

12/12/91 DIRECT FINANCING OF SCHOOL CONSTRUCTION DRAFT

Background

The New York City school system was hit with a debilitating capital appropriation reduction of \$750 million during the 1992 City fiscal year. The \$750 million capital cut was equivalent to lopping off a year's worth of projects from the existing \$4.3 billion five year plan. The existing plan, adopted in 1988, was barely adequate enough to meet the most urgent capital needs of a school system where approximately half of its 1100 buildings require either complete modernization or at least replacements of one or more entire building systems (eg. plumbing, roofs). In fact, the capital plan only addresses 20% of the system's total capital needs as identified in a capital needs assessment conducted in 1988/89.

However, the City of New York agreed to pursue in cooperation with the Board of Education, state legislation which would allow the Board of Education to directly pledge building aid generated by the existing capital program to a new bonding program separate from the City's General Obligation Capital Plan. This agreement would allow the Board to at least restore \$750 million to the 5 year capital program and at the same time lower the official debt burden of the City.

This agreement grew out of negotiations with the City over the statutory obligation (Stavisky-Goodman) of the City to fund the Board of Education at a certain percent of City budget expenditures. The Board of Education pursued relief on the capital budget rather than solely concentrating on the operating budget for the following reasons: 1) the prolonged slump in the construction industry is resulting in tremendous cost savings therefore making the present the best time to build; 2) the authorizing legislation for the School Construction Authority only gives a Wicks exemption for five years which would be squandered by capital cuts and deferrals during that time interval; 3) the outdated and poor condition of many school buildings wastes scarce operating dollars due to maintenance and energy inefficiencies.

The City's agreement to relinquish building aid generated from the five year plan and use it to secure a new bonding program poses little risk to the City's financial position due to limitations in the State's building aid formula and the unique cap placed on the N.Y.C. schools system's overall share of negotiated school aid increases. The current practice is for the City to finance capital construction from the proceeds of City general obligation bonds. The City then pays the debt service from its own debt service appropriation. State building aid claims are later submitted on eligible projects but the effective yield on a dollar of construction is typically 25% despite an ostensible state aid building aid ratio of 50%. The lower yield is due to limitations placed on allowable costs, including: the use of a statewide building cost index which penalizes higher cost regions of the state; and a 25% cap on ancillary costs such as land acquisition and site preparation which doesn't recognize the tremendous cost of land in densely settled and built areas such as Manhattan.

Since building aid is another form of unrestricted school aid,

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the City receives it as just another form of general operating aid, divorced from any relevance to capital financing by the City. Further reinforcing the irrelevance, is the practice by the State Legislature of including building aid within an overall "share cap" on the Board of Education's school aid increase. This is exactly why the City perceives no real risk in forgoing building aid reimbursements since they believe that any building aid increases are off-set by decreases in other formula categories in order to shoehorn all computerized aids within the overall share cap.

In order to restore vital projects to the Capital plan, the Board of Education is proposing a new revenue backed bonding program to be secured by state aid appropriations derived from the state's building aid formula. The board proposes using the existing New York City Education Construction Fund to finance these projects. Additionally, the Board proposes modernizing the school aid formula in order to more accurately aid the true costs incurred in constructing schools designed to meet modern needs of school children. The specific details of the school construction proposal follow.

1) Authorize the New York City Education Construction Fund (ECF) to finance school construction projects.

ECF was established as a public benefit corporation in 1966 to finance combined occupancy structures whereby private developers share the cost of erecting a facility and the public schools occupy part of the structure. One noteworthy school built by the ECF during the 1970's is the Norman Thomas High School for Commercial Education.

ECF is a logical choice to assume the responsibility for financing capital projects since it has established a track record in school construction finance including a recent \$80 million refinancing of outstanding notes. Furthermore, the E.C.F. would be responsive and accountable to the school system for its operations since its three trustees include as ex-officio members, the Chancellor and the President of the Board of Education. The third trustee is appointed by the Mayor of New York City.

2) Use state building aid apportionment generated by 5 year capital plan as debt service pledge for bonds issued by E.C.F.

The state established the precedent of using building aid as a direct debt service pledge in the adoption of legislation authorizing the State Dormitory Authority to finance capital construction on behalf of Special Act School Districts (Chapter 737 of the Laws of 1988). Special Act School Districts were created from pre-existing residential schools serving handicapped children which were originally established by religious and non-sectarian not-for-profit agencies. In order to allow these schools to qualify for certain state and federal aid, they were individually constituted by special acts of the legislature as public school districts coterminous with the boundaries of the land owned by the not-for-profit agencies who operated them. Special Act School Districts are funded by tuition payments made by the social services districts or local school districts on behalf of children that they refer to these Special Act School Districts. Special Act

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School Districts are also eligible for building aid and transportation aid under section 3602 of the education law.

Since Special Act School Districts cannot levy taxes, and were operated by not-for-profit agencies lacking any endowment income or other assets with which to secure capital loans, they could not access capital markets for facility needs. The 1988 legislation authorizing the Dormitory Authority to finance construction for Special Act School Districts remedied this situation by providing for the deposit of state building aid into a school financing reserve fund to be used to pay the debt service on school construction bonds issued by the Dormitory Authority. The legislation also provided for transfer of certain tuition payments into the reserve fund.

Although different in many basic respects, the New York City school system is in an analogous situation to Special Act School Districts in that it also cannot levy school taxes and therefore cannot, on its own, access capital markets for school construction purposes. Given the City of New York's determination to lower its debt service burden, the school system at present lacks the capacity to meet fundamental capital needs.

The Governor and the Legislature recognized the fundamental public interest served by Special Act School Districts in meeting the special education needs of thousands of children. They also recognized that the failure to provide a mechanism to maintain the facilities of these schools would jeopardize the state's interest. The New York City school serves no less a fundamental state interest in educating almost one million school children - a mission seriously jeopardized by inadequate and often sub-standard facilities.

3) Devise a steady stream of debt service payments for the direct financing of school construction.

The success in marketing authority issued bonds at a favorable market rate rests on our ability to structure a predictable and secure stream of revenue with which to secure the bonds. According to knowledgeable officials in the municipal securities industry, a steady stream of debt service payments would be highly desirable in attracting securities industry support for a direct service contract bonding program utilizing building aid.

Another critical reason for pursuing a steady stream of payment agreement is the need to mitigate sharp increases in building aid (based on current construction activity) that would come at the expense of operating aids vital to the school systems instructional programs.

As was stated earlier, the New York City school system receives an overall cap on its share of school aid increases. Unlike other districts which are allowed to benefit from increases in building aid, New York City schools would suffer reduced operating aids in order to "shoehorn" escalating building aid apportionments within the overall share cap on computerized aids.

The obvious immediate obstacle to devising a steady stream of payments based on building aid is that it would increase in the first couple of years the state's apportionment of building aid at a time when the state can ill afford it. This obstacle could be

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overcome by the use of interest deferred securities such as zero coupon bonds which would obviate the need to make semi-annual payments to note holders during the first few years of the bond's maturity.

In order to use building aid as a direct service pledge, the allowable costs would have to be estimated for the projects within the capital plan rather than analyzing actual claims on construction already begun. This should not prove to be insuperable and safeguards could be build in to assure that building aid is linked to the smooth implementation of the capital plan.

4) Exclude Building Aid from the calculation of the computerized school aids.

The Commissioner of Education has recommended for years that building and transportation aids be excluded from the calculation of computerized aids. Because of the erratic nature of building cycles, changes in debt service levels and completion of amortization schedules, building aid apportionments are volatile. It can greatly distort the true underlying level of state support received by a particular local district.

Even more importantly building aid should not cause a school system to lose critically important operating aid funding. No other district is penalized for gyrations in building aid levels which has nothing to do with how New York City schools are faring in state school aid support relative to other districts. Removing building aid from the calculations is vital to protecting the operation of the New York City school system.

5) Modernize and reform building aid formula

Although not absolutely essential to the creation of a direct financing mechanism for school construction, a comprehensive reform of the building aid formula is long overdue and could be used to build a multi-region coalition that would help secure legislation establishing a direct financing mechanism. Also, given the state's financial difficulty, reform of building aid would allow the state to finally address school finance issues such as "regional cost" without incurring significant immediate costs.

The provisions of the state's building aid formula have failed to keep pace with the profound changes in the functions of the school districts. Allowable costs are calculated using a rated capacity methodology which is simply a prescribed ratio of children to a classroom (one classroom for 28 children for grades 1-12). This methodology fails to take into account all the other services and functions which schools have been called on to provide in recent times such as special education services, and pre-kindergarten classes.

The second deficiency in the building formula is that it fails to take into account the significant regional disparities in the costs of construction. The building aid provision requires the use of a single statewide index developed by the Commissioner of Labor which significantly under states the cost of construction in New York City and other downstate communities. Related to the single cost index cap is the cap on ancillary costs. School districts are

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allowed to include up to 20% or 25% cost allowance, depending on the grade level, for site acquisition, site improvement, and other related costs. However, site acquisition and improvement costs often greatly exceed these percentage caps in many areas of New York City. Available land for school sites is extremely scarce, and like any commodity sensitive to supply and demand, this scarcity is reflected in higher prices.

The combined effects of the aforementioned limitations in the building aid law is to reduce the New York City's building aid "reimbursement rate" from an ostensible 50% to an effective rate of 25%.

The Board of Education has recommended the following changes as part of a comprehensive reform of building aid:

- . Establish a rated capacity for such programs as pre-kindergarten and day care that have an instructional focus, libraries, teacher/student conference rooms, and other instructional and support related functions.
- . Replace the single statewide building index with a "reasonable and prudent" cost definition for the purpose of calculating allowable costs for building aid purposes.
- . Increase the allowance for ancillary costs from 25% to 40%, when reflective of the costs of construction.

Strategy to Secure Direct Financing Legislation

The \$750 million in capital construction that rides on the success of this proposal represents a tremendous amount of economic activity in a sector of the economy (construction industry) that is in a near depression. Most economists would agree that the most effective way to boost the economy is to directly invest in public infra-structure. This proposal should enjoy great support from general contractors and the building trades in the New York City metropolitan region. This strategy also greatly complements the Governor's recent economic proposals to enhance the transportation infra-structure of the N.Y.C. metropolitan region.

Key to a successful strategy to secure legislation for direct financing of New York City school construction is the involvement of other regions of the state. The building aid reforms suggested in this memo would be particularly helpful to Long Island since the single statewide cost index understates cost in these communities. Also, removing building aid from computerized aids would help Long Island since this region has also been subject to a percentage cap which will hurt them as building aid claims rise.

The direct financing proposal could also be linked to a revived proposal to authorize the State Dormitory Authority to provide financing and construction oversight services to school districts statewide. This proposal could include the following benefits for many school districts: allow school districts to pool bond issuances and save on financing costs; use Dormitory Authority construction expertise and oversight services that may be too

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expensive for a single district to establish themselves; and allow a district to pursue projects through an authority rather than submitting vital construction projects to voters at a time when an increasing number of school budgets are being rejected by voters.

Accessing the Dormitory Authority's services should be particularly attractive to smaller districts with limited resources in Up-State New York. These districts are hard pressed to afford bond expertise and construction management expertise during the long intervals between building replacement or renovation cycles.

Conclusion

The New York City Board of Education needs the strong support of the Executive in bringing this proposal before the Legislature. Its inclusion in the State-of-the-State and submission as an Article 7 budget bill could strongly propel it as a top legislative issue for the 1992 session. It also provides an opportunity for the state to make a powerful improvement in the educational lives of school children without increasing the state's financial burden at a time when it must close a deficit projected to be in excess of \$4 billion.

The Legislature and the Governor would also, if this proposal is adopted, be able to show the voters exactly what they are getting for the building aid being paid out by the state. If the state supports legislation which results in saving close to a billion dollars in school capital projects, it should then get high profile credit for these projects when they are completed.

SCHOOL BUILDERS UNBOUND: A
REVIEW OF THE SCHOOL
CONSTRUCTION REFORM ACT

By The Committee on Construction Law,
The Association of the Bar of the
City of New York

Heralded as "a very special gift" to the children of the City of New York,¹ the New York City School Construction Authority (the "Authority") on July 1, 1989, officially took over responsibility for building City schools from the Board of Education, whose construction has been criticized as too costly and too slow. The legislation² creating the Authority and changing the manner in which public schools are planned and constructed has likewise been greeted by the Mayor, other public officials, members of the building and education community and, most prominently, the media as a triumph for reform of school construction. The legislation has even been hailed as a test for reform of the entire public construction process itself.

While we believe the legislation as a whole to have made significant, positive steps toward reform and to be worthy of much of the praise it has generated, we are concerned by the entirely uncritical acclaim with which it has been greeted. A review of the

¹See Press Release, Governor's Office, December 15, 1988.

²New York City School Construction Authority Act, ch. 738, 1988 N.Y. Laws 1525 (hereinafter, the "Act").

Act suggests several formidable limitations which may prevent or impede the Authority from achieving its mission and disappoint the public to whom it was acclaimed. To the extent that the statute is now hailed as an unqualified achievement, these limitations will not be recognized or dealt with until their inhibiting impact has been felt-- which may be too late to avoid much of their damage. To the extent that the Act is viewed as a test of reform, future disappointments may be treated as reform's futility. Should construction under the Authority not meet expectations, that result may be taken as proof that many of the positive advances attempted (such as abolition of the Wicks law) make no difference in the construction process.

