S T A T E O F N E W Y O R K

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I N A S S E M B L Y

April 28, 2016

Introduced by M. of A. MAYER, PRETLOW -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Short title. This act shall be known and may be cited as "the Yonkers city school district joint schools construction and modernization act".

S 2. Legislative findings and declaration of need. The legislature finds that Yonkers schools have a growing population yet the average age of the school buildings in Yonkers is seventy-five years with the oldest building at one hundred nineteen years old; nine are over ninety-seven years old and most are past their useful life and in need of extensive refurbishment. The age of buildings in Yonkers is significantly over the sixty-five years average age of schools in New York State. Even by maximizing the debt borrowing under existing constitutional and statutory limits Yonkers city is unable to finance modernization of its facilities at a reasonable rate as needs are far greater than the availability of capital. The city school district's facilities are landlocked in highly dense urban neighborhoods lacking proper school bus loops, athletic facilities and other essential school amenities required for the safe and proper administration of an educational institution, and while Yonkers city has invested significant capital, deterioration of building stock outpaces the district's ability to repair it.

The legislature further finds that such deterioration of the schools and inability to expand school sites to provide even a modicum of customary facilities and amenities to students is a serious impediment to learning and teaching. If the quality of education in the city is to be improved, existing schools must be rehabilitated and reconstructed 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.

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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; and (4) managing such projects.

(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 any member. For purposes of this section, an independent member is one who: (i) is not, and in the past two years has not been employed by the

board, the city or the school district; (ii) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the board, the city or the school district or received any other form of financial assistance valued at more than fifteen thousand dollars from the board, the city or the school district; (iii) is not a relative of an executive officer or employee in an executive position with the city of Yonkers or the Yonkers city school district or a member of the Yonkers city council or the Yonkers board of education; and (iv) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the board, the city or the school district.

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

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

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

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

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

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

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

(4) to develop and maintain the joint schools construction and modernization plan for so long as the projects authorized pursuant to this act, are yet to be undertaken; and

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

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

(2) The conflict of interest policy shall include, at a minimum, the following provisions: (i) a definition of the circumstances that consti-

tute a conflict of interest; (ii) procedures for disclosing a conflict of interest to the board; (iii) a requirement that the person with the conflict of interest not be present at or participate in board deliberation or vote on the matter giving rise to such conflict, provided that nothing in this subdivision shall prohibit the board from requesting that the person with the conflict of interest present information as background or answer questions at a board meeting prior to the commencement of deliberations or voting relating thereto; (iv) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict; (v) a requirement that the existence and resolution of the conflict be documented in the board's records, including in the minutes of any meeting at which the conflict was discussed or voted upon; and (vi) procedures for disclosing, addressing, and documenting related party transactions in accordance with subdivision (g) of this section.

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

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

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

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

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

(3) SED may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this section or was otherwise not reasonable or in the best interests of the board at the time the transaction was approved, or to seek restitution, and the removal of members or officers, or seek to require any person or entity to: (i) account for any profits made from such transaction, and pay them to the board; (ii) pay the board the

value of the use of any of its property or other assets used in such transaction; (iii) return or replace any property or other assets lost to the board as a result of such transaction, together with any income or appreciation lost to the board by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the board together with interest at the legal rate; and (iv) pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.

(4) No related party may participate in deliberations or voting relating to a related party transaction in which he or she has an interest; provided that nothing in this section shall prohibit the board from requesting that a related party present information as background or answer questions concerning a related party transaction at a board meeting prior to the commencement of deliberations or voting relating thereto.

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

S 5. Joint schools construction and modernization plan; project costs. (a) The superintendent, in consultation with the Yonkers board of education, shall submit to the YJSC board a comprehensive draft plan recommending and outlining the projects for phase one it proposes to be undertaken pursuant to this act. The YJSC board shall consider the plan in developing a comprehensive joint schools construction and modernization plan recommending and outlining the projects it proposes to be potentially undertaken pursuant to this act. The comprehensive joint schools construction and modernization plan shall include:

(1) an estimate of total costs to be financed, 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 reserve fund and to pay reasonable costs of issuance, a proposed financing plan, a proposed method of financing, terms and conditions of the financing, and estimated financing costs (calculated on a net interest cost basis). The plan shall address what specific options would be used to ensure that sufficient resources exist to cover the local share of any such project cost on an annual basis;

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

(3) a district wide technology plan and a description of related incidental expenses;

