developing and implementing an MWBE/DBE Utilization Master Plan for the governance of all project contracts;

(c) provide technical assistance to potential MWBE and DBE contractors and subcontractors interested in bidding on any such project;

(d) obtain and maintain records and documentation as are necessary to confirm compliance with any established MWBE, DBE or skilled minority employment resources utilization goals for any such project;

(e) identify contractors in non-compliance with the established MWBE, DBE or skilled minority employment resources utilization goals or in willful violation of any federal, state and local laws rules and regulations;

(f) monitor and report the upward/downward price adjustment and payment amounts to MWBE's and DBE's listed on contractors utilization plan for any such project; and

(g) develop and work with YJSC board to enforce agreed financial or monetary sanctions for any contractors non-compliance with MWBE/DBE Utilization Master Plan.

(h) the compliance officer shall report to the YJSC board on a monthly basis.

S 12. Building aid. (a) Notwithstanding any other general, special, or local law or provision or regulation, all costs under the joint schools construction and modernization plan approved by SED shall receive building aid from the state at a rate of ninety-eight percent (98%) of approved costs. Projects exceeding the Maximum Cost Allowance ("MCA") as identified by SED shall receive the calculated MCA equal to the policy of 2 five-year cycles. When the YJSC board exercises the option of combining 2 five-year cycles for a project, the facility shall not be eligible for aid for 10 years after project initiation.

(b) Notwithstanding any other provision of law, building aid that would otherwise be payable for the school district portion of expenditures for capital outlays and debt service for each project undertaken pursuant to the provisions of this act in accordance with subdivision 6 of section 3602 of the education law, shall be paid to the city.

S 13. Operation and maintenance. (a) Notwithstanding any other general, special, or local law or provision of this section to the contrary, any project undertaken pursuant to this section shall be operated and maintained by the board of education of the city school district in the same manner as existing school buildings owned by the city are operated and maintained by such board.

(b) Notwithstanding any other provision of any general, special, or local law to the contrary, any project undertaken pursuant to the provisions of this act shall be exempt from all taxes (including sales and use taxes), special assessments, and special ad valorem levies and from the payment of any and all charges and rents for sewer systems, both while such project is being constructed and during its use by the city school district for school purposes.

S 14. Maintenance of effort exclusion. Payment of debt service on bonds, notes or other obligations issued to secure financing for projects undertaken pursuant to this act shall not be considered when determining the "city amount" required pursuant to subparagraph (ii) of paragraph a of subdivision 5-b of section 2576 of the education law; provided, however, that this provision shall not otherwise affect the determination of said "city amount" with respect to funding unrelated to projects undertaken pursuant to this act.

S 15. SED oversight of projects. Nothing in this act shall be construed to exempt a project undertaken pursuant to this section from the review and approval procedures applied to such projects by SED when undertaken by the city school district pursuant to the education law.

S 16. Financing of projects. (a) To finance project costs authorized and undertaken pursuant to this act, bonds, notes and other obligations in an aggregate principal amount not to exceed five hundred twenty-three million dollars (\$523,000,000), plus such additional amount of bonds, notes and other obligations necessary to provide for a debt service

1 reserve fund and to pay reasonable costs of issuance, are authorized to
2 be issued on behalf of the YJSC board pursuant to subdivisions (d) or
3 (e) of this section; provided, however, that bonds, notes and other
4 obligations issued to refund or advance refund previously issued bonds,
5 notes and other obligations under this act may exceed such aggregate
6 principal limitation; provided, further however, that any accretion of
7 principal of bonds, notes and other obligations issue pursuant to the
8 authority contained in this act that would constitute interest under the
9 Internal Revenue Code of 1986, as amended shall not count against such
10 aggregate principal limitation. Any bonds, notes or other obligations
11 issued by or on behalf of the YJSC board pursuant to this act, and the
12 income therefrom shall, to the maximum extent practicable, be exempt
13 from taxation.