Such are the dangers, we believe, in exaggerating the Authority's present potential as an instrument for insuring the speedy and economical rebuilding of the City's crumbling schools. While purporting to release the new school builders from the shackles which impeded the Board of Education in this task, the Act imposes many of the same kinds of limitations on the Authority that so thwarted the goals of its predecessor. If the Authority is to match its loud acclaim, those limitations may have to be accorded further legislative scrutiny.

PROMISE OF THE ACT

Designing, building and renovating billions of dollars of education infrastructure is by any measure a daunting task. There is no dispute that it is a challenge the Board of Education was

unable to meet. Children are today taught in overcrowded classrooms scarred by leaking ceilings, broken lighting, peeling paint, shattered windows. Overcrowding has led to the use of closets, toilets, storage rooms and gymnasiums for classroom facilities. Millions have been spent, and the situation has only further deteriorated.

In Section 1 of the Act, the Senate and Assembly laid the blame for the schools' "deplorable condition" on "inefficient bureaucratic practices," "lengthy review and approval processes," and "limitations on the construction process [which] have proven to be inefficient, wasteful, and incapable of yielding quality construction on time and at reasonable cost." Curiously, the Legislature seemed to chastise the Board of Education for the inefficient practices and wasteful limitations, many of which, in fact, are the result of laws enacted by the Legislature. Indeed, the Legislature itself in subsequent language appeared to recognize that substituting a new authority for the Board's construction arm, without correcting some of the inefficient practices and limitations on the construction process which impeded the Board, would do little to produce schools in an efficient and economical manner.

Thus, the Legislature went on to find that "extraordinary measures must be taken to reverse the deterioration of educational facilities." It created the Authority with only one responsibility --the construction and renovation of the City's education infrastructure -- and sought to free that process from many of the

obstacles which stood in the way. The Legislature declared that the new Authority should be "exempt from local laws and regulations concerning the provision of school buildings." It suggested a need to attract more, and presumably better, contractors to compete for school construction.³ It approved of the use of construction managers and project managers as "a preferred tool."

In short, it promised to create in the Authority an independent agency unfettered by bureaucracy and free to hire competent managers, design professionals and employees based on merit. The new agency, presumably, would be relieved of lengthy approval practices and freed from the limitations imposed on the public construction process which had made it costly, wasteful, and deficient in quality and had necessitated this new Act. Indeed, in proclaiming that "[t]here can be no higher priority" than

³The Legislature declared that many construction companies have been unwilling to engage in school construction because, in part, of "unfair contract requirements." What is regarded as unfair and by whom is not disclosed. Presumably, the Legislature is referring to provisions which severely limit the circumstances under which contractors may make claims for sums beyond the price for which they agreed to perform the job. Some members of this Committee agree that such contractual provisions discourage bidders. Others, however, believe that it is claims-permissive contracts which impair competition, since they permit the most litigious bidders, by bidding low, to obtain the job at the expense of better contractors, secure in the knowledge that they can later supplement their "lowest" bid with claims. See also Association of the Bar of the City of New York, Report on Legislation, No. 35, S.6691-A, A.8017-A, June 1984, Committee on Municipal Affairs:

The Committee is concerned that some contractors sue for delay damages to effectively increase their bid price. This practice not only renders the bid price speculative, but undermines the rationale of public bidding.

creating quality schools "for the education of our children" (§ 1 of the Act), the Legislature suggested that the new Authority would be unchained from the yoke of special interest entitlements and allowed to exercise the economies, control, and free choice generally available to private developers.

Our review of the legislation, however, reveals that while many provisions of the Act abate some wasteful limitations on the preconstruction and construction processes, other limitations remain and new ones have been imposed. If the legislative promise is to be realized, further work, we believe, must be done.

ACHIEVEMENTS OF THE ACT

Until now, the average time elapsed to obtain a school, from a request for its construction to its completion, has been from eight to ten years, only three to four years of which were spent on actual construction. It is anticipated that under the new program, the entire process will be completed within four to five years. The most significant achievements of the Act are found in those provisions which expedite the lengthy preconstruction phase, particularly budgeting and site selection.

Discarding a project-by-project approach, the Board of Education was required to adopt, with community participation within a delineated time frame, a year 2000 master plan identifying all needs and a five-year capital plan budgeting all expenditures in connection therewith. (See § 13 of the Act.) The five-year lump sum capital plan must be included within the City budget,

setting forth specific budgets for each of the five years included within the plan. The lump sum may be reduced only if the Board of Education so requests or if there is a general reduction in capital funds for all City agencies. These plans serve not only to expedite what has been a protracted and often bitter budgeting process, but to reduce the destabilizing impact of allowing transient political considerations to interfere with what must be long-term planning and budgeting.

A streamlined process is also set forth for approval of "project scopes" by the City's Office of Management and Budget ("OMB"). (See subsection 6(d) of new § 2590-p of the Education Law, created by § 13 of the Act.) OMB must approve or disapprove a project within 30 days (failure to act within 30 days is deemed automatic approval). This expedited involvement of OMB contrasts with previous practices requiring numerous approvals from OMB with protracted negotiations at various stages of the preconstruction phase. Moreover, the Authority may make expenditures for site acquisition prior to OMB approval of the project scope. (See subsection 6(b)).

Once approved, the project scope is forwarded to the Authority for implementation. In contrast to past practices, where approval by outside agencies of site selection was required to be completed before design planning (creating an average time delay of two years), the Authority can now proceed simultaneously on both site selection and design planning with far fewer restrictions.

In selecting sites for school facilities, the Authority is

subject only to Article 8 of the Environmental Conservation Law (SEQRA) and Article 14 of the Parks, Recreation and Historic Preservation Law. It is exempted from any general, special or local law, administrative code, ordinance or resolution governing:

- any other state or local land use planning review and approvals;
- historic preservation procedures;
- architectural reviews;
- franchise approvals.

Projects are specifically exempted from City Charter provisions relating to:

- site selection;
- land use review procedures;
- art commission review procedures;
- general standards and cost limits;
- project scope and design procedures;
- contract registration and vouchering procedures.

(See Public Authorities Law § 1730, created by § 14 of the Act.)

While notice of site plans must be filed with affected community school boards and community boards, the procedures for subsequent community input are streamlined. A public hearing must be held within 30 days of the filing of notice and written public comment must be filed within 15 days of the hearing. (See Public Authorities Law § 1731.)

Board of Estimate approval of site selection is similarly expedited and curtailed. Review is limited to the particular site selected by the Authority, and the Board of Estimate can only

approve or disapprove. Disapproval requires a 2/3 vote and failure to act within 20 days is deemed to be an approval. The Board of Estimate cannot require additional public hearings or seek further approvals as a condition for receiving approval. (See Public Authorities Law § 1732.)⁴

With respect to the actual construction of school buildings, the Act also contains several important reforms. As pointed out in the following section, however, some of these reforms were seriously diluted by compromises reached in the final days before legislative passage.

Perhaps the most touted construction reform set forth in the Act is its purported exemption of the Authority from the Wicks law.⁵ The Wicks law requires municipal and other government agencies to use a "multiple contracts system" under which the agencies must retain independently at least four separate prime contractors for the construction of most public works. Thus, the law prescribes that separate specifications must be prepared and separate bids procured for three categories of specialty work: (1) plumbing and gas fitting; (2) electrical; and (3) heating, ventilation and air conditioning. (The three specialty contractors specified by the Wicks law will subsequently be referred to as

⁴Since the Board of Estimate will be abolished pursuant to recent revisions of the New York City Charter, the Act will have to be amended to designate some other body to undertake this review or to do away with such review altogether.

⁵What is known as the "Wicks law" is not codified in a single statute, but found in the New York General Municipal Law § 135, and New York Public Housing Law § 151-A.

"Wicks" or "Wicks law" contractors.) At least one additional contract must be awarded to a general contractor to perform the balance of the construction work. Some judicial decisions have made the Wicks law even more onerous by unnecessarily interpreting it to prohibit state and local governments from delegating responsibility for supervising and coordinating these multiple prime contractors.⁶

Calls for repeal of the Wicks law have been repeatedly sounded for the past two decades.⁷ Even one court has commented on the need for legislative action:

The Court would like to observe that [the Wicks Law] ... should be studied with the express purpose of either eliminating or amending the law to permit the State to let such contracts as this one to one bidder, instead of five, six or more bidders, with none having authority over the others but all

⁶ See, e.g., General Building Contractors of New York State v. City of Syracuse, 40 A.D.2d 584, 334 N.Y.S.2d 730 (4th Dep't 1972), modified on other grounds, 32 N.Y.2d 780, 344 N.Y.S.2d 961 (1973); General Building Contractors of New York State v. County of Oneida, 54 Misc.2d 260, 282 N.Y.S.2d 385 (Sup. Ct. Oneida Cty. 1967).

⁷ See, e.g., "The Wicks Law: Repeal It Now," Report of the Committee on Municipal Affairs of the Association of the Bar of the City of New York, May 1986; The New York Times, March 3, 1988, Editorial: "This is the Year to Kill the Wicks Law"; New York State, Division of the Budget, Fiscal Implications of the Wicks Law Mandate (May 1987); New York State Facilities Development Corporation, Construction Cost Study of Community-Based Facilities (prepared by EBASCO Services, Inc.) (1986); City of New York, Office of the Mayor, Wicks Law Repeal -- A Public Construction Necessity (Sept. 1984); New York State, Division of the Budget, Study of Public Construction Laws and Procedures (1977); New York State Assembly Standing Committee on Local Government, Sub-Committee on Bidding and Purchase Contracts, The Multiple Contract System and Competitive Bidding Requirements (Feb. 1971).

having the same privilege of screaming for help from the State engineer on the job, whose own efficiency is often diluted because too often he has to mother the disputing contractors, rather than performing his primary duty of progressing the job. Experience would indicate that under the prevailing system the State squanders huge sums of money in trying to keep the jigsaw puzzle together, whereas under the one [contract] system, the responsibility of efficiency and coordination would not only be upon the one contractor but it would be to said contractor's financial advantage to move with coordination, efficiency and due speed to complete the contract, for the basic reason that the contractor could not place upon the shoulders of others, but only on himself, any blame for a slowdown or uncoordinated work.

Forest Electric Corp. v. State, 52 Misc.2d 215, 217-18, 275 N.Y.S.2d 917, 919-20 (Ct.Cl. 1966), aff'd, 30 A.D.2d 905, 292 N.Y.S.2d 589 (3d Dep't 1968).

In an effort to overcome resistance to exempting the Authority from the Wicks law, Governor Cuomo agreed to limit the exemption to five years and to refrain from pressing for outright repeal of Wicks. Describing the enactment of the School Construction Act as "an opportunity to measure over five years the effectiveness of construction without the requirements of Wicks," the Governor pledged that he would "await the outcome of this experience before considering whether to ask the Legislature for any future repeal or modification of its provisions." (Press Release, December 15, 1988).

Thus, the five-year exemption of New York City school construction from the operation of Wicks affords the Authority the freedom to contract with only one builder who would bear the

responsibility and financial risk of bringing in school construction projects on time and within budget. However, as pointed out in a subsequent section of this Report, the Governor's agreement to refrain from pressing for outright repeal of Wicks, as well as other compromises favoring Wicks law contractors in school construction, raises questions as to whether real reform has been achieved and as to whether the exemption, as ultimately adopted, really provides for a fair test of "construction without the requirements of Wicks."

In another effort to reform the construction process, the Act permits the Authority to select its contractors after an initial prequalification process designed to eliminate from the pool of prospective bidders poor performers and other undesirable contractors. (See Public Authorities Law § 1734[3].) The standards for prequalification include, but are not limited to, the experience, past performance, ability, financial capability, responsibility, and reliability of the prospective bidder. The opportunity to prequalify contractors on the basis of their prior performance and conduct constitutes an important power accorded the Authority to exercise some degree of selectivity in obtaining construction services. It may also provide contractors with an added incentive, too often lacking in public construction -- the incentive to work with, rather than against, their public customer to achieve a satisfactory result.

The Act also permits the Authority to serve as its own civil service commission. (Public Authorities Law § 1737.) Apparently,

it is assumed that the new small bureaucracy will cause less delay than the larger New York City Department of Personnel, the body presently serving as the Board of Education's commission.

These and many other reforms set forth in the Act have justifiably received loud applause. There are nonetheless various other limitations on the efficient construction of public schools which the Legislature ignored. Unless addressed, these shortcomings risk defeat of the Act's promises. Perhaps of equal concern is that to the extent these shortcomings cause the Authority in some way to fail to accomplish its mission, that failure will be attributed not to these shortcomings, but rather to the futility of the reforms which are included in the Act.

DISAPPOINTMENTS OF THE ACT

Some provisions of the Act appear not to serve the overall purpose of promoting efficient construction of New York City public schools. For example, in an effort to dismantle the bureaucracy which had hamstrung the Board of Education, the original bill proposed by the Board eliminated civil service requirements for Authority employees. The bill as passed reimposed them. (See § 1737.)⁸ Whatever benefits civil service may be argued to bestow, few credit the system with furthering the cause of efficient school construction.

Indeed, in an effort to jettison unproductive employees

⁸Unless otherwise indicated, sections cited refer to new sections of the Public Authorities Law added by § 14 of the Act.

created by the system at the Board of Education, the new Authority, under the Act, may refuse to accept the transfer of construction-related personnel. (See § 16 of the Act.)⁹ Since the Act forbids any layoffs as a direct result of the transfer of construction functions to the new Authority (§ 16 of the Act), the result seems to be that the Board may be left with large numbers of unproductive employees with little to do but receive checks from the taxpayers.