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

(5) estimates on the design, construction, reconstruction and rehabilitation costs by project, any administrative costs for potential projects, and an outline of the timeframe expected for completion of each potential project;

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

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

(8) a diversity plan, in compliance with section eleven of this act, to develop diversity goals, including appropriate community input and public discussion, and develop strategies that would create and coordi-

nate any efforts to ensure a more diverse workforce for the projects. The MWBE/DBE utilization master plan should address accountability for attainment of the diversity goals, what forms of monitoring would be used, and how such information would be publicly communicated. Prior to the development of the comprehensive joint schools construction and modernization plan, the YJSC board and district shall hold not less than one public hearing per school site to ensure sufficient public input and allow for significant public discussion on school building needs in such city, with at least one such hearing to be held in each neighborhood potentially impacted by a proposed project and in each neighborhood from which the majority of students impacted reside. The hearing must be widely publicized, including, but not limited to, social media distribution by the board of education and the YJSC board. The Yonkers joint schools construction board shall submit the components of such plan described in paragraph one of this subdivision to the comptroller, along with any other information requested by the comptroller, for his or her review and approval.

(b) The aggregate amount of project costs authorized and undertaken pursuant to this act as phase one shall not 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 reserve fund and to pay reasonable costs of issuance, unless otherwise authorized by law. Due to the urgent need to address increased enrollment, phase one shall consist of construction of up to three new schools along with critical infrastructure system replacements at the existing schools to maintain safe operation of the existing schools until future renovations are made as part of the joint schools construction and modernization plan. Such infrastructure system replacement will be coordinated so that the work remains in place and is incorporated into the future renovation of the schools.

S 6. Project eligibility. To be eligible for selection as a project to be undertaken pursuant to this section, such project shall be included by the city school district in its joint schools construction and modernization plan as a special section of the district's five-year capital facilities plan that is required pursuant to subdivision 6 of section 3602 of the education law and the regulations of the commissioner. The facilities modernization plan and any portions of such plan relating to such projects, including any amendments thereto, shall have the contents required in the regulations of the commissioner and shall be submitted to the commissioner for approval. Notwithstanding anything to the contrary in this section, the city school district may elect to finance a project under its ongoing capital improvement plan pursuant to the powers and authority granted to all school districts in the state or as part of the joint schools construction and modernization plans pursuant to the special powers and authority granted to the city school district and the YJSC board by this act. Commencing on the effective date of this section, the city school district shall create and maintain a written schedule listing each project undertaken, certified to annually by the city's commissioner of finance, which schedule shall identify each project and its cost and formally designate such project as being undertaken pursuant to either the joint schools construction and modernization plan or the capital improvement plan.

S 7. Determination of projects. (a) Upon approval by the commissioner of the YJSC board's joint schools construction and modernization plan, the YJSC board may select projects to be undertaken pursuant to this section, as provided for in such approved joint schools construction and

modernization plan. After the board has selected a new project and plans and specifications for such project have been prepared and approved by the board, which are consistent with the approved comprehensive plan, the board shall deliver such plans and specifications to the commissioner for his or her approval. After approval by the commissioner, the plans and specifications shall be returned to the board. All such specifications shall detail the number of students the completed project is intended to serve, the site description, the types of subjects to be taught, the types of activities for school, recreational, social, safety, or other purposes intended to be incorporated in the school building or on its site and such other information as the board and the commissioner shall deem necessary or advisable.

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

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

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

(2) Notwithstanding any other provision of law to the contrary, the YJSC board shall submit estimated project costs for the projects authorized pursuant to paragraph five of subdivision (a) of section five of this act after the completion of schematic plans and specifications for review by the commissioner. If the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of fifty-two million dollars ($52,000,000) or ten percent of the approved costs, and the city school district has not otherwise demonstrated to the satisfaction of the SED the availability of additional local shares for such excess costs, then the YJSC board shall not proceed with the preparation of final plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed the above cost limits.

(3) Notwithstanding any other provision of law to the contrary, the YJSC board shall submit estimated project costs for the projects authorized pursuant to paragraph five of subdivision (a) of section five of this act after the completion of fifty percent of the final plans and specifications for review by the commissioner. If the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of fifty-two million dollars ($52,000,000) or ten percent of the approved costs, and the city school district has not otherwise demonstrated to the satisfaction of the SED the availability of addi-

tional local share for such excess costs, then the YJSC board shall not proceed with the completion of the remaining fifty percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed the above cost limits.