14 (b) Notwithstanding the provisions of any other general, special, or
15 local law to the contrary, any bonds, notes or other obligations issued
16 to finance any project authorized and undertaken pursuant to this act,
17 including ancillary financing costs described in subdivision (a) of this
18 section, may be issued without regard to any debt limitation applicable
19 to the city or the city school district or any instrumentality thereof.

20 (c) Notwithstanding any general, special, or local law or ordinance to
21 the contrary, contracts entered into by the YJSC board for projects
22 undertaken pursuant to this act may be initially funded by the city from
23 any available monies or from the proceeds of city obligations issued in
24 anticipation of permanent financing from any source provided under the
25 act and the reimbursement to the city of any available monies so
26 advanced or the payment of obligations of the city issued in antic-
27 ipation of permanent financing (including permanent financing issued
28 through the city of Yonkers industrial development agency for such
29 purpose) is hereby specifically authorized.

30 (d) Notwithstanding any limitations contained in article 18-A of the
31 general municipal law, including subdivisions (4) and (12) of section
32 854 of the general municipal law, a project undertaken pursuant to this
33 section shall be a "project" within the definition and for the purposes
34 of subdivision (4) of section 854 of the general municipal law, which
35 may be financed, owned, or leased by the city of Yonkers industrial
36 development agency or any successor agency thereto and the city of Yonk-
37 ers industrial development agency is expressly authorized to refinance
38 obligations issued by the city in anticipation of financing authorized
39 by this act and/or reimburse the city for monies advanced by the city
40 for projects undertaken pursuant to this act. In connection with the
41 city of Yonkers industrial development agency financing of the costs of
42 any project undertaken pursuant to this act, the city and the city
43 school district may grant a leasehold or license interest in the land
44 and or building constituting such project to the city of Yonkers indus-
45 trial development agency and may enter into installment purchase
46 contracts to facilitate such financing.

47 (e) Projects undertaken pursuant to this act may be financed through a
48 special program agreement with the state of New York municipal bond bank
49 agency pursuant to the provisions of section 2435-a of the public
50 authorities law. It shall be the duty of the YJSC board to compare the
51 financing available for such projects through the city of Yonkers indus-
52 trial development agency with financing available through the state of
53 New York municipal bond bank agency, and to employ the financing mech-
54 anism that will result in the lowest cost to the taxpayers of the city
55 and the state calculated on a net interest cost basis. It shall be the
56 duty of the YJSC board and the city of Yonkers industrial development

1 agency to share with the state of New York municipal bond bank agency
2 any information in their possession that is required by the state of New
3 York municipal bond bank agency to determine the cost of financing such
4 projects and to compute the interest rate that would have been applica-
5 ble to a bond issuance by the state of New York municipal bond bank
6 agency in the event that financing is obtained through the city of Yonk-
7 ers industrial development agency or any alternative funding conduit.
8 Any failure to provide such information within thirty days of receipt of
9 a request from the state of New York municipal bond bank agency shall be
10 deemed to be a failure of the board to submit the data needed to compute
11 the apportionment of state building aid, and the commissioner shall
12 withhold such apportionment until such information is fully submitted.
13 Upon request of the YJSC board, the director of the state of New York
14 municipal bond bank agency shall submit such reports as the commissioner
15 may require on the financing of such projects and/or the interest rate
16 that would have been applicable to such projects if they had been
17 financed through such agency.

18 (f) Notwithstanding any other provision of any general, special, or
19 local law or provision of this act to the contrary, any project under-
20 taken pursuant to this act shall be operated and maintained by the board
21 of education of the city school district in the same manner as existing
22 school buildings owned by the city are operated and maintained by such
23 board.

24 S 17. Exemption from bond issuance charge. Any notes, bonds, or other
25 obligations issued to finance projects authorized pursuant to this act
26 shall be exempt from the collection of any bond issuance charge under
27 subdivision 2 of section 2976 of the public authorities law.