In a compromise forced by the unions representing Board of Education employees, the legislation places severe limitations on the Authority's freedom to use outside design and engineering services. (See § 1740.) Through June 30, 1990, the Authority's own employees must perform 20 percent of such work. By 1991, that number grows to 30 percent, and by 1992 to 40 percent. The rationale for these limitations on utilizing outside design services is to force the Authority to retain its own professional staff, subject to civil service. It may well be desirable, of course, for a builder to develop its own staff of designers and construction managers; and any builder subject to a budget could be expected to do so voluntarily where cost-effective. The Act, however, forces the Authority to retain certain percentages of in-house staff even when not cost-effective.

Moreover, the employee unions must be given at least 15 days to object in the case of every proposed outside professional contract, and a union which objects must be accorded a hearing by

⁹ However, any employee to be retained at the Board may protest. (§ 16 of the Act.)

the trustees of the Authority prior to the award of the contract. (See § 1740[3][c][1].) This is so even in the event of an emergency, except that, in such a case, the unions may be given less than the required 15 days to object. (See § 1740[3][c][2]). And should the Authority fail in some way to adhere to some step of the process it is required to follow before awarding a professional contract, the Act creates a cause of action against the Authority to challenge such a failure. (§ 1740[5].) It is hard to see how provisions of this kind further the speedy construction of schools.

Limitations on the Authority's flexibility in favor of contractors and trade unions also abound. Almost invariably, the Authority must resort to the competitive bidding of construction contracts and award the job to the lowest qualifying bidder, rather than to the bidder most qualified to do the work. (See § 1734.) No other competitive method is permitted for the award of construction contracts, such as competitive requests for proposals ("RFP's"), although RFP's are permitted for non-construction contracts whenever the Authority determines that it is in the public interest to use that process. (§ 1734[5][d].) The Authority is allowed to seek alternatives to the bidding of a construction contract only under the most extreme circumstances ("an emergency involving danger to life, safety or property"). (See § 1734[5][a].) The school builders should be accorded a greater measure of flexibility if they are expected to get the job done.

The Act forbids the new Authority from engaging in custodial

operations, in order not to diminish "the rights of school custodians and custodian engineers." (§ 1728 [9].) It additionally imposes on the Authority the requirements of Gen. Mun. Law § 106-b(1) which, among other constraints, limits the amount that can be withheld from payments made a contractor during the progress of the job. (See § 1734[11].) To that degree, it curbs the control that the Authority may exercise over its contractors by virtue of the purse strings. In one respect, the Authority is extended a bit more flexibility than that accorded other public owners under Gen. Mun. Law § 106-b(1). Whereas the General Municipal Law permits municipal agencies, upon substantial completion of a contract, to hold back only twice the value of the uncompleted work, the Act permits the Authority to retain up to four times the value of the remaining items to be completed (§ 1734[11].)

Also imposed on the Authority are the provisions of Article 8 of the Labor Law. Among other things, Article 8 compels a contractor to pay the "prevailing rate" (essentially, the union rate) for labor and to refrain, except in cases of extraordinary emergency, from permitting anyone to work more than eight hours in any day or more than five days in a week. Again, whatever the merits of such provisions, which are generally imposed on the construction of public projects, they do not further the intended goals of the new Authority -- the expeditious completion of schools at reasonable cost.

Even the legislation's most publicized reform -- its five-year

exemption of the Authority from the Wicks law (§ 1735[1]) -- is, in reality, something of a mixed result. The Wicks law complicates public construction in part because, under the multiple contract system, the general contractor does not control the work of the plumbing, heating, and electrical contractors. Without the Wicks law, a public builder would be free to hire and pay a single general contractor to perform the work, who, in turn, would hire and pay whatever other contractors were necessary to help that contractor get the job performed. One of the general contractor's major means of controlling the contractors it hires and pays is, of course, the general contractor's power to withhold payment for work with which it is not entirely satisfied. It is precisely because the Wicks law does not permit the general contractor to have such power over them that the plumbing, heating, and electrical contractors have fought so hard for its continued existence.

The Act's so-called waiver of the Wicks law is in reality a compromise under which the general contractor's ability to control the plumbing, heating, and electrical contractors remains significantly circumscribed. Although it allows the general contractor, rather than the Authority, to retain Wicks contractors as subcontractors, it restricts the general contractor's ability to control the purse strings and involves the Authority in their disagreements. (See § 1735[6].) The statute requires the general contractor to pay the plumbing, heating, and electrical contractors within seven days of receiving payment from the Authority. If the

general contractor does not do so, the Wicks contractors may demand and receive such payment directly from the Authority, which in turn will deduct the payment from future sums due the general contractor. If the general contractor contends that the Wicks law contractor is not entitled to the money, the sum must be deducted by the Authority from amounts becoming due and payable to the general contractor and deposited in a separate interest-bearing account pending resolution of the dispute.

There is nothing inequitable about requiring a contractor to pay a subcontractor promptly for work for which the contractor himself has already received payment. However, the requirements imposed by the Act thrust the Authority into the disputes of its contractors, burden it with new record-keeping responsibilities, and to that extent divert its attentions from what is supposed to be its mission: the swift production and repair of educational facilities at moderate cost.

Nor does "fairness" to subcontractors appear to be the rationale behind these burdens, whose benefits inure only to Wicks law subcontractors. Thus, the only subcontractors protected by these payment requirements are the plumbing, heating, and electrical subcontractors. (See § 1735[3], [6].) Nor does a Wicks law contractor, having itself received prompt payment, have any obligation to pay its own subcontractors in accordance with these requirements. (See final paragraph of § 1735[6].)

As a further limitation of the general contractor's control of Wicks law subcontractors, the Act provides that the general

contractor may not retain for security more than ten percent of each payment to such a subcontractor (not more than five percent if the subcontractor provides a performance bond and a labor and material bond). (See § 1735[6].) Such a requirement may discourage the contractor from using an inexperienced subcontractor for which a greater retainage might be advisable. Thus, the legislation may have a negative impact on the employment of emerging minority subcontractors.

Still another provision of the Act requires the general contractor, upon submitting its bid, to identify the Wicks law contractors it proposes to utilize and the estimated amount it will pay each one. (§ 1735[3].) Presumably, this provision is intended to discourage "bid shopping", that is, negotiating a lesser amount with a subcontractor, or retaining a different subcontractor altogether, after being awarded the contract. It is unclear, however, what is supposed to happen where the contractor nonetheless chooses to use a different subcontractor or pay a different price. If this clause is interpreted as according an identified subcontractor a statutory right to work on the project, then the commencement of the school may be delayed until the dispute between the contractor and the identified subcontractor is resolved. Like provisions previously discussed, the benefits of this requirement are accorded to Wicks law subcontractors alone.

Among limitations imposed on the Authority in favor of trade unions is one which requires the Authority, in prequalifying bidders, to consider criteria which have nothing to do with how

well the contractor has performed in the past. Thus, in addition to examining the performance factors specified in § 1734(3)(b) -- experience, past performance, ability to undertake work, financial capability, responsibility, and reliability -- the Authority, pursuant to § 1735(5), must also consider such criteria as the degree to which the prospective bidder utilizes union labor, recognizes apprentice programs, complies with existing labor standards, and maintains "harmonious labor relations." Such factors, whatever their possible benefit, do not appear likely to contribute to the construction of schools more expeditiously and less expensively than in the past. Indeed, it is possible that they may be used to penalize contractors who stand up against featherbedding or refuse to condone corrupt practices.

The Act requires the Authority to establish a committee to review, among other things, the extent to which the considerations noted above are complied with in contracts awarded by the Authority. (§ 1735[4].) The committee will also issue reports dealing with the costs of construction under the Act. It is noteworthy that a majority of this committee -- four of seven numbers -- must be composed of two representatives of the construction industry and two representatives from construction-related labor organizations. The labor representatives must be designated from a list of names submitted by the New York State AFL-CIO.

Furthermore, should one or more of the special interest concessions discussed above be deemed invalid by the courts, the

Wicks law will spring back to life. That is because both the five-year waiver of Wicks and most of the concessions are now contained in a single section of the Act -- § 1735 -- subsection 7 of which provides for the extinction of all provisions of the section upon invalidation of any provision. Undoubtedly, the specter of Wicks resurrected will discourage legal challenges to even the section's most questionable clauses.

PERPETUATION OF THE WICKS LAW IN
CONSTRUCTION BY OTHER AGENCIES

In order to secure even that reform represented by the Act, the Governor stated publicly that he would not seek repeal or modification of the Wicks law as it applies to other governmental projects until the Authority's five-year program is completed and assessed. See Press Release, December 15, 1988; Newsday, December 16, 1988, at 6, col. 2; The New York Times, December 16, 1988, at B1, B5. For the next half-decade, municipalities and state agencies throughout New York will have to struggle on under the enormous and costly burdens imposed by Wicks.

It has been estimated that in the City of New York alone the Wicks law will cost the public over \$100,000,000 per year. [See, e.g., The New York Times, March 3, 1988, Editorial: "This is the Year to Kill the Wicks Law" (\$1.6 billion attributed to Wicks law-waste over the next ten years).] If it costs that much more to build other public facilities -- water pollution control plants, courthouses, police stations, firehouses, sanitation garages, etc. -- there is necessarily less to contribute to school construction,

whether or not Wicks applies to the Authority itself. And because the experience of the Authority is perceived as a test of construction outside the Wicks law, its failings may be regarded as proof of the futility of "reform."

Thus, more rides on the success of the Authority over the next five years than even our children's schools.

CONCLUSION

This legislation should be applauded for removing some of the legal manacles which have impeded the timely and cost-effective completion of City schools. More work, however, remains to be done to secure the success of this very important venture.

Should the schools of the Authority prove almost as costly and long-in-coming as those of its predecessor, it will be because the new Act presently retains many of the same kinds of limitations that beset the Board. Ironically, such constraints are imposed only on municipalities, boards of education, and other public agencies.

If we truly expect the Authority to build with the efficiency and dispatch we admire in the private sector, it must be accorded more of the freedom and flexibility that the private sector has long enjoyed. Otherwise, it may well be said of us by future generations that, all our rhetoric notwithstanding, we cared more about having hotels built quickly than public schools.

The Committee on Construction Law

John F. Grubin, Chair

Heidi L. Hamilton, Secretary

Richard Bowers

Valerie F. Mauceri

Carol A. Edmead

Robert M. O'Brien

Kevin J. Ford

Robert A. Rubin

John D. Gordan, III

Jonathan Sinnreich

Robert Mass

Thomas Day Thacher, II

Dissenting

Abstaining

Eli Saul Cohen

Charles Fastenberg

Scott D. St. Marie

January 1990

the state comptroller and to the special act school districts pursuant to this section and shall be paid pursuant to such leases,

state comptroller a special fund reserve fund. Within such fund, special act school district which dormitory authority pursuant to

such fund shall consist of part of special services districts as determined by the commissioner pursuant to this chapter as determined by the commissioner in the fund in order to provide for the payment of the authority from each such special act school district. Any other agreement entered into by the authority shall certify to the amount of payments as scheduled in its budget. The authority shall certify the amount of payments to the special act school districts. The authority shall certify the amount of payments to the special act school districts, respectively and shall make such payments to the commissioner with respect to educational budget, and after consultation with

capital facilities financing reserve fund. All deposits of such fund shall be made in accordance with the provisions of the United States or the state or obligations of the United States or by the state.

certificates from the dormitory authority in the appropriate special account of such special act school district pursuant to this section, each of such payments and the date when the payment shall be made from such special account on or after receipt of such certificate or receipt generated by the dormitory authority.

capital facilities financing reserve fund shall be maintained in the name of the state comptroller.

pursuant to article eighty-one or article eighty-two of the constitution of this state or a public school district and any special act school district which enters into a lease, sublease or other agreement pursuant to this section, payments due pursuant to this section shall be made in accordance with

required to take whatever actions and the provisions of any leases, and the provisions of any leases, pursuant to this section, including making the

actions by strikeouts-

11. Any contract undertaken or financed by the dormitory authority for any construction, reconstruction, rehabilitation or improvement for any special act school district shall comply with the provisions of sections one hundred one and one hundred three of the general municipal law.

¹ Education Law §§ 4001 et seq.; 4401 et seq.

² Public Authorities Law § 1675 et seq.

§ 2. Section forty-four hundred one of such law is amended by adding a new subdivision nine to read as follows:

9. Notwithstanding any inconsistent provisions of this article, where the special act school district enters into a lease, sublease or other agreement with the dormitory authority pursuant to section four hundred seven-a of this chapter, the tuition rates established by the commissioner pursuant to this section shall be established in two parts, one part of which shall be the cost per child of the annual rental payment pursuant to such section four hundred seven-a of this chapter to be paid by the school district or the social services district, as the case may be, to the fund established in such section; the remaining part shall be the tuition amount to be paid to the special act school district.

§ 3. Paragraph (b) of subdivision two of section sixteen hundred seventy-six of the public authorities law is amended by adding a new undesignated subparagraph to read as follows:

Special act school districts listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended.

§ 4. Subdivision one of section sixteen hundred eighty of such law is amended by adding a new undesignated paragraph to read as follows:

Special act school districts listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven, as amended.