(b) A contract entered into between the board and any person pursuant to this section may be awarded either pursuant to public bidding in compliance with section 103 of the general municipal law or, in order to foster major investment in existing school buildings or new school buildings and to deliver quality products and services that are beneficial to the city school district and the public it serves, on the basis of factors other than cost alone, including, but not limited to, adherence to facility design, quality and durability or materials, energy efficiency, incorporating systems and approaches which provide maximum facility value using the best current development, and construction techniques available, and maximization of state building aid, and such a contract may be entered into pursuant to the following provisions of this section for the award of a contract based on evaluation of proposals submitted in response to a request for proposals prepared by or for the board; provided, however, that contracts or agreements involving construction which are not awarded in compliance with section 103 of the general municipal law must include a project labor agreement in accordance with paragraph (f) of this subdivision. If a project labor agreement is not performed on the project, all construction contracts must be awarded pursuant to sections 101 and 103 of the general municipal law.

(c) Notwithstanding any inconsistent provision of this act, all work performed on any project authorized by this act where all or any portion thereof involves a lease, grant, bond, covenant, debt agreement, permit, contract or agreement entered into by the YJSC board for construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration, or improvement shall be deemed public work and shall be subject to and performed in accordance with the provisions of article 8 of the labor law to the same extent and in the same manner as a contract of the state, and compliance with all the provisions of article 8 of the labor law shall be required of any lessee, sublessee, contractor or subcontractor on the project including the enforcement of prevailing wage requirements by the fiscal officer as defined in paragraph e of subdivision 5 of section 220 of the labor law to the same extent as a contract of the state.

(d) Every contract entered into by the YJSC board for a project shall contain a provision that the design of such project shall be subject to the review and approval of the Yonkers board of education and that the design and construction standards of such project shall be subject to the review and approval of the commissioner. In addition, every such contract shall contain a provision that the contractor shall furnish a labor and material bond guaranteeing prompt payment of moneys that are due to all persons furnishing labor and materials pursuant to the requirements of any contracts for a project undertaken pursuant to this section and a performance bond for the faithful performance of the project, which shall conform to the provisions of section 103-f of the general municipal law, and that a copy of such performance and payment bonds shall be kept by the YJSC board and shall be open to public inspection.

(e) (1) The YJSC board may require a contractor awarded a contract, subcontract, lease, grant, bond, covenant or other agreement for a

project to enter into a project labor agreement during and for the work involved with such project when such requirement is part of the request for proposals for the project and when it has been determined that the record supporting the decision to enter into such an agreement establishes that it is justified by the interests underlying the competitive bidding laws, and (2) any contract, subcontract, lease, grant, bond, covenant or other agreement for projects undertaken pursuant to this act shall not be subject to sections 101 or 103 of the general municipal law when the YJSC board has chosen to require a project labor agreement. This exemption shall only apply to the projects undertaken pursuant to this act and shall not apply to projects undertaken by any other school district or municipality unless otherwise specifically authorized.

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

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

(h) In the event the YJSC board shall cease to exist for any reason whatsoever during the life of such contracts as it has entered into pursuant to this section, such contracts shall remain in full force and effect and the city and city school district shall stand in the place and stead of the board with respect to all rights and obligations under such contracts and with respect to all powers granted to the board by 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 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 verifica-

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

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

(c) Notwithstanding any general, special, or local law or ordinance to the contrary, contracts entered into by the YJSC board for projects undertaken pursuant to this act may be initially funded by the city from any available monies or from the proceeds of city obligations issued in anticipation of permanent financing from any source provided under the act and the reimbursement to the city of any available monies so advanced or the payment of obligations of the city issued in antic-

ipation of permanent financing (including permanent financing issued through the city of Yonkers industrial development agency for such purpose) is hereby specifically authorized.