28 S 18. Security for bonds, notes and other obligations; remedies. In
29 the event that the city or city school district shall fail to make a
30 payment in such amount and by such date as is provided to be made by
31 such city or city school district under agreements entered into with the
32 city of Yonkers industrial development agency or any successor agency
33 thereto, such entity shall so certify to the state comptroller. Such
34 certificate shall be in such form as the state comptroller deems desira-
35 ble, but shall specify the amount by which such payment shall have been
36 deficient. The state comptroller, upon receipt of such certificate from
37 such entity, shall withhold such amount of state and/or school aid paya-
38 ble to such city or city school district to the extent of the amount so
39 stated in such certificate as not having been made, and shall immediat-
40 ly pay over to each financial institution acting as trustee on behalf of
41 bondholders of the Yonkers industrial development agency or any succes-
42 sor agency thereto, the amount so withheld by the state comptroller. Any
43 amount so paid to bondholders from such state and/or school aid shall
44 not obligate the state to make, nor entitle the city or the city school
45 district to receive, any additional amounts of state and/or school aid.
46 Nothing contained in this section shall be deemed to prevent the state
47 from modifying, reducing or eliminating any program or programs of state
48 and/or school aid; nor shall the state be obligated by the terms hereof
49 to maintain state and/or school aid at any particular level or amount.

50 S 19. Actions against the YJSC board. (a) Except in an action for
51 wrongful death, no action or proceeding shall be prosecuted or main-
52 tained against the YJSC board for personal injury or damage to real or
53 personal property alleged to have been sustained by reason of the negli-
54 gence or wrongful act of the YJSC board or of any director, officer,
55 agent or employee thereof, unless:

1 (1) it shall appear by and as an allegation in the complaint or moving
2 papers that a notice of claim shall have been made and served upon the
3 YJSC board, the city and the city school district, within the time limit
4 prescribed by and in compliance with section 50-e of the general municipi-
5 pal law;

6 (2) it shall appear by and as an allegation in the complaint or moving
7 papers that at least thirty days have elapsed since the service of such
8 notice and that adjustment or payment thereof has been neglected or
9 refused; and

10 (3) the action or proceeding shall be commenced within one year after
11 the happening of the event upon which the claim is based.

12 (b) An action against the YJSC board for wrongful death shall be
13 commenced in accordance with the notice of claim and time limitation
14 provisions of section 217-a of the civil practice law and rules.

15 (c) The venue of every action, suit or special proceeding brought
16 against the YJSC board shall be the supreme court in the county of West-
17 chester.

18 (d) Neither any director of the YJSC board nor any officer, employee,
19 or agent of the YJSC board, while acting within the scope of his or her
20 authority, shall be subject to any liability resulting from exercising
21 or carrying out any of the powers given in this act.

22 S 20. Progress reports. On June 30, 2017 and annually thereafter,
23 until completion of the projects in a total aggregate maximum amount of
24 \$523,000,000, plus such additional amount of bonds, notes and other
25 obligations necessary to provide for a debt service reserve fund and to
26 pay reasonable costs of issuance, authorized pursuant to this act, the
27 YJSC board shall issue a report to the governor, the comptroller, the
28 commissioner, the temporary president of the senate, the speaker of the
29 assembly, the city mayor, the city council and the city school district
30 on the progress and status of the projects undertaken by the YJSC board.
31 Provided further, that if any such entities request information on the
32 progress and status of the projects prior to such report, it shall be
33 provided to such entities by the YJSC board. In addition, on or before
34 June 30, 2019, the YJSC board shall issue a report to the city mayor,
35 the city school district, the governor, the commissioner, the comp-
36 troller, the temporary president of the senate, the minority leader of
37 the senate, the speaker of the assembly, the minority leader of the
38 assembly, the state board of regents, and the chairs and ranking minori-
39 ty members of the New York state senate and assembly committees on
40 education, the finance committee of the New York state senate, the ways
41 and means committee of the New York state assembly and the division of
42 the budget. Such report shall identify the fiscal and pedagogical
43 results of the projects undertaken pursuant to this act, along with
44 recommendations for its continuance to a phase two, amendments, or
45 discontinuance.