§ 5. Section four of chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven relating to the apportionment of funds to certain school districts, as amended by chapter one hundred twenty-two of the laws of nineteen hundred seventy, is amended to read as follows:

§ 4. In addition to the apportionments computed pursuant to sections two and three of this act, each such district shall also be entitled to an apportionment for school building purposes for school construction, the general contract for which shall have been awarded on or after February ~~twenty-eight~~ twenty-eighth, nineteen hundred sixty-seven. Such apportionment shall be computed in accordance with the education law, section thirty-six hundred two, subdivision one, paragraphs a and b and subdivision six, except that for the purpose of such computation an aid ratio of forty-nine per centum shall be used and the annual rental payments pursuant to section four hundred seven-a of the education law shall be included as a current year approved expenditure for debt service under such subdivision six. For such districts which have a lease, sublease or other agreement with the dormitory authority pursuant to section four hundred seven-a of the education law, such apportionment shall be paid into the school capital facilities financing reserve fund in accordance with such section.

§ 6. This act shall take effect immediately.

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

CHAPTER 738

S.9334-A, A.9189-C

Approved Dec. 19, 1988, effective as provided in section 19

Message of necessity, pursuant to Art. III, sec. 14, of Const.

AN ACT to amend the administrative code of the city of New York, the civil service law, the education law, the public authorities law and the local finance law, in relation to establishing the New York City school construction authority and prescribing its powers and duties with

respect to the provision of educational facilities for the board of education of the city school district of the city of New York and repealing certain provisions of the education law relating thereto and providing for the repeal of certain provisions of the civil service law and the public authorities law upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. Legislative findings and declaration. The legislature hereby finds and declares that the elementary and secondary schools of the city of New York are in deplorable physical condition. Many of the schools are overcrowded, unsafe, unhealthy and unusable. The physical deterioration of the schools is a serious impediment to learning and teaching. If the quality of education in New York city is to be improved, the city's schools must be modernized, expanded and restored to a state of good repair.

The legislature finds that the New York city board of education, which is responsible for the physical condition of school facilities, has been unable to take corrective action because of inefficient bureaucratic practices and lengthy review and approval processes. In addition, limitations on the construction process have proven to be inefficient, wasteful and incapable of yielding quality construction on time and at a reasonable cost.

The legislature finds that extraordinary measures must be taken to reverse this deterioration of educational facilities. Since the need to improve the efficiency, economics and quality of the process by which the city's schools are renovated and constructed is immediate and long-term, a new public authority should be established to manage the acquisition, design, construction and major rehabilitation of New York city schools. In order to ensure the effectiveness of the new authority, it should be exempt from local laws and regulations concerning the provision of school buildings.

The legislature further finds that many construction companies have been unwilling to engage in construction because of outmoded requirements and unfair contract requirements. Accordingly, the legislature declares that a priority of the new authority should be to establish a more equitable procedure for dispute resolution. In addition, the legislature declares that it shall be the responsibility of the authority to keep abreast of changes in building science, technology and materials. The legislature also finds that use of construction managers and project managers is a preferred tool in improving construction efficiency.

The legislature further finds and declares that repairing and replacing New York city's schools must begin immediately and must proceed without obstruction. There can be no higher priority than creating a physical environment in the schools that fosters rather than impedes, the education of our children.

§ 2. Paragraph b of subdivision three of section 13-101 of the administrative code of the city of New York is amended to read as follows:

b. Service as a paid employee of the triborough bridge authority, the Henry Hudson parkway authority, the Marine parkway authority, the New York city tunnel authority, the New York city parkway authority, the New York city housing authority, the triborough bridge and tunnel authority, the New York city transit authority, the New York city housing development corporation, the New York city health and hospitals corporation, the New York city off-track betting corporation, the New York city school construction authority, the transit construction fund and the New York city sports authority and the New York city rehabilitation mortgage insurance corporation shall constitute city-service as herein defined.

§ 3. Paragraph one of subdivision c of section 13-133 of such code is amended by adding a new subparagraph (C) to read as follows:

(C) The New York city school construction authority shall make monthly payments, in twelve equal installments, with respect to obligations which it incurs to pay sums to the retirement system.

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§ 4. Section two hundred nine of the civil service law is amended by adding a new subdivision six to read as follows:

6. In the event that the public employment relations board certifies that a voluntary resolution of the contract negotiations between the New York city school construction authority and a public employee organization certified or recognized to represent employees of the authority cannot be effected, or upon the joint request of the authority-employer and any such affected employee organization, such board shall refer the dispute to a public arbitration panel, consisting of one member appointed by the public employer, one member appointed by the employee organization and one public member appointed jointly by the public employer and the employee organization who shall be selected within ten days after receipt by the board of a petition for creation of the arbitration panel. If either party fails to designate its member to the public arbitration panel, the board shall promptly, upon receipt of a request by either party, designate a member associated in interest with the public employer or employee organization he is to represent. Each of the respective parties is to bear the cost of its member appointed or designated to the arbitration panel and each of the respective parties is to share equally the cost of the public member. The procedure for the selection of the public member and the procedures for the arbitration process shall be the same as those set forth in subdivision five of this section. The panel shall make a just and reasonable determination of matters in dispute. In arriving at such determination of matters in dispute, the panel shall specify the basis for its findings, taking into consideration the same criteria as applicable as contained in said subdivision five, and such procedures shall continue to apply for purposes of this subdivision notwithstanding expiration of such subdivision five, and regardless of any subsequent renumbering of such subdivision, which occurs prior to the expiration of this subdivision. The panel shall have full authority to resolve the matters in dispute before it and issue a determination which shall be final and binding upon the parties, notwithstanding any other provision of this article. Except for the purposes of judicial review, any provision of a determination of the arbitration panel, the implementation of which requires an enactment of law, shall not become binding until the appropriate legislative body enacts such law.

§ 5. Subparagraph one of paragraph (j) of subdivision sixteen of section twenty-five hundred seventy-five of the education law, as amended by chapter nine hundred fifty-seven of the laws of nineteen hundred eighty-one, is amended to read as follows:

(1) The board of education or the New York city school construction authority shall make monthly payments, in twelve equal installments, with respect to the respective obligations which such board or authority incurs to pay sums to the retirement system.

§ 6. Subparagraph ten of paragraph (b) of subdivision seventeen of section twenty-five hundred seventy-five of such law, as added by chapter nine hundred ten of the laws of nineteen hundred eighty-five, is amended to read as follows:

(10) "Education service." Service as a paid official or employee of the board of education of the city of New York as now constituted, or of any prior board, body or agency of which it is the successor in school affairs in the territory now comprised within the city and school district of New York, or the New York city school construction authority, and allowable as provided in section four of the rules and regulations.

§ 7. Subparagraph six of paragraph (a) of subdivision eighteen of section twenty-five hundred seventy-five of such law, as added by chapter five hundred thirty-six of the laws of nineteen hundred eighty-six, is amended to read as follows:

(6) "Education service". Service as a paid official or employee of the board of education or the New York city school construction authority, and allowable as provided in section four of the rules and regulations or, in the case of a tier II member or a tier IV member, allowable pursuant to the provisions which respectively govern the service credit of such a member of the board of education retirement system.

§ 8. Section twenty-five hundred seventy-six of such law is amended by adding a new subdivision ten to read as follows:

10. In any city with a population of one million or more, amounts appropriated to effectuate the implementation of a five-year educational facilities capital plan for such

city shall be appropriated as a single item in such city's capital budget in accordance with subdivision four of section twenty-five hundred ninety-p of this chapter.

§ 9. Section twenty-five hundred ninety-a of such law is amended by adding two new subdivisions nine and ten to read as follows:

9. Educational facilities. The term "educational facilities" shall mean land and the improvements thereon for use in connection with any educational activity to be undertaken or provided by the city board or any community school board or any facility attendant thereto or any facility necessary, useful or desirable in connection with such activity.

10. Project. The term "project" shall mean, with respect to an educational facilities capital plan, (a) the performance, at a specified educational facility, of one or more program elements, as defined in paragraph a, b, c or d of subdivision two of section twenty-five hundred ninety-p of this article; or (b) the performance of the program elements defined in paragraphs f and g of such subdivision or any system replacement identified in paragraph c of such subdivision.

§ 10. Subdivisions thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of section twenty-five hundred ninety-e of such law are REPEALED.

§ 11. Section twenty-five hundred ninety-g of such law is amended by adding four new subdivisions seventeen, eighteen, nineteen and twenty to read as follows:

17. Approve an educational facilities master plan, and any revisions thereto, as defined in section twenty-five hundred ninety-o of this article, which shall be submitted by the chancellor.

18. Approve a five-year educational facilities capital plan, and any amendments thereto, as defined in section twenty-five hundred ninety-p of this article, which shall be submitted by the chancellor.

19. Enter into agreements with the New York city school construction authority for implementation of the five-year capital plan and other projects pursuant to which the authority will be responsible for the acquisition, design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of and otherwise providing for educational facilities for the city board.

20. Enter into agreements with the New York city school construction authority pursuant to which the city board may make available to such authority the services of employees of the city board who are contemplated to be transferred to the authority pursuant to a plan for such transfers for the purpose of rendering assistance in establishing the operations of the authority; provided, however, that such employees shall no longer be available to the authority pursuant to the terms of this subdivision beyond one year following the effective date of this subdivision.

§ 12. Section twenty-five hundred ninety-h of such law is amended by adding two new subdivisions twenty-three and twenty-four to read as follows:

23. Develop an educational facilities master plan, and revisions thereto, as defined in section twenty-five hundred ninety-o of this article.

24. Develop and implement a five-year educational facilities capital plan, and amendments thereto, as defined in section twenty-five hundred ninety-p of this article, and appoint a person, who reports directly to the chancellor, to assist in the development and implementation of such plan and amendments thereto and to oversee the school buildings program.

§ 13. Such law is amended by adding two new sections twenty-five hundred ninety-o and twenty-five hundred ninety-p to read as follows:

§ 2590-o. Educational facilities master plan

1. In accordance with the schedule set forth in subdivision two of this section, the chancellor shall prepare an educational facilities master plan to take effect on July first, nineteen hundred eighty-nine, which shall set forth all the actions necessary to restore the city's educational facilities to a state of good repair by January first, two thousand. The

c. Major modernization and rehabilitation: The plan shall identify each educational facility at which a rehabilitation or major modernization is to be performed, describe the general scope of such work at each such facility and describe the nature and estimated cost of the arrangements proposed in order to accommodate any students who will be temporarily displaced as a result of the work.

d. Athletic fields, playgrounds and pools: The plan shall identify each educational facility at which an athletic field, playground or pool is to be constructed or at which an existing athletic field, playground or pool is to be the subject of a major repair or rehabilitation.

e. System replacements: The plan shall identify (i) each particular system to be replaced, in part or in its entirety, including electrical, plumbing, boilers, elevators, heating, ventilation and air conditioning, roof replacement, window replacement, kitchens and warming pantries, lighting, exterior masonry and painting and plaster, (ii) the general standards to be adopted for such replacement systems and (iii) the number, and to the extent ascertainable, the identity of educational facilities in each borough at which each such system replacement is to be performed.

f. Security: The plan shall describe the nature of security devices and systems proposed to be installed at educational facilities and the number, and to the extent ascertainable, the identity of facilities in each borough at which such a security system is to be installed.

g. Educational enhancements: The plan shall describe programs for the redesign and reconfiguration of space within educational facilities in order to enhance educational activities therein, including the installation of wiring or other facilities to permit or facilitate the use of computers or other educational devices and equipment and shall identify the number, and to the extent ascertainable, the identity of educational facilities in each borough at which such educational enhancement programs shall be undertaken.

h. Emergency, unspecified and miscellaneous: The plan shall include an estimate of the funding requirements to perform emergency projects, unspecified projects and miscellaneous capital activities; provided, however, that the cost of such program element shall not exceed five percent of the total estimated cost of the five-year capital plan.