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

(e) Projects undertaken pursuant to this act may be financed through a special program agreement with the state of New York municipal bond bank agency pursuant to the provisions of section 2435-a of the public authorities law. It shall be the duty of the YJSC board to compare the financing available for such projects through the city of Yonkers industrial development agency with financing available through the state of New York municipal bond bank agency, and to employ the financing mechanism that will result in the lowest cost to the taxpayers of the city and the state calculated on a net interest cost basis. It shall be the duty of the YJSC board and the city of Yonkers industrial development agency to share with the state of New York municipal bond bank agency any information in their possession that is required by the state of New York municipal bond bank agency to determine the cost of financing such projects and to compute the interest rate that would have been applicable to a bond issuance by the state of New York municipal bond bank agency in the event that financing is obtained through the city of Yonkers industrial development agency. Any failure to provide such information within thirty days of receipt of a request from the state of New York municipal bond bank agency shall be deemed to be a failure of the board to submit the data needed to compute the apportionment of state building aid, and the commissioner shall withhold such apportionment until such information is fully submitted. Upon request of the YJSC board, the director of the state of New York municipal bond bank agency shall submit such reports as the commissioner may require on the financing of such projects and/or the interest rate that would have been applicable to such projects if they had been financed through such agency.

(f) Notwithstanding any other provision of any general, special, or local law or provision of this act to the contrary, any project undertaken pursuant to this act 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.

S 17. Security for bonds, notes and other obligations; remedies. In the event that the city or city school district shall fail to make a payment in such amount and by such date as is provided to be made by

such city or city school district under agreements entered into with the city of Yonkers industrial development agency or any successor agency thereto, such entity shall so certify to the state comptroller. Such certificate shall be in such form as the state comptroller deems desirable, but shall specify the amount by which such payment shall have been deficient. The state comptroller, upon receipt of such certificate from such entity, shall withhold such amount of state and/or school aid payable to such city or city school district to the extent of the amount so stated in such certificate as not having been made, and shall immediately pay over to each financial institution acting as trustee on behalf of bondholders of the Yonkers industrial development agency or any successor agency thereto, the amount so withheld by the state comptroller. Any amount so paid to bondholders from such state and/or school aid shall not obligate the state to make, nor entitle the city or the city school district to receive, any additional amounts of state and/or school aid. Nothing contained in this section shall be deemed to prevent the state from modifying, reducing or eliminating any program or programs of state and/or school aid; nor shall the state be obligated by the terms hereof to maintain state and/or school aid at any particular level or amount.

S 18. Progress reports. On June 30, 2017 and annually thereafter, until completion of the projects in a total aggregate maximum amount of $523,000,000, plus such additional amount of bonds, notes and other obligations necessary to provide for a debt service reserve fund and to pay reasonable costs of issuance, authorized pursuant to this act, the YJSC board shall issue a report to the governor, the comptroller, the commissioner, the temporary president of the senate, the speaker of the assembly, the city mayor, the city council and the city school district on the progress and status of the projects undertaken by the YJSC board. Provided further, that if any such entities request information on the progress and status of the projects prior to such report, it shall be provided to such entities by the YJSC board. In addition, on or before June 30, 2019, the YJSC board shall issue a report to the city mayor, the city school district, the governor, the commissioner, the comptroller, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the state board of regents, and the chairs and ranking minority members of the New York state senate and assembly committees on education, the finance committee of the New York state senate, the ways and means committee of the New York state assembly and the division of the budget. Such report shall identify the fiscal and pedagogical results of the projects undertaken pursuant to this act, along with recommendations for its continuance to a phase two, amendments, or discontinuance.

S 19. Clause (a) of subparagraph 5 of paragraph e of subdivision 6 of section 3602 of the education law is amended by adding a new item (v) to read as follows:

(V) NOTWITHSTANDING THE PROVISIONS OF ITEM (I) OF THIS CLAUSE, WHERE SUCH CITY OR CITY SCHOOL DISTRICT HAS ENTERED INTO AN AGREEMENT WITH THE STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY FOUR HUNDRED THIRTY-FIVE-A OF THE PUBLIC AUTHORITIES LAW AND SECTION SIXTEEN OF THE YONKERS CITY SCHOOL DISTRICT JOINT SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, OR AN AGREEMENT WITH THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY FOR PROJECTS AUTHORIZED PURSUANT TO THE YONKERS CITY SCHOOL DISTRICT JOINT SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, TO FINANCE DEBT RELATED TO SCHOOL REHABILITATION OR RECONSTRUCTION OF SCHOOL BUILDINGS OR CONSTRUCTION OF NEW SCHOOL