46 S 21. Clause (a) of subparagraph 5 of paragraph e of subdivision 6 of
47 section 3602 of the education law is amended by adding a new item (v) to
48 read as follows:

49 (V) NOTWITHSTANDING THE PROVISIONS OF ITEM (I) OF THIS CLAUSE, WHERE
50 SUCH CITY OR CITY SCHOOL DISTRICT HAS ENTERED INTO AN AGREEMENT WITH THE
51 STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY PURSUANT TO SUBDIVISION ONE
52 OF SECTION TWENTY FOUR HUNDRED THIRTY-FIVE-A OF THE PUBLIC AUTHORITIES
53 LAW AND SECTION SIXTEEN OF THE YONKERS CITY SCHOOL DISTRICT JOINT
54 SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, OR AN AGREEMENT WITH THE
55 CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY OR AN ALTERNATIVE FUNDING
56 CONDUIT ENTITY FOR PROJECTS AUTHORIZED PURSUANT TO THE YONKERS CITY

1 SCHOOL DISTRICT JOINT SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, TO
2 FINANCE DEBT RELATED TO SCHOOL REHABILITATION OR RECONSTRUCTION OF
3 SCHOOL BUILDINGS OR CONSTRUCTION OF NEW SCHOOL BUILDINGS THAT IS SUBJECT
4 TO SUBPARAGRAPH THREE OF THIS PARAGRAPH, THE LESSER OF: (A) THE NET
5 INTEREST COST, AS DEFINED BY THE COMMISSIONER, APPLICABLE TO THE OBLI-
6 GATIONS ISSUED BY THE STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY OR
7 THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY FOR SUCH PURPOSE; OR
8 (B) SUCH NET INTEREST COST, AS DEFINED BY THE COMMISSIONER, THAT WOULD
9 HAVE BEEN APPLICABLE TO BONDS ISSUED BY THE STATE OF NEW YORK MUNICIPAL
10 BOND BANK AGENCY IF THE PROJECT HAD BEEN AUTHORIZED TO BE FINANCED AND
11 HAD BEEN FINANCED THROUGH SUCH ENTITY, AS CERTIFIED TO THE COMMISSIONER
12 BY THE EXECUTIVE DIRECTOR OF THE STATE OF NEW YORK MUNICIPAL BOND BANK
13 AGENCY, SHALL BE THE INTEREST RATE ESTABLISHED FOR SUCH CITY APPLICABLE
14 TO SUCH DEBT.

15 S 22. The opening paragraph of subdivision 6 of section 3602 of the
16 education law, as amended by chapter 416 of the laws of 2007, is amended
17 to read as follows:

18 Apportionment for capital outlays and debt service for school building
19 purposes. Any apportionment to a school district pursuant to this subdivi-
20 sion shall be based upon base year approved expenditures for capital
21 outlays incurred prior to July first, two thousand one from its general
22 fund, capital fund or reserved funds and current year approved expendi-
23 tures for debt service, including debt service for refunding bond issues
24 eligible for an apportionment pursuant to paragraph g of this subdivi-
25 sion and lease or other annual payments to the New York city educational
26 construction fund created by article ten of this chapter or the city of
27 Yonkers educational construction fund created by article ten-B of this
28 chapter which have been pledged to secure the payment of bonds, notes or
29 other obligations issued by the fund to finance the construction, acqui-
30 sition, reconstruction, rehabilitation or improvement of the school
31 portion of combined occupancy structures, or for lease or other annual
32 payments to the New York state urban development corporation created by
33 chapter one hundred seventy-four of the laws of nineteen hundred sixty-
34 eight, pursuant to agreement between such school district and such
35 corporation relating to the construction, acquisition, reconstruction,
36 rehabilitation or improvement of any school building, or for annual
37 payments to the dormitory authority pursuant to any lease, sublease or
38 other agreement relating to the financing, refinancing, acquisition,
39 design, construction, reconstruction, rehabilitation, improvement,
40 furnishing and equipping of, or otherwise provide for school district
41 capital facilities or school district capital equipment made under the
42 provisions of section sixteen hundred eighty of the public authorities
43 law, or for annual payments pursuant to any lease, sublease or other
44 agreement relating to the financing, refinancing, acquisition, design,
45 construction, reconstruction, rehabilitation, improvement, furnishing
46 and equipping of, or otherwise providing for educational facilities of a
47 city school district under the provisions of section sixteen of chapter
48 six hundred five of the laws of two thousand, or for payments, pursuant
49 to any assignment authorized by section twenty-seven hundred ninety-
50 nine-tt of the public authorities law, of debt service in furtherance of
51 funding the five-year educational facilities capital plan of the city of
52 New York school district or related debt service costs and expenses as
53 set forth in such section, for annual payments pursuant to any lease,
54 sublease or other agreement relating to the financing, refinancing,
55 design, reconstruction, rehabilitation, improvement, furnishing and
56 equipping of, or otherwise providing for projects authorized pursuant to