3. a. No later than January sixth, nineteen hundred eighty-nine, the chancellor shall, in conjunction with the submission of the educational facilities master plan required by section twenty-five hundred ninety-o of this chapter, submit the initial proposed five-year educational facilities capital plan to each community school board, which shall conduct a public hearing on both the educational facilities master plan and the five-year educational facilities capital plan and shall prepare and submit recommendations to the chancellor on or before February twentieth, nineteen hundred eighty-nine with respect to matters in the plans that involve that school district. The chancellor shall consider the recommendations received from the community school boards on both the proposed educational facilities master plan and the proposed five-year educational facilities capital plan, and, on or before March eighth, nineteen hundred eighty-nine, shall submit a final proposed five-year educational facilities capital plan to the city board for its approval. On or before March twenty-second, nineteen hundred eighty-nine, the city board shall approve the five-year educational facilities capital plan submitted by the chancellor or such plan as is determined by the city board, which shall take effect on July first, nineteen hundred eighty-nine.

b. Commencing on November first, nineteen hundred ninety-three, and every five years thereafter, the chancellor shall submit a proposed five-year educational facilities capital plan to take effect on the succeeding July first to each community school board, which shall conduct a public hearing and shall prepare and submit recommendations to the chancellor on or before January first of the ensuing year with respect to matters in the plan that involve that school district. The chancellor shall consider the recommendations received from the community school boards, and, on or before February first of such year, shall submit a final proposed five-year educational facilities capital plan to the city board for its approval. On or before March first of such year, the city board shall approve the five-year educational facilities capital plan submitted by the chancellor or such plan as is determined by the city board.

plan shall identify each educational facility to be performed, describe the nature and estimated cost to accommodate any students who will be

plan shall identify each educational facility to be constructed or at which an amendment is the subject of a major repair or

by (i) each particular system to be repaired, electrical, plumbing, boilers, elevators, window replacement, kitchens, painting and plaster, (ii) the general elements and (iii) the number, and to the facilities in each borough at which each

of security devices and systems and the number, and to the extent at which such a security system is

describe programs for the redesign and elements in order to enhance educational facilities or other facilities to permit or install devices and equipment and shall identify the identity of educational facilities and programs shall be undertaken. The plan shall include an estimate of projects, unspecified projects and miscellaneous cost of such program element shall of the five-year capital plan.

red eighty-nine, the chancellor shall submit the initial proposed five-year plan to the school board, which shall conduct a public hearing on the five-year educational facilities capital plan and the five-year educational facilities capital plan to the chancellor on or before July first of such year. The chancellor shall consider the recommendations of the school board on the proposed educational facilities capital plan, and, on or before July first of such year, shall submit a final proposed five-year plan to the school board for its approval. On or before March first of such year, the chancellor or such plan as is determined by the school board on or before July first, nineteen hundred eighty-

and every five years, the chancellor shall submit a proposed five-year educational facilities capital plan to each community school board, which shall conduct a public hearing on the proposed five-year educational facilities capital plan and submit recommendations to the chancellor on or before July first of such year with respect to matters in the plan. The chancellor shall consider the recommendations of the school board on or before February first of such year, and, on or before February first of such year, shall submit a final proposed five-year plan to the city board for its approval. On or before July first of such year, the chancellor or such plan as is determined by the school board on or before July first, nineteen hundred eighty-

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4. Following approval by the city board of a five-year educational facilities capital plan, the chancellor shall transmit such plan to the mayor, the board of estimate and the council of the city of New York. After consultation with the chancellor and the city board, the mayor shall include in the city's executive capital budget for the fiscal year in which the five-year plan is to commence an appropriation for educational facilities in an amount he recommends as sufficient to provide for the funding of a five-year capital program for the city board and shall specify amounts for each fiscal year within such five-year period. Such five-year appropriation, which shall specify the annual amounts for each fiscal year to be made available, shall be subject to adoption, veto and, except as hereinafter provided, amendment in accordance with the procedures set forth in the charter of the city of New York. Upon adoption of a five-year appropriation pursuant to such process, the capital program of the city board shall, if the amount so appropriated differs from the cost estimated in the plan approved by the city board, be amended to reflect the funding so provided. No reduction shall thereafter be made by the city in the amount of such appropriation until completion of the plan unless (i) the city board shall so recommend or (ii) a general, across-the-board reduction is made in the city's capital appropriations in order to accommodate an unforeseen reduction in the availability of city capital funds. In the event the city board so recommends or such a reduction is made, the appropriation may be reduced in accordance with such recommendation or proportionately to the reduction in the city's general capital appropriations. In the event the city board requests additional appropriations from such city during the five-year period of the then effective plan, the city board shall specify the needs to be met by such additional appropriations. The city may appropriate additional amount for the five-year educational facilities capital plan, provided that in no event shall such an additional appropriation be conditioned upon a reduction or alteration of the five-year plan then in effect. The authority may not spend more in any fiscal year of the capital program than the amount specified in the five-year city appropriation therefor, as amended from time to time; provided that any amounts not expended during a fiscal year may be expended in any succeeding fiscal year, and provided further that the mayor may authorize funds to be expended at a rate faster than the amounts so specified, within the balance of the five-year appropriation available therefor.

5. a. The chancellor may in his discretion submit amendments to an approved five-year educational facilities capital plan to the city board for its approval.

b. The chancellor shall submit such amendments in the event (i) the estimated cost of any program element shall increase by more than ten percent from the estimate contained in the plan, (ii) a project will not be commenced within six months from the date set forth in the plan, (iii) a project to be performed at an identified educational facility is proposed to be performed at a different educational facility or (iv) a project not identified in the plan, other than projects to be performed pursuant to paragraph h of subdivision two of this section, is proposed to be initiated.

c. In the event the city shall appropriate an amount less than the amount proposed to be funded by the city in the then approved five-year educational facilities capital plan, or in the event an appropriation shall be reduced below such level as provided in subdivision four of this section, the chancellor shall prepare and submit to the city board for its approval an amendment to such plan to reflect the reduced amount of funding from the city.

d. If the effect of any plan amendment would require an additional appropriation by the city, no such amendment shall be implemented unless and until the city shall make such additional appropriation.

e. Amendments submitted by the chancellor as described in paragraph c and in clauses (iii) and (iv) of paragraph b of this subdivision shall also be submitted to each affected community school board, which may conduct a public hearing and prepare and submit recommendations to the city board within forty-five days of such submission.

6. a. For each project included in an approved five-year educational facilities capital plan, the chancellor shall develop a detailed scope of the project, which shall include the following: (i) the purposes and public to be served, (ii) the programs to be conducted in the facility, (iii) the gross amounts of space and bulk for any building or structure, (iv)

identification of the intent to use architectural, engineering or other consultant services and estimated fees for such consultant services (v) the schedule of design and construction, (vi) the total estimated project costs, including costs for site acquisition, preparation and tenant relocation, design, construction and equipment, (vii) maximum estimated expenditures for the project for each fiscal year until its completion, (viii) costs associated with maintenance and operation of the physical plant and (ix) such other information as the chancellor shall specify. In the event, a project consists of a program element without identification of the particular education facility at which such project is to be performed, the detailed scope of the project shall specify the nature of the work to be performed, applicable price and quality standards, a list of the schools eligible for such work, annual performance targets and the total estimated costs of such project during each fiscal year until its completion.

b. The chancellor may request the New York city school construction authority, and the authority shall be authorized, to develop preliminary plans for each project, to assist the chancellor in the development of the detailed scope of project, to proceed with site acquisition for such project and to assist in responding to emergency projects undertaken pursuant of paragraph h of subdivision two of this section. The authority may expend moneys for such purposes for projects to be funded pursuant to subdivision four of this section in such amounts as are consistent with the city capital budget appropriation therefor.

c. The chancellor shall prepare preliminary scopes (i) for each project contained within the program elements defined in paragraphs a and b of subdivision two of this section and, where appropriate, paragraph g of subdivision two of this section, (ii) for each major modernization project contained in paragraph c of such subdivision two, and (iii) for each new construction project contained in paragraph d of such subdivision two, and shall transmit such preliminary scopes to the affected community school boards. The community school board may hold hearings on such scope, provided, however, that the community school board must submit any comments to the chancellor no later than thirty days following the date of submission. The chancellor shall consider the comments in preparing the scope that he will submit to the director of management and budget of the city pursuant to paragraph d of this subdivision.

d. For projects to be funded pursuant to subdivision four of this section, the chancellor shall transmit the detailed scope of each such project to the director of management and budget of the city for approval.

(i) Except as provided in paragraph b of this subdivision, no expenses shall be incurred by the city board or the authority for any such project prior to approval of the detailed scope of any such project.

(ii) No detailed scope of project shall be approved unless the total estimated costs of such project, together with the aggregate estimated costs of all projects for which a detailed scope has theretofore been approved, are within city capital budget appropriations available therefor. A detailed scope of project that is not disapproved by the director of management and budget within thirty days of its submission shall be deemed approved. To the extent the director disapproves all or part of a scope, he shall set forth in writing the reasons therefor.

(iii) Upon approval of the detailed scope of project, the chancellor shall refer such project to the New York city school construction authority for implementation in accordance with an agreement between the authority and the city board and shall transmit the approved project scope to the comptroller whereupon the total estimated costs of such project as set forth in such approved project scope shall be available for expenditure.

(iv) Approval of the director of management and budget shall be required for any material change in the approved detailed scope of project or for any increase in the total cost of such project in excess of any reserve provided in the approved detailed scope of project. Such approval shall be given or deemed given in the manner provided herein.

(v) The provisions of this paragraph shall not apply to emergency projects undertaken pursuant to paragraph h of subdivision two of this section, the estimated costs of which, together with the costs of other projects undertaken pursuant to said paragraph h, does

§ 1725. Short title

This title shall be known and may be cited as the "New York city school construction authority act".

§ 1726. Definitions

As used or referred to in this title, unless a different meaning clearly appears from the context:

1. "Authority" shall mean the New York city school construction authority.
2. "Board" shall mean the board of trustees of the New York city school construction authority.
3. "Board of estimate" shall mean the board of estimate of the city of New York or any official public body next succeeding to the powers of such board.
4. "Chancellor" shall mean the chancellor of the city school district of the city of New York.
5. "City" shall mean the city of New York.
6. "City board" shall mean the board of education of the city school district of the city of New York.
7. "Comptroller" shall mean the comptroller of the city of New York.
8. "Director of management and budget" shall mean the director of management and budget of the city of New York.
9. "Educational facilities" shall have the meaning set forth in subdivision nine of section twenty-five hundred ninety-a of the education law.
10. "Mayor" shall mean the mayor of the city of New York.
11. "Project" shall have the meaning set forth in subdivision ten of section twenty-five hundred ninety-a of the education law.
12. "State" shall mean the state of New York.

§ 1727. New York city school construction authority

1. There is hereby established a public benefit corporation to be known as the "New York city school construction authority".
2. The authority shall be governed by and its powers shall be exercised by a board of trustees consisting of three members. The members shall be the chancellor, or acting chancellor if the position of chancellor is vacant, and two members, one to be appointed by the governor and one to be appointed by the mayor. The appointee of the mayor shall serve as the chairman of the board of trustees. No member of the city board or of a community school board shall be one of the appointed members of the board, nor shall an officer or employee of the city or state be one of the appointed members of the board. The appointed members shall serve at the pleasure of the appointing authority.
3. Each appointed member shall continue in office until a successor has been appointed and qualifies. In the event a vacancy occurs in the office of an appointed member, the vacancy shall be filled in the same manner as was the original appointment of the trustee whose office became vacant.
4. Appointed members may engage in private employment, or in a profession or business; provided, however, that notwithstanding any provision of general law, the members shall be subject to the limitations contained in sections twenty-six hundred four, twenty-six hundred five, twenty-six hundred six and twenty-six hundred seven of the New York city charter. The authority shall, for the purposes of such sections be a "city agency" and such trustees shall be "officers" of the authority for the purposes of such sections.
5. The board shall provide for the holding of regular meetings and such special meetings at the call of the chairman, as may be necessary. A majority of the whole

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number of trustees shall constitute a quorum for the transaction of business. The
powers of the board shall be vested in and exercised by a majority of the whole number of
the members thereof.

6. Trustees shall receive no compensation for their services, but shall be reimbursed
for the actual and necessary expenses incurred by them in the performance of their
official duties as trustees of the authority.

7. The board shall appoint as president of the authority an individual who has
extensive executive-level construction experience. The president, who shall not be a
member of the board, shall be the chief executive officer of the authority and shall be
responsible for the discharge of the executive and administrative functions and powers of
the authority. The president shall serve at the pleasure of the board.

8. The authority shall continue in its corporate existence until terminated by law.
Upon termination of the existence of the authority, all of the property interests of the
authority shall pass to and vest in the city and the city shall assume any outstanding
contractual duties or obligations of the authority, except as otherwise may be specified by
law.

9. The authority shall continue in its corporate existence until terminated by law or
until such time as the size or composition of the city board as set forth in chapter nine
hundred fifteen of the laws of nineteen hundred seventy-three is amended, altered or
modified. Upon termination of the existence of the authority, all of the property interests
of the authority shall pass to and vest in the city and the city shall assume any
outstanding contractual duties or obligations of the authority, except as otherwise may be
specified by law.