BUILDINGS THAT IS SUBJECT TO SUBPARAGRAPH THREE OF THIS PARAGRAPH, THE LESSER OF: (A) THE NET INTEREST COST, AS DEFINED BY THE COMMISSIONER, APPLICABLE TO THE OBLIGATIONS ISSUED BY THE STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY OR THE CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY FOR SUCH PURPOSE; OR (B) SUCH NET INTEREST COST, AS DEFINED BY THE COMMISSIONER, THAT WOULD HAVE BEEN APPLICABLE TO BONDS ISSUED BY THE STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY IF THE PROJECT HAD BEEN AUTHORIZED TO BE FINANCED AND HAD BEEN FINANCED THROUGH SUCH ENTITY, AS CERTIFIED TO THE COMMISSIONER BY THE EXECUTIVE DIRECTOR OF THE STATE OF NEW YORK MUNICIPAL BOND BANK AGENCY, SHALL BE THE INTEREST RATE ESTABLISHED FOR SUCH CITY APPLICABLE TO SUCH DEBT.

S 20. The opening paragraph of subdivision 6 of section 3602 of the education law, as amended by chapter 416 of the laws of 2007, is amended to read as follows:

Apportionment for capital outlays and debt service for school building purposes. Any apportionment to a school district pursuant to this subdivision shall be based upon base year approved expenditures for capital outlays incurred prior to July first, two thousand one from its general fund, capital fund or reserved funds and current year approved expenditures for debt service, including debt service for refunding bond issues eligible for an apportionment pursuant to paragraph g of this subdivision and lease or other annual payments to the New York city educational construction fund created by article ten of this chapter or the city of Yonkers educational construction fund created by article ten-B of this chapter which have been pledged to secure the payment of bonds, notes or other obligations issued by the fund to finance the construction, acquisition, reconstruction, rehabilitation or improvement of the school portion of combined occupancy structures, or for lease or other annual payments to the New York state urban development corporation created by chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight, pursuant to agreement between such school district and such corporation relating to the construction, acquisition, reconstruction, rehabilitation or improvement of any school building, or for annual payments to the dormitory authority pursuant to any lease, sublease or other agreement relating to the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise provide for school district capital facilities or school district capital equipment made under the provisions of section sixteen hundred eighty of the public authorities law, or for annual payments pursuant to any lease, sublease or other agreement relating to the financing, refinancing, acquisition, design, construction, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for educational facilities of a city school district under the provisions of section sixteen of chapter six hundred five of the laws of two thousand, or for payments, pursuant to any assignment authorized by section twenty-seven hundred ninety-nine-tt of the public authorities law, of debt service in furtherance of funding the five-year educational facilities capital plan of the city of New York school district or related debt service costs and expenses as set forth in such section, for annual payments pursuant to any lease, sublease or other agreement relating to the financing, refinancing, design, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for projects authorized pursuant to the city of Syracuse and the board of education of the city school district of the city of Syracuse cooperative school reconstruction act, for annual payments pursuant to any lease, sublease or other agreement

relating to the financing, refinancing, design, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for projects authorized pursuant to the city of Rochester and the board of education of the city school district of the city of Rochester school facilities modernization program act, FOR ANNUAL PAYMENTS PURSUANT TO ANY LEASE, SUBLEASE OR OTHER AGREEMENT RELATING TO THE FINANCING, REFINANCING, DESIGN, CONSTRUCTION, RECONSTRUCTION, REHABILITATION, IMPROVEMENT, FURNISHING AND EQUIPPING OF, OR OTHERWISE PROVIDING FOR PROJECTS AUTHORIZED PURSUANT TO THE YONKERS CITY SCHOOL DISTRICT FACILITIES MODERNIZATION PROGRAM ACT, or for lease, lease-purchase or other annual payments to another school district or person, partnership or corporation pursuant to an agreement made under the provisions of section four hundred three-b, subdivision eight of section twenty-five hundred three, or subdivision six of section twenty-five hundred fifty-four of this chapter, provided that the apportionment for such lease or other annual payments under the provisions of section four hundred three-b, subdivision eight of section twenty-five hundred three, or subdivision six of section twenty-five hundred fifty-four of this chapter, other than payments under a lease-purchase agreement or an equivalent agreement, shall be based upon approved expenditures in the current year. Approved expenditures for capital outlays from a school district's general fund, capital fund or reserved funds that are incurred on or after July first, two thousand two, and are not aidable pursuant to subdivision six-f of this section, shall be aidable as debt service under an assumed amortization established pursuant to paragraphs e and j of this subdivision. In any such case approved expenditures shall be only for new construction, reconstruction, purchase of existing structures, for site purchase and improvement, for new garages, for original equipment, furnishings, machinery, or apparatus, and for professional fees and other costs incidental to such construction or reconstruction, or purchase of existing structures. In the case of a lease or lease-purchase agreement entered pursuant to section four hundred three-b, subdivision eight of section twenty-five hundred three or subdivision six of section twenty-five hundred fifty-four of this chapter, approved expenditures for the lease or other annual payments shall not include the costs of heat, electricity, water or other utilities or the costs of operation or maintenance of the leased facility. An apportionment shall be available pursuant to this subdivision for construction, reconstruction, rehabilitation or improvement in a building, or portion thereof, being leased by a school district only if the lease is for a term of at least ten years subsequent to the date of the general construction contract for such construction, reconstruction, rehabilitation or improvement. Each school district shall prepare a five year capital facilities plan, pursuant to regulations developed by the commissioner for such purpose, provided that in the case of a city school district in a city having a population of one million inhabitants or more, such facilities plan shall comply with the provisions of section twenty-five hundred ninety-p of this chapter and this subdivision. Such plan shall include, but not be limited to, a building inventory, and estimated expense of facility needs, for new construction, additions, alterations, reconstruction, major repairs, energy consumption and maintenance by school building, as appropriate. Such five year plan shall include a priority ranking of projects and shall be amended if necessary to reflect subsequent on-site evaluations of facilities conducted by state supported contractors.