1 the city of Syracuse and the board of education of the city school
2 district of the city of Syracuse cooperative school reconstruction act,
3 for annual payments pursuant to any lease, sublease or other agreement
4 relating to the financing, refinancing, design, reconstruction, rehabil-
5 itation, improvement, furnishing and equipping of, or otherwise provid-
6 ing for projects authorized pursuant to the city of Rochester and the
7 board of education of the city school district of the city of Rochester
8 school facilities modernization program act, FOR ANNUAL PAYMENTS PURSU-
9 ANT TO ANY LEASE, SUBLEASE OR OTHER AGREEMENT RELATING TO THE FINANCING,
10 REFINANCING, DESIGN, CONSTRUCTION, RECONSTRUCTION, REHABILITATION,
11 IMPROVEMENT, FURNISHING AND EQUIPPING OF, OR OTHERWISE PROVIDING FOR
12 PROJECTS AUTHORIZED PURSUANT TO THE YONKERS CITY SCHOOL DISTRICT FACILI-
13 TIES MODERNIZATION PROGRAM ACT, or for lease, lease-purchase or other
14 annual payments to another school district or person, partnership or
15 corporation pursuant to an agreement made under the provisions of
16 section four hundred three-b, subdivision eight of section twenty-five
17 hundred three, or subdivision six of section twenty-five hundred fifty-
18 four of this chapter, provided that the apportionment for such lease or
19 other annual payments under the provisions of section four hundred
20 three-b, subdivision eight of section twenty-five hundred three, or
21 subdivision six of section twenty-five hundred fifty-four of this chap-
22 ter, other than payments under a lease-purchase agreement or an equiv-
23 alent agreement, shall be based upon approved expenditures in the
24 current year. Approved expenditures for capital outlays from a school
25 district's general fund, capital fund or reserved funds that are
26 incurred on or after July first, two thousand two, and are not aidable
27 pursuant to subdivision six-f of this section, shall be aidable as debt
28 service under an assumed amortization established pursuant to paragraphs
29 e and j of this subdivision. In any such case approved expenditures
30 shall be only for new construction, reconstruction, purchase of existing
31 structures, for site purchase and improvement, for new garages, for
32 original equipment, furnishings, machinery, or apparatus, and for
33 professional fees and other costs incidental to such construction or
34 reconstruction, or purchase of existing structures. In the case of a
35 lease or lease-purchase agreement entered pursuant to section four
36 hundred three-b, subdivision eight of section twenty-five hundred three
37 or subdivision six of section twenty-five hundred fifty-four of this
38 chapter, approved expenditures for the lease or other annual payments
39 shall not include the costs of heat, electricity, water or other utili-
40 ties or the costs of operation or maintenance of the leased facility. An
41 apportionment shall be available pursuant to this subdivision for
42 construction, reconstruction, rehabilitation or improvement in a build-
43 ing, or portion thereof, being leased by a school district only if the
44 lease is for a term of at least ten years subsequent to the date of the
45 general construction contract for such construction, reconstruction,
46 rehabilitation or improvement. Each school district shall prepare a five
47 year capital facilities plan, pursuant to regulations developed by the
48 commissioner for such purpose, provided that in the case of a city
49 school district in a city having a population of one million inhabitants
50 or more, such facilities plan shall comply with the provisions of
51 section twenty-five hundred ninety-p of this chapter and this subdivi-
52 sion. Such plan shall include, but not be limited to, a building inven-
53 tory, and estimated expense of facility needs, for new construction,
54 additions, alterations, reconstruction, major repairs, energy consump-
55 tion and maintenance by school building, as appropriate. Such five year
56 plan shall include a priority ranking of projects and shall be amended

1 if necessary to reflect subsequent on-site evaluations of facilities
2 conducted by state supported contractors.