§ 1728. Powers and duties of the authority

The authority shall have the following powers and duties:

1. To sue and be sued;
2. To have a seal or alter the same at pleasure;
3. To make and alter by-laws for the organization and the management and regulation
of its affairs;

4. To appoint officers and employees and fix their compensation;
5. To design, construct, reconstruct, improve, rehabilitate, maintain, furnish, repair,
equip and otherwise provide for educational facilities, as defined in section twenty-five
hundred ninety-a of the education law, for the city board pursuant to agreements with the
city board;

6. To acquire real and personal property, or any interest therein, by any method,
including but not limited to purchase or condemnation, for the purpose of constructing,
reconstructing, improving, rehabilitating, maintaining, repairing, furnishing, equipping or
otherwise providing for educational facilities for the city board; provided, however, that
the authority shall use such condemnation power only if the authority is unable to
purchase property by negotiation or bidding and provided further that, except to the
extent permitted by subdivision two of section seventeen hundred twenty-nine of this title,
the authority may not condemn property dedicated to use, used or mapped as a city street
or any other property owned by, or subject to any interest therein, of the city of New
York;

7. To make and execute contracts and all other instruments necessary or convenient
for the exercise of its functions, powers and duties, provided that the authority may not
unless otherwise specifically authorized by law issue negotiable bonds or notes;

8. To engage the services of private consultants on a contract basis for rendering
professional and technical assistance and advice;

9. To enter into agreements with the city board pursuant to which the authority will
be responsible for the acquisition, design, construction, reconstruction, improvement,
rehabilitation, maintaining, repairing, furnishing, equipping of and otherwise providing
for educational facilities for the city board, provided, however, that (i) any agreement

under which the authority shall engage in maintenance shall be limited to maintenance that is attendant to the authority's implementation of a five-year educational facilities capital plan; (ii) nothing herein shall be deemed to diminish the rights of school custodians and custodian engineers as established in the existing collective bargaining agreement with the city board or other custodian or maintenance employees as established in their respective collective bargaining agreements; and (iii) further provided that the authority is not empowered to engage in custodial operations;

10. Notwithstanding the provisions of section two thousand five hundred four of the insurance law or any other law, to procure insurance on behalf of itself and others against any loss in connection with its activities, properties and other assets, in such amounts and from such insurers as it deems desirable; provided that the authority may enter into agreements with the city, acting either by the mayor alone or by resolution of the board of estimate, providing for indemnification by the city of the authority against tort and contract judgments and claims, which agreements may contain provisions requiring legal representation of the authority by the corporation counsel of the city and specifying any insurance to be carried by the authority, which provisions shall supersede any agreements with the city board on such subject;

11. Upon completion of the design, construction, reconstruction, improvement, rehabilitation, maintaining, repairing, furnishing, equipping of or otherwise providing for educational facilities, to convey title to any such facilities to the city for use as educational facilities by the city board. In the case of educational facilities leased by the authority, the city board may occupy or sublet such facilities from the authority without compensation and without further approval and, upon transfer or assignment of the authority's interest in these facilities to the city board, the city board shall assume all rights and obligations of the authority under such lease;

12. To dispose of personal property and, with the consent of the city, acting by resolution of the board of estimate, to dispose of real property, or any interest therein, held by the authority and not required for educational purposes of the city board, by sale, lease, sublease or otherwise, provided that such disposition is pursuant to the implementation of a five-year educational facilities capital plan;

13. To enter into agreements with the city's department of city planning to render any services the authority may request, including but not limited to professional and technical assistance by planning experts, engineers, architects and any other staff as may be necessary, and the use of the premises, personnel, equipment and personal property of the department of city planning. The authority shall provide for reimbursement to the department of city planning from the authority for any expenses incurred by the department of city planning in carrying out the terms of any such agreements;

14. To enter into agreements with the city board to render services, including but not limited to the use of the premises, personnel and personal property of the city board, and to provide for reimbursement to the city board from the authority for any expenses incurred by the city board in carrying out the terms of these agreements;

15. To enter into agreements with the city board pursuant to which the city board may make available to the authority the services of employees of the city board who are contemplated to be transferred to the authority pursuant to a plan for such transfers for the purpose of rendering assistance in establishing the operations of the authority; provided, however, that such employees shall no longer be available to the authority pursuant to the terms of this subdivision beyond one year following the effective date of this title;

16. To apply for or accept any gifts, grants or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, from the state or any agency or instrumentality thereof, from the city or any agency or instrumentality thereof or from any other source, for any or all of the purposes specified in this title, and it may comply, subject to the provisions of this title, with the terms and conditions thereof; and

17. To do any and all things necessary or convenient to carry out and exercise the powers given and granted by this section.

§ 1729. Transfer of property

1. The city board and the city, acting either by the mayor alone or by resolution of the board of estimate, may convey or transfer to the authority, with or without consideration and without any further authorization, any real, personal or mixed property (including inalienable property of the city, except for land mapped as parks), or any interest therein, in order to assist the authority in implementing a five-year educational facilities capital plan.

2. In the event the authority wishes to obtain city property for use as an educational facility pursuant to an approved five-year educational facilities capital plan, the authority shall request such property in writing and shall submit such request directly to the mayor. The mayor shall have thirty days to respond to such request. If the request is denied, the mayor shall set forth in writing the reasons for such denial, including whether the city intends to use such property for other public uses. Such response shall be made available to the public upon request. If the mayor fails to respond to such request, the authority may, at the expiration of the thirty-day period, condemn such property pursuant to its powers under subdivision six of section seventeen hundred twenty-eight of this title.

§ 1730. Exemption from land use review procedures and other requirements

1. Except for the provisions of article eight of the environmental conservation law¹ and article fourteen of the parks, recreation and historic preservation law,² neither (a) the establishment or amendment of an educational facilities capital plan and actions relating to the financing thereof, nor (b) the establishment or revision of an educational facilities master plan and actions relating to the financing thereof, nor (c) the selection of sites for educational facilities pursuant to a five-year educational facilities capital plan, nor (d) any conveyance or other grant of property or of any interest therein by the city, the city board or any other person, firm or organization to the authority or to the city board pursuant to a five-year educational facilities capital plan, nor (e) the design, construction, reconstruction, improvement, rehabilitation, maintaining, furnishing, repairing, equipping or use of educational facilities by the authority, including any contracts, approvals, consents, agreements, permits or authorizations necessary to accomplish the same, which are pursuant to a five-year educational facilities capital plan, nor (f) the reconveyance or transfer of property to the city board or to the city by the authority or any disposition of property pursuant to a five-year educational facilities capital plan, shall be subject to the provisions of any general, special or local law, city charter, administrative code, ordinance or resolution governing uniform land use review procedures, any other land use planning review and approvals, historic preservation procedures, architectural reviews, franchise approvals and other state or local review and approval procedures governing the use of land and the improvements thereon within the city. Capital projects for educational facilities to be undertaken by the authority shall not be subject to the provisions of the charter of the city relating to site selection, land use review procedures, art commission review procedures, general standards and cost limits, project scope and design procedures, or contract registration and vouchering procedures.

2. The authority shall be deemed the lead agency for purposes of the implementation of the environmental review procedures prescribed by article eight of the environmental conservation law and the rules and regulations promulgated by the department of environmental conservation pursuant thereto.

3. The authority shall be subject to zoning regulations to the same extent that the city board is subject to such regulations, if at all.

¹ ECL § 8-0101 et seq.

² Parks, Recreation and Historic Preservation Law § 14.01 et seq.

§ 1731. Community participation

1. Prior to the commencing of new construction or building additions of an educational facility, or the acquisition of real property or any interest therein for such purpose, the

authority shall file a copy of the site plan of such facility in its offices and shall provide a copy thereof to the city board, the city planning commission and the community school board and community board of the district in which the facility will be located. Upon request, any other person shall be furnished with such plan or a summary thereof. The authority shall publish in a newspaper of general circulation in the city a notice of the filing of such plan and the availability of the plan and a summary thereof. Such plan shall include, in the case of any project for which the acquisition of real property or interest therein is proposed, the recommended site, any alternate sites considered, and any rationale as to why the alternate sites were not selected.

2. Within thirty days after publication of the notice required under subdivision one of this section, a public hearing with sufficient public notice shall be held by each affected community school board on any or all aspects of the site plan and by each affected community board on aspects of the site plan which relate to the general public use of the educational facility and to its impact on the surrounding community. The affected board may request the attendance of representatives of the authority or the city board at a hearing and the authority or the city board shall comply with such requests. If the proposed project affects two or more school districts or community boards, then a hearing may be held jointly by the affected community school boards and/or the affected community boards. Any affected community school board, together with any affected community board, may at their mutual discretion, elect to conduct a hearing jointly.

3. Within forty-five days after publication of such notice, each affected community school board or community board shall prepare and submit to the authority, written comments on the site plan. Any other organization or person shall also have the opportunity to present written comments on the plan during this period. Each comment received by the authority on such plan at any time prior to action being taken by the authority on the plan shall be considered by the authority in connection with such action.

4. After due consideration of such comments, if any, the authority may affirm, modify or withdraw the plan.

5. Nothing herein shall preclude the authority from holding hearings on the site plan, provided, however, that any such hearings on the site plan shall be conducted within the period specified in subdivision three of this section.

§ 1732. Board of estimate approval of sites

1. Following the hearings held pursuant to section seventeen hundred thirty-one of this title, but prior to initiating construction of new educational facilities, the authority shall submit the site plan of such projects to the board of estimate for review, provided, however, that such review shall be limited to the site selected for the project.

2. The board of estimate may approve or disapprove such site plan, provided however that (a) if the board of estimate fails to act within twenty days of such submission by the authority, the site plan shall be deemed to be approved and (b) any vote to disapprove such site plan shall require a two-thirds vote of the total number of board of estimate vote. For purposes of such vote, the twenty day notice provision contained herein shall be deemed sufficient for board of estimate action notwithstanding any provision of law, local or general, or charter to the contrary.

3. The board of estimate may not require the authority to conduct any further hearings or seek any further approvals as a condition for receiving board of estimate approval.

4. If the board of estimate disapproves the site plan, (a) the authority may, after consultation with the city board, revise such site plan for resubmission pursuant to section seventeen hundred thirty-one of this title and this section or (b) the authority may, with the agreement of the city board and chancellor, eliminate such site plan from the five-year educational facilities capital plan.

§ 1733. Compliance with codes

The authority shall, in the design, construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational

facility in its offices and shall provide a commission and the community school which the facility will be located. Upon such plan or a summary thereof. The circulation in the city a notice of the plan and a summary thereof. Such plan shall include the acquisition of real property or other, any alternate sites considered, and not selected.

Notice required under subdivision one of this section shall be held by each affected community and by each affected community relate to the general public use of the affected community. The affected board shall advise the authority or the city board at a public hearing to comply with such requests. If the authority or community boards, then a hearing shall be held by the affected community school boards and/or the affected community board, together with any affected community, to elect to conduct a hearing jointly. Upon such notice, each affected community shall submit to the authority, written comments and person shall also have the opportunity to be heard during this period. Each comment shall be taken into account prior to action being taken by the authority in connection with such action. If, upon any, the authority may affirm, modify

from holding hearings on the site plan, the site plan shall be conducted within the

section seventeen hundred thirty-one of this chapter, if the authority shall forward of estimate for review, provided, that the site plan is selected for the project. Upon approval of such site plan, provided however that the authority shall receive within twenty days of such submission by the authority and (b) any vote to disapprove the site plan shall be taken. The total number of board of estimate members shall be as provided in the notice provision contained herein shall notwithstanding any provision of law,

the authority to conduct any further action for receiving board of estimate

the site plan, (a) the authority may, after the authority has received a site plan for resubmission pursuant to this section or (b) the authority may, upon the authority's decision, eliminate such site plan from the

construction, improvement, rehabilitation or otherwise providing for educational

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facilities, comply with the requirements of the city building code, fire code and electrical code.

§ 1734. Contracts of the authority

1. a. All contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational facilities for the city board may be awarded in accordance with the provisions of this section, notwithstanding the provisions of section eight of the public buildings law, section one hundred three of the general municipal law, section one hundred thirty-five of the state finance law, section seven of the New York state financial emergency act for the city of New York or of any other provision of general, special or local law, charter or administrative code.

b. The authority shall be subject to the provisions of section one hundred one of the general municipal law.

2. a. Except as otherwise provided in this section, all purchase contracts for supplies, materials or equipment involving an estimated expenditure in excess of ten thousand dollars and all contracts for public work involving an estimated expenditure in excess of fifty thousand dollars shall be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in the manner hereinafter set forth. For purposes hereof, contracts for public work shall exclude contracts for personal, engineering and architectural, or professional services.

b. The authority may reject all bids and obtain new bids in the manner provided by this section when it deems it in the public interest to do so or, in cases where two or more responsible bidders submit identical bids which are the lowest bids, award the contract to any of such bidders or obtain new bids from such bidders. Nothing herein shall obligate the authority to seek new bids after the rejection of bids or after cancellation of an invitation to bid. Nothing in this section shall prohibit the evaluation of bids on the basis of costs or savings including life cycle costs of the item to be purchased, discounts, and inspection services so long as the invitation to bid reasonably sets forth the criteria to be used in evaluating such costs or savings. Life cycle costs may include but shall not be limited to costs or savings associated with installation, energy use, maintenance, operation and salvage or disposal.

3. a. Notwithstanding the provisions of paragraph a of subdivision two of this section, the authority shall establish guidelines governing the qualifications of bidders entering into contracts for the construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational facilities for the city board. The bidding may be restricted to those who have qualified prior to the receipt of bids according to standards fixed by the authority; provided, however, that the award of contracts shall, to the extent not inconsistent with this paragraph, be in accordance with paragraph b of subdivision two of this section.

b. In determining whether a prospective bidder qualifies for inclusion on a list of pre-qualified bidders, the authority shall consider (1) the experience and past performance of the prospective bidder; (2) the prospective bidder's ability to undertake work; and (3) the financial capability, responsibility and reliability of prospective bidders. The authority may also consider such other factors as it deems appropriate.

c. The authority shall, not less than twice each year, publish, in a newspaper of general circulation in the city of New York, an advertisement requesting prospective bidders to submit qualification statements. Lists of pre-qualified bidders shall be reviewed and updated not less than annually by the authority. The authority shall delete from the list of pre-qualified bidders any bidder who has failed to perform adequately or satisfactorily for the authority, the city board or any other city or state agency or authority.

d. Lists of pre-qualified bidders may be established on a project-specific basis; provided, however, that any such list shall have no less than five bidders.

4. Advertisement for bids, when required by this section, shall be published at least once in a newspaper of general circulation in the city of New York. Publication in

such a newspaper shall not be required (i) if bids for contracts for supplies, materials or equipment are of a type regularly purchased by the authority and are to be solicited from a list of potential suppliers, if such list is or has been developed consistent with the provisions of subdivision six of this section or (ii) if bids are to be solicited from a list of pre-qualified bidders pursuant to the provisions of paragraph d of subdivision three of this section. Any such advertisement shall contain a statement of the time and place where all bids received pursuant to such notice will be publicly opened and read. At least fourteen days shall elapse between the first publication of such advertisement or the solicitation of bids, as the case may be, and the date of opening and reading of bids.

b. The authority may designate any officer or employee to open the bids at the time and place bids are to be opened and may designate an officer to award the contract to the lowest responsible bidder. Such designee shall make a record of all bids in such form and detail as the authority shall prescribe. All bids received shall be publicly opened and read at the time and place specified in the advertisement or at the time of solicitation, or to which the opening and reading have been adjourned by the authority. All bidders shall be notified of the time and place of any such adjournment.