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

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

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

(1) In order to fulfill the purposes of this title and to provide a means by which the special program municipalities may (a) receive moneys to refund certain property taxes determined to be in excess of state constitutional tax limits or to reimburse the special program municipalities for the prior refunding of such taxes or (b) receive moneys to be applied to the cost of settling litigation involving the city school districts of special program municipalities and the teachers' unions in such special program municipalities, or (c) receive moneys for the financing of public improvements to be applied to the cost of the reconstruction, rehabilitation or renovation of an educational facility pursuant to the provisions of subdivision (b) of section sixteen of chapter six hundred five of the laws of two thousand, or (d) receive moneys for the financing of public improvements to be applied to the cost of a project for design, reconstruction or rehabilitation of a school building pursuant to the provisions of section fourteen of the city of Syracuse and the board of education of the city school district of the city of Syracuse cooperative school reconstruction act, OR (E) RECEIVE MONEYS FOR THE FINANCING OF PUBLIC IMPROVEMENTS TO BE APPLIED TO THE COST OF A PROJECT FOR DESIGN, RECONSTRUCTION OR REHABILITATION OF A SCHOOL BUILDING, OR THE CONSTRUCTION OF A NEW SCHOOL BUILDING, PURSUANT TO THE PROVISIONS OF SECTION TWELVE OF THE YONKERS CITY SCHOOL DISTRICT JOINT SCHOOLS CONSTRUCTION AND MODERNIZATION ACT, and notwithstanding any general or special law to the contrary, the agency and each special program municipality are hereby authorized to enter into one or more special program agreements, which special program agreements shall, consistent with the provisions of this title, contain such terms, provisions and conditions as, in the judgment of the agency, shall be necessary or desirable. Each special program agreement shall specify the amount to be made available to the respective special program municipality from the proceeds of an issue of special program bonds and shall require such special program municipality, subject to appropriation by the appropriate legislative body of such special program municipality, to make payments to the agency in the amounts and at the times determined by the agency to be necessary to provide for payment of such issue of special program bonds and such other fees, charges, costs and other amounts as the agency shall in its judgment determine to be necessary or desirable.

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

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

S 24. Subdivision 1 of section 2438 of the public authorities law, as amended by section 7 of part N of chapter 56 of the laws of 2010, is amended to read as follows:

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

S 25. Effect of inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, special, or local, or of the city charter or an ordinance or resolution of the city council or the board of education of the city school district, or any rule or regulation, the provisions of this act shall be controlling, provided that nothing contained in this act shall be held to supplement or otherwise expand the powers or duties of the city or the city school district except as specified in this act.

S 26. Severability; construction. The provisions of this act shall be severable, and if the application of any clause, sentence, paragraph, subdivision, section or part of this act to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not necessarily affect, impair or invalidate the application of any such clause, sentence, paragraph, subdivision, section, part of this act or remainder thereof, as the case may be, to any other person or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 27. This act shall take effect immediately.