3 S 23. Subdivision 12 of section 2432 of the public authorities law, as
4 amended by section 21 of part A4 of chapter 58 of the laws of 2006, is
5 amended to read as follows:

6 (12) "Special Program Municipality". Any city having a population of
7 less than one million but more than three hundred fifty thousand; and
8 any city having a population of less than two hundred fifty thousand but
9 more than two hundred thousand, determined according to the federal
10 decennial census of nineteen hundred eighty. Such term shall also
11 include the city of Syracuse solely for the purpose of the city of Syra-
12 cuse and the board of education of the city school district of the city
13 of Syracuse cooperative school reconstruction act AND THE CITY OF YONK-
14 ERS SOLELY FOR THE PURPOSE OF THE YONKERS CITY SCHOOL DISTRICT JOINT
15 SCHOOLS CONSTRUCTION AND MODERNIZATION ACT.

16 S 24. Subdivision 1 of section 2435-a of the public authorities law,
17 as amended by section 22 of part A4 of chapter 58 of the laws of 2006,
18 is amended to read as follows:

19 (1) In order to fulfill the purposes of this title and to provide a
20 means by which the special program municipalities may (a) receive moneys
21 to refund certain property taxes determined to be in excess of state
22 constitutional tax limits or to reimburse the special program munici-
23 palities for the prior refunding of such taxes or (b) receive moneys to
24 be applied to the cost of settling litigation involving the city school
25 districts of special program municipalities and the teachers' unions in
26 such special program municipalities, or (c) receive moneys for the
27 financing of public improvements to be applied to the cost of the recon-
28 struction, rehabilitation or renovation of an educational facility
29 pursuant to the provisions of subdivision (b) of section sixteen of
30 chapter six hundred five of the laws of two thousand, or (d) receive
31 moneys for the financing of public improvements to be applied to the
32 cost of a project for design, reconstruction or rehabilitation of a
33 school building pursuant to the provisions of section fourteen of the
34 city of Syracuse and the board of education of the city school district
35 of the city of Syracuse cooperative school reconstruction act, OR (E)
36 RECEIVE MONEYS FOR THE FINANCING OF PUBLIC IMPROVEMENTS TO BE APPLIED TO
37 THE COST OF A PROJECT FOR DESIGN, RECONSTRUCTION OR REHABILITATION OF A
38 SCHOOL BUILDING, OR THE CONSTRUCTION OF A NEW SCHOOL BUILDING, PURSUANT
39 TO THE PROVISIONS OF SECTION TWELVE OF THE YONKERS CITY SCHOOL DISTRICT
40 JOINT SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, and notwithstanding
41 any general or special law to the contrary, the agency and each special
42 program municipality are hereby authorized to enter into one or more
43 special program agreements, which special program agreements shall,
44 consistent with the provisions of this title, contain such terms,
45 provisions and conditions as, in the judgment of the agency, shall be
46 necessary or desirable. Each special program agreement shall specify the
47 amount to be made available to the respective special program munici-
48 pality from the proceeds of an issue of special program bonds and shall
49 require such special program municipality, subject to appropriation by
50 the appropriate legislative body of such special program municipality,
51 to make payments to the agency in the amounts and at the times deter-
52 mined by the agency to be necessary to provide for payment of such issue
53 of special program bonds and such other fees, charges, costs and other
54 amounts as the agency shall in its judgment determine to be necessary or
55 desirable.