5. Notwithstanding the foregoing, the authority may by resolution approved by a vote of its members declare (i) that competitive bidding for non-construction contracts is impractical or inappropriate because of the existence of any of the circumstances hereinafter set forth or (ii) that competitive bidding for construction contracts is impractical or inappropriate because of the existence of the circumstances set forth in paragraph a of this subdivision. Thereafter the authority may proceed to award contracts without complying with the requirements of subdivision two or three of this section. In each case where the authority declares competitive bidding impractical or inappropriate, it shall state the reason therefor in writing and summarize any negotiations that have been conducted and shall be made available upon request. Except for contracts awarded pursuant to paragraphs a, b and c of this subdivision, the authority shall not award any contract pursuant to this subdivision earlier than thirty days from the date on which the authority declares that competitive bidding is impractical or inappropriate. Competitive bidding may only be declared impractical or inappropriate where:

a. the existence of an emergency involving danger to life, safety or property requires immediate action and cannot await competitive bidding or the item to be purchased is essential to efficient operation or the adequate provision of service by the city board or the authority and as a consequence of unforeseen circumstance such purchase cannot await competitive bidding;

b. the authority receives no responsive bids or only a single responsive bid in response to an invitation for competitive bids;

c. the item is available through an existing contract between a vendor and (i) another public authority provided that such other authority utilized a process of competitive bidding or a process of competitive requests for proposals to award such contracts, or (ii) the city board, or (iii) the state of New York, or (iv) the city of New York, provided that in any case when under this paragraph the authority determines that obtaining such item thereby would be in the public interest and sets forth the reason for such determination. The authority shall accept sole responsibility for any payment due the vendor as a result of the authority's order; or

d. the authority determines that it is in the public interest to award contracts pursuant to a process for competitive requests for proposals as hereinafter set forth. For purposes of this section, a process for competitive requests for proposals shall mean a method of soliciting proposals and awarding a contract on the basis of a formal evaluation of the characteristics, such as quality, cost, delivery schedule and financing of such proposals against stated selection criteria. Public notice of the requests for proposals shall be given in the same manner as provided in subdivision three of this section and shall include the selection criteria. In the event the authority makes a material change in the selection criteria from those previously stated in the notice, it will inform all proposers of such change and permit proposers to modify their proposals.

(i) The authority may award a contract pursuant to this paragraph only after a resolution approved by a vote of its members at a public meeting of the authority with

contracts for supplies, materials or authority and are to be solicited from been developed consistent with the bids are to be solicited from a list of paragraph d of subdivision three of a statement of the time and place publicly opened and read. At least of such advertisement or the of opening and reading of bids. employee to open the bids at the time officer to award the contract to the a record of all bids in such form and ed shall be publicly opened and read or at the time of solicitation, or to y the authority. All bidders shall be ent.

ay by resolution approved by a vote g for non-construction contracts is nce of any of the circumstances or construction contracts is impracti- r circumstances set forth in paragraph proceed to award contracts without e three of this section. In each case r practical or inappropriate, it shall e any negotiations that have been t. Except for contracts awarded y, the authority shall not award any ty days from the date on which the tical or inappropriate. Competitive riate where:

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et between a vendor and (i) another utilized a process of competitive als to award such contracts, or (ii) city of New York, provided that in etermine that obtaining such item the reason for such determination. ayment due the vendor as a result

interest to award contracts pursuant hereinafter set forth. For purposes proposals shall mean a method of asis of a formal evaluation of the e and financing of such proposals e requests for proposals shall be ee of this section and shall include s a material change in the selection will inform all proposers of such

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such resolution (A) disclosing the other proposers and the substance of their proposals, (B) summarizing the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (C) setting forth the criteria upon which the selection was made.

(ii) Nothing in this paragraph shall require or preclude (A) negotiations with any proposers following the receipt of responses to the request for proposals or (B) the rejection of any or all proposals at any time. Upon the rejection of all proposals, the authority may solicit new proposals or bids in any manner prescribed in this section.

6. Upon the adoption of a resolution by the authority stating, for reasons of efficiency, economy, compatibility or maintenance reliability, that there is a need for standardization, the authority may establish procedures whereby particular supplies, materials or equipment are identified on a qualified products list. Such procedures shall provide for products or vendors to be added to or deleted from such list and shall include provisions for public advertisement of the manner in which such lists are compiled. The authority shall review such list no less than twice a year for the purpose of making such modifications. Contracts for particular supplies, materials or equipment identified on a qualified products list may be awarded by the authority to the lowest responsible bidder after obtaining sealed bids in accordance with this section or without competitive sealed bids in instances when the item is available from only a single source, except that the authority may dispense with advertising provided that it mails copies of the invitation to bid to all vendors of the particular item on the qualified products list.

7. The authority shall compile a list of potential sources of supplies, materials or equipment regularly purchased. The authority shall, by resolution, set forth the procedures it has established to identify new sources and to notify such new sources of the opportunity to bid for contracts for the purchase of supplies, materials or equipment. Such procedures shall include, but not be limited to advertising in trade journals.

8. The authority shall be subject to the provisions of section twenty-eight hundred seventy-nine of this chapter in awarding contracts for personal services.

9. The board shall, by resolution, establish procedures for the fair and equitable resolution of contract disputes. Prior to the establishment of such policy, the board shall publish in appropriate publications a notice of such policy and invite comment from interested parties, including, but not limited to representatives of construction organizations. Such notice shall also state that the authority will hold a public hearing to consider the policy at a specified time and place on a date not less than ten days after such publication, and the authority shall conduct the public hearing pursuant to such notice.

10. The provisions of article eight of the labor law¹ shall be applicable to all contracts entered into directly or indirectly by the authority.

11. The provisions of subdivision one of section one hundred six-b of the general municipal law shall apply to the authority, provided, however, that the authority may retain up to four times the value of any remaining items to be completed.

¹ Labor Law § 220 et seq.

§ 1735. Certain contracts of the authority

1. Notwithstanding the provisions of paragraph b of subdivision one of section seventeen hundred thirty-four of this title, the award of construction contracts by the authority between July first, nineteen hundred eighty-nine and June thirtieth, nineteen hundred ninety-four, shall not be subject to the provisions of section one hundred one of the general municipal law; provided, however, that the value of contracts awarded between July first, nineteen hundred ninety-three and June thirtieth, nineteen hundred ninety-four pursuant to this subdivision shall not exceed one hundred forty percent of the highest annual value of contracts awarded in any previous fiscal year in which contracts are awarded pursuant to this section.

2. Notice of the invitation for bids for contracts to be awarded pursuant to this section shall state the time and place of the receipt and opening of bids.

3. All bidders shall submit to the authority, prior to the opening of a bid for the award of a contract under this section, a sealed list identifying the names of each subcontractor each contractor proposes to utilize under the contract for the performance of the following subdivisions of work:

- a. Plumbing and gas fitting;
- b. Steam heating, hot water heating, ventilating and air conditioning apparatus; and
- c. Electric wiring and standard illuminating fixtures.

The low bidder shall specify in such list the estimated value to be paid each such subcontractor for the work to be performed by such subcontractor. After the authority has announced the low bidder at the bid opening, the authority shall open only such low bidder's separate sealed list and shall read aloud such subcontractors listed therein. All such sealed lists except those of the low bidder shall be returned unopened to their respective contractors following the awarding of a contract.

4. The authority shall establish a committee to review and report on contracts issued pursuant to this section and on the procedures and methodology of the authority in awarding such contracts. The review shall include, but not be limited to, the degree to which contractors awarded contracts pursuant to such paragraph, and the subcontractors utilized by them, utilize employees who are represented by labor organizations, comply with existing labor standards, maintain harmonious labor relations and recognize state approved apprentice programs. The committee shall, from time to time, issue economic and statistical reports dealing with the costs of construction under this article. Such reports shall deal with the costs of labor, material, equipment and profit. The committee shall have no authority to approve or disapprove contracts. The committee shall be composed of two representatives from the authority, one representative from the board, two representatives from construction-related labor organizations and two representatives from the construction industry. The president of the authority shall designate the members of the committee, provided, however, that the president shall designate the representatives of labor organizations from a list of names submitted by the New York state AFL-CIO.

5. In awarding contracts pursuant to this section the authority shall, in addition to the factors set forth in subdivision three of section seventeen hundred thirty-four of this title, consider the following factors when establishing a list of pre-qualified bidders for construction work: (a) the degree to which a contractor or subcontractor utilizes employees who are represented by a labor organization; (b) the absence of any intentional misrepresentation with regard to lists of subcontractors previously submitted pursuant to the provisions of subdivision two of this section; and (c) the record of the bidder in complying with existing labor standards, maintaining harmonious labor relations and recognizing state approved apprentice programs.

6. The authority shall provide in its construction, erection or alteration contracts which implement a five year educational facilities capital plan a provision that shall require each contractor to make prompt payment to its subcontractors performing each subdivision of work listed in subdivision three of this section. Within seven calendar days of the receipt of any payment from the authority, the contractor shall pay to each such subcontractor that portion of the proceeds of such payment representing the value of the work performed by such subcontractor, based upon the actual value of the subcontract, which has been approved and paid for by the authority, less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged and less any amount retained by the contractor as provided herein. For such purpose, the subcontract may provide that the contractor may retain not more than five per centum of each payment to the subcontractor or not more than ten per centum of each such payment if prior to entering into the subcontract the subcontractor is unable or unwilling to provide, at the request of the contractor, a performance bond and a labor and material bond both in the amount of the subcontract.

At the time of making a payment to the contractor for work performed by the subcontractors set forth in subdivision three of this section, the authority shall file in its office for review a record of such payment. If any such subcontractor shall notify the

prior to the opening of a bid for the award identifying the names of each subcontractor for the performance of the

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tractor for work performed by the section, the authority shall file in its y such subcontractors shall notify the

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authority and the contractor in writing that the contractor has failed to make a payment to it as provided herein and the contractor shall fail, within five calendar days after receipt of such notice, to furnish either proof of such payment or notice that the amount claimed by the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it, shall remit the amount when and so withheld to the subcontractor and deduct such payment from the amounts then otherwise due and payable to the contractor, which payment shall, as between the contractor and the authority, be deemed a payment by the authority to the contractor. In the event the contractor shall notify the authority as above provided that the claim of the subcontractor is in dispute, the authority shall withhold from amounts then or thereafter becoming due and payable to the contractor, other than from amounts becoming due and payable to the contractor representing the value of work approved by the authority and performed by other subcontractors and which the contractor is required to pay to such subcontractors within seven calendar days as herein provided, an amount equal to that portion of the authority's prior payment to the contractor which the subcontractor claims to be due it and deposit such amount when and so withheld in a separate interest-bearing account pending resolution of the dispute, and the amount so deposited together with the interest thereon shall be paid to the party or parties ultimately determined to be entitled thereto, or until the contractor and subcontractor shall otherwise agree as to the disposition thereof. In the event the authority shall be required to withhold amounts from a contractor for the benefit of more than one subcontractor, the amounts so withheld shall be applied to or for such subcontractors in the order in which the written notices of nonpayment have been received by the authority, and if more than one such notice was received on the same day, proportionately based upon the amount of the subcontractor claims received on such day. Nothing herein contained shall prevent the authority from commencing an interpleader action to determine entitlement to a disputed payment in accordance with section one thousand six of the civil practice law and rules, or any successor provision thereto.

Payment to a subcontractor shall not relieve the contractor from responsibility for the work covered by the payment. Except as otherwise provided, nothing contained herein shall create any obligation on the part of the authority to pay any subcontractor, nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and the authority.

The provisions of this subdivision shall not be applicable to the subcontractors of a contractor whose contract is limited to the performance of a single subdivision of work listed in subdivision three of this section.

7. The provisions of this section shall cease to be in effect in the event any of the provisions of this section shall be adjudged to be invalid by the final judgment of a court of competent jurisdiction from which judgment all appeals or applications for relief have been exhausted or the time therefor has expired, provided, however, that such appeals or applications are pursued promptly.

§ 1736. Funding of the authority

1. Each year the authority shall prepare and the board shall adopt an itemized estimate of the sum of money it deems necessary from the city board to cover the authority's operating expenses for the ensuing fiscal year. Such estimate shall take into account any prior year's surplus and shall be delivered to the city board for review at least ten business days prior to the date for submission of the city board's annual estimate pursuant to section twenty-five hundred seventy-six of the education law and shall be included as part of such city board estimate. Upon appropriation of the city's expense budget for such ensuing fiscal year, the amount of the authority's estimate shall be paid to the authority by the city in twelve equal payments, each payable on the first

day of each month of the fiscal year. The authority shall not be required to present any vouchers for such payments, but shall issue quarterly reports not later than thirty days after the end of each quarter comparing actual expenditures to estimated expenditures and analyzing any significant variances. The authority shall develop procedures to ensure that it operates at all times within the amounts payable to it pursuant to this section, after taking into account funds available to the authority for such purpose from sources other than the city. Expenditures of the authority from funds paid to it by the city shall be subject to audit by the comptroller, who may recommend procedures designed to improve the authority's accounting and expenditure and control expenditures. In the event the authority's cash flow projections require that funds be advanced more rapidly during a fiscal year than would occur pursuant to the payment dates set forth in this section, the authority shall advise the city board, the director of management and budget and the comptroller of such requirement. Such officials shall, in consultation with the authority, develop a schedule of advance payments to the authority designed to cover projected cash shortfalls during a fiscal year and to provide the authority with cash balances at all times sufficient to permit prompt payment of the authority's creditors.