1 S 25. Subdivision 4 of section 2436 of the public authorities law, as
2 amended by section 23 of part A4 of chapter 58 of the laws of 2006, is
3 amended to read as follows:

4 4. In the event that a special program municipality shall fail to make
5 a payment in such amount (as calculated in accordance with the special
6 program agreement to which such municipality shall be a party) and by
7 such date as is provided to be made by such municipality in its special
8 program agreement, the chairman of the agency shall so certify to the
9 comptroller. Such certificate shall be in such form as the agency deems
10 desirable, but shall specify the amount by which such payment shall have
11 been deficient. The comptroller, upon receipt of such certificate from
12 the agency, shall withhold from such special program municipality any
13 state aid payable to such municipality to the extent of the amount so
14 stated in such certificate as not having been made, and shall immediate-
15 ly pay over to the agency the amount so withheld; provided, however,
16 that in the case of a special program agreement entered into for the
17 purpose described in paragraph (b) or (c) or (d) OR (E) of subdivision
18 one of section twenty-four hundred thirty-five-a of this title, the
19 comptroller shall be authorized to withhold from the special program
20 municipality such school aid as is payable to the city school district
21 of the special program municipality, to the extent of the amount so
22 stated in such certificate as not having been made, and shall immediate-
23 ly pay over to the agency the amount so withheld. Any amount so paid to
24 the agency from such state and/or school aid shall not obligate the
25 state to make, nor entitle the special program municipality to receive,
26 any additional amounts of state and/or school aid. Nothing contained
27 therein shall be deemed to prevent the state from modifying, reducing or
28 eliminating any program or programs of state and/or school aid; nor
29 shall the state be obligated by the terms hereof to maintain state
30 and/or school aid at any particular level or amount.

31 S 26. Subdivision 1 of section 2438 of the public authorities law, as
32 amended by section 7 of part N of chapter 56 of the laws of 2010, is
33 amended to read as follows:

34 (1) The agency shall not issue bonds and notes in an aggregate princi-
35 pal amount at any one time outstanding exceeding one billion dollars,
36 excluding tax lien collateralized securities, special school purpose
37 bonds, special school deficit program bonds, special program bonds
38 issued to finance the reconstruction, rehabilitation or renovation of an
39 educational facility pursuant to the provisions of subdivision (b) of
40 section sixteen of chapter six hundred five of the laws of two thousand,
41 special program bonds issued to finance the cost of a project for
42 design, reconstruction or rehabilitation of a school building pursuant
43 to the provisions of section fourteen of the city of Syracuse and the
44 board of education of the city school district of the city of Syracuse
45 cooperative school reconstruction act, SPECIAL PROGRAM BONDS ISSUED TO
46 FINANCE THE COST OF A PROJECT FOR DESIGN, CONSTRUCTION, RECONSTRUCTION
47 OR REHABILITATION OF A SCHOOL BUILDING PURSUANT TO THE PROVISIONS OF
48 SECTION THIRTEEN OF THE YONKERS CITY SCHOOL DISTRICT JOINT SCHOOLS
49 CONSTRUCTION AND MODERNIZATION ACT, recovery act bonds, public safety
50 communications bonds and bonds and notes issued to refund outstanding
51 bonds and notes.

52 S 27. Effect of inconsistent provisions. Insofar as the provisions of
53 this act are inconsistent with the provisions of any other law, general,
54 special, or local, or of the city charter or an ordinance or resolution
55 of the city council or the board of education of the city school
56 district, or any rule or regulation, the provisions of this act shall be

1 controlling, provided that nothing contained in this act shall be held
2 to supplement or otherwise expand the powers or duties of the city or
3 the city school district except as specified in this act.

4 S 28. Severability; construction. The provisions of this act shall be
5 severable, and if the application of any clause, sentence, paragraph,
6 subdivision, section or part of this act to any person or circumstance
7 shall be adjudged by any court of competent jurisdiction to be invalid,
8 such judgment shall not necessarily affect, impair or invalidate the
9 application of any such clause, sentence, paragraph, subdivision,
10 section, part of this act or remainder thereof, as the case may be, to
11 any other person or circumstance, but shall be confined in its operation
12 to the clause, sentence, paragraph, subdivision, section or part thereof
13 directly involved in the controversy in which such judgment shall have
14 been rendered.

15 S 29. This act shall take effect immediately.