2. The authority shall present vouchers for payment of costs incurred for projects the detailed scope of which approval has been obtained and for activities for which no such scope approval is required as provided in section twenty-five hundred ninety-p of the education law to the comptroller, which vouchers shall contain the following information: the amounts to be paid; the payees; the project or purpose for which the costs were incurred; a statement that the amounts to be paid are within city capital budget appropriations available therefor; and, with respect to projects for which scope approval has been obtained, a statement that the amounts to be paid are in accordance with such approved project scope. The authority shall not be required to furnish any additional information prior to payment of a voucher pursuant to this subdivision, and the comptroller is hereby authorized and directed to take such actions as may be necessary to make such payment.

3. The authority shall not be deemed a "covered organization" as defined in the New York state financial emergency act for the city of New York.

§ 1737. Civil service

1. a. The authority, for the purpose of administering the state civil service law, shall be deemed to be a municipal commission provided, however, that (i) the authority may elect to delegate the administration of any or all of the provisions of the civil service law, except article fourteen of such law, to the department of personnel of the city of New York with respect to titles established at the authority and which the city has also established and promulgates; (ii) the civil service commission of the city of New York shall exercise on behalf of the authority the powers and duties of review assigned under sections fifty, seventy-two, and seventy-six of the civil service law; and (iii) the New York city office of administrative trials and hearings will be designated the hearing office and shall conduct on behalf of the authority such hearings as are required by sections seventy-one, seventy-two, seventy-three, seventy-five and eighty-one of the civil service law.

b. In the event the authority elects to delegate administration of any or all of the provisions of the civil service law pursuant to paragraph a of this subdivision, the city department of personnel shall enter into a contract with such authority for the rendition of such services. The authority shall compensate the city of New York for such services only with respect to such services rendered for or on behalf of the authority. If the city of New York and the authority cannot agree on the amount of such compensation, the city comptroller shall determine the fair and reasonable value of such services and the authority shall pay such sum to the city of New York.

2. a. Any person on an eligible list for a position with the city board in effect on the effective date of this title shall continue to hold such position on such list and shall be entitled to the same civil service rights.

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b. The authority shall continue to use any new or existing civil service lists promul-
gated by the city department of personnel until such time as successor titles are
established.

3. With respect to persons employed by the city board on the effective date of this
section, the authority and the city board shall be deemed to be the same public employer
only for purposes of transfer of employment under the civil service law. No civil service
right of an employee of the city board employed on the effective date of this title shall be
lost, impaired or affected by reason of the enactment of this section into law.

4. A tripartite panel shall be established, consisting of one person representing the
authority, one person representing the appropriate public employee organization and an
impartial person selected by these representatives. This panel shall hear complaints filed
by such public employee organization with respect to the creation and classification of
new titles and shall render non-binding written recommendations to the public employee
organization and the authority prior to the public hearing required of a municipal civil
service commission pursuant to section twenty of the civil service law, provided that the
hearing of the tripartite panel shall be expedited so as to avoid delay.

¹ Civil Service Law § 200 et seq.

§ 1738. Retirement of employees

Employees of the authority shall be eligible to join the board of education retirement
system as established in section twenty-five hundred seventy-five of the education law
and pursuant to the usual rules of that system, provided that a new employee who upon
appointment by or transfer to the authority is a member of the New York city employees
retirement system may remain a member of the New York city employees retirement
system if, within ninety days of the effective date of the transfer to or appointment by
the authority, the employee exercises an election to do so. Furthermore, the retirement
rights of employees of the city board employed on the effective date of this title shall not
be impaired by reason of the enactment of this title into law.

§ 1739. Collective negotiation

1. For the purpose of article fourteen of the civil service law,¹ the authority shall be
deemed to be the public employer and as such shall negotiate with and enter into written
agreements with employee organizations representing the staff of the authority that have
been certified or recognized under such article. In carrying on such negotiations, the
authority shall consult with and seek assistance from the office of labor relations and
collective bargaining of the city board and the New York city office of municipal labor
relations. The state public employment relations board shall have exclusive jurisdiction
for the purpose of administering the provisions of such article and the provisions of
section two hundred twelve of such article shall not be applicable to any such negotia-
tions.

2. Employees transferred from the city board to the authority shall be included in an
appropriate employer-employee negotiating unit pursuant to article fourteen of the civil
service law except for those employees who are designated managerial or confidential.
With respect to such employees, the existing public employee organization recognized or
certified to represent the employees of the existing negotiating unit shall be recognized as
the representative for the negotiating unit of the authority.

3. Future alterations of the negotiating unit shall be made pursuant to article fourteen
of the civil service law.

4. a. The authority shall consult with the appropriate public employee organization on
the establishment of, and bargain all terms and conditions of, any new titles it establishes
which have a community of interest with titles already represented by the public
employee organization which presently has representation rights for those titles at the
city board or at the city of New York.

b. Any such titles for which terms and conditions are bargained pursuant to para-
graph a of this subdivision shall be deemed to be successor titles within the meaning of
applicable law and, so long as the responsibilities of employees in these titles are

reasonably related to the responsibilities of employees currently represented by a public employee organization, shall be accreted to the appropriate bargaining certificates for which such public employee organization shall be voluntarily recognized as the bargaining agent under procedures acceptable to the state public employment relations board.

¹ Civil Service Law § 200 et seq.

§ 1740. Use of outside design, drafting or inspection services

1. All design, drafting or inspection services necessary in connection with the approved educational facilities capital plan shall be performed by appropriate employees of the authority, except as otherwise provided in this section.

2. a. The authority will undertake design, drafting and inspection services with employees of the authority so that (i) not less than twenty percent of such work performed in the years ending June thirtieth, nineteen hundred eighty-nine, and June thirtieth, nineteen hundred ninety will be so undertaken; (ii) not less than thirty percent of such work performed in the year ending June thirtieth, nineteen hundred ninety-one will be so undertaken; and (iii) not less than forty percent of such work performed in the year ending June thirtieth, nineteen hundred ninety-two and thereafter will be so undertaken. Each such percentage shall be determined by the value of the work performed for its respective fiscal year for such design, drafting and inspection services in the approved educational facilities capital plan.

b. Notwithstanding the provisions of paragraph a of this subdivision, design, drafting and inspection services may be performed by persons other than employees of the authority in any given fiscal year when the amount of services allowed to be performed by persons other than employees of the authority pursuant to the provisions of this subdivision have been exhausted for that fiscal year, and when:

(1) Performance by persons other than employees of the authority is necessary to avoid a conflict of interest, as defined in regulations promulgated by the authority, and is a direct consequence of an accident or other unforeseen circumstance; or

(2)(A) Current employees of the authority are otherwise engaged and cannot be reassigned to perform the services; (B) new employees cannot be hired within a reasonable time to perform such services; and (C) such services are needed in connection with work undertaken in response to an emergency. For purposes of this subparagraph, the term "emergency" shall mean a situation involving danger to life, safety or property which requires immediate action, is essential to efficient operation or the adequate provision of service by the city board or the authority, and is a direct consequence of an accident or other unforeseen circumstance.

3. a. Design, drafting or inspection services above the minimum percentages reserved for employees of the authority pursuant to paragraph a of subdivision two of this section may be performed by other than appropriate employees of the authority if to do so is (i) cost effective, (ii) required to obtain special expertise not available through the appropriate employees of the authority, (iii) required to perform a service of short duration, (iv) required to respond to an emergency, or (v) required to avoid a conflict of interest.

b. Prior to executing a contract for design, drafting or inspection services pursuant to paragraph a of this subdivision, the authority shall prepare a specific statement which sets forth the objective data supporting the reasons why the proposed contract meets one or more of the requirements set forth in such paragraph. Where use of the contract is stated to be in compliance with subparagraph (i) of such paragraph, such statement shall include certification that the contract will not cause the displacement of authority employees.

c. (1) Prior to the scheduled award of the contract proposed to be awarded pursuant to paragraph a of this subdivision, the authority shall provide all employee organizations that represent authority employees who would otherwise perform such work with copies of the statement rendered pursuant to paragraph b of this subdivision and the proposed contract so that each such employee organization shall have at least fifteen days to object to the proposed contract. Any employee organization which provides a timely written notice of objection and the reasons therefor shall, unless the authority agrees in writing:

ees currently represented by a public appropriate bargaining certificates for voluntarily recognized as the bargaining public employment relations board.

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rafting and inspection services with than twenty percent of such work eeten hundred eighty-nine, and June aken; (ii) not less than thirty percent hirtieth, nineteen hundred ninety-one ercent of such work performed in the ety-two and thereafter will be so ermined by the value of the work sign, drafting and inspection services

a of this subdivision, design, drafting rsons other than employees of the of services allowed to be performed pursuant to the provisions of this r, and when:

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otherwise engaged and cannot be ees cannot be hired within a reason- rices are needed in connection with r purposes of this subparagraph, the g danger to life, safety or property fficient operation or the adequate ty, and is a direct consequence of an

to the minimum percentages reserved h a of subdivision two of this section ees of the authority if to do so is (i) g not available through the appropri- rform a service of short duration, (iv) red to avoid a conflict of interest. ng or inspection services pursuant to prepare a specific statement which why the proposed contract meets one graph. Where use of the contract is such paragraph, such statement shall ause the displacement of authority

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to withdraw the proposed contract, be permitted to be heard by the authority's trustees prior to the award of the contract.

(2) Notwithstanding the provisions contained within subparagraph one of this paragraph, the employee organization may be provided less than the required fifteen days to object to the proposed contract when the contract is required to respond to an emergency as defined in subparagraph two of paragraph b of subdivision two of this section; provided, however, that all other provisions of such clause shall be observed.

4. No later than ten days prior to the date set by the city charter for the holding of hearings on the mayor's annual preliminary budget statements for capital projects, the authority shall prepare a report specifying the projects from the approved educational facilities plan which the authority plans to commit to during the next fiscal year. If the authority intends to contract for design, drafting or inspection services in connection with any project so specified, the report shall further specify (i) for which projects the services are needed; (ii) the type of services to be provided pursuant to contract; (iii) the estimated cost of the contract; and (iv) the reason or reasons why award of the contract is consistent with this subdivision. The report shall be filed in the authority's office and in the office of the city board, and shall be available to the public upon request. The authority shall file revisions to the report so as to provide advance notice of not less than thirty days of additional projects that the authority plans to undertake on which the authority intends to contract for design, drafting or inspection services. Such revisions shall be in accordance with the criteria of this subdivision. Such revisions shall also identify projects which the authority included in its report but which the authority does not intend to pursue in the applicable fiscal year. The authority shall file such revisions in the authority's office and in the office of the city board, and such revisions shall be available to the public upon request. Such report and revisions shall not preclude the authority from entering into contracts or undertaking projects.

5. Nothing herein shall be deemed to create a cause of action against the authority challenging the board's determination to award a contract pursuant to subdivision three of this section, except to challenge a failure by the authority to adhere to the process set forth in paragraphs b and c of subdivision three of this section.

§ 1741. Deposit and investment of moneys of the authority

1. The authority may establish and maintain funds for the purpose of receiving and expending moneys received by the authority.

2. All moneys of the authority from whatever source derived shall be paid to the authority and shall be deposited in accounts held in the authority's name in the bank or banks in the state designated by the authority. The moneys in such accounts shall be paid out on checks of the authority upon requisition by the chairman or such other officer or officers as the authority may authorize to make such requisitions.

3. Any moneys on deposit in the accounts of the authority not required for immediate expenditure shall be invested in obligations in which a municipality may be authorized to invest in accordance with section eleven of the general municipal law, provided, however, that such funds shall not be invested in instruments commonly known as repurchase agreements.

4. The authority shall provide the city with records and other information regarding (i) the nature of work performed by the authority's employees so as to enable the city to determine the extent to which the cost of such services may be treated as capital costs of the city and the educational facilities to which such costs pertain and (ii) the investment of funds received from the city so as to enable the city to comply with the requirements of federal tax laws and preserve the tax-exempt status of obligations issued by the city. The authority shall cooperate with the city in all respects to ensure that all investments are made in a manner that preserves the tax-exempt status of such obligations.

§ 1742. Exemption of the authority

1. Notwithstanding any other provision of law, any real or personal property, while owned or subject to any rights of the authority, shall be exempt from all taxes, special

assessments and special ad valorem levies and from the payment of any and all charges, rents or other payments to the city, other than charges for services provided by the city's water and sewer systems. In addition, any in rem actions or proceedings brought against such property by the city or any other actions or proceedings concerning any of the above brought against the authority by the city, and any such actions or proceedings shall be void and shall be subject to dismissal upon application of the authority at the sole expense of the city of New York. In no instance shall title to any such property pass to the city of New York except by deed or other appropriate document of sale, release or conveyance executed by the authority.

2. Debts of the authority shall not be considered debts of the state or debts of the city.

§ 1743. Equal employment opportunity program and minority and women-owned business enterprise program

1. Notwithstanding any other inconsistent provision of law, sections 8-107 and 8-108.1 of the administration code of the city of New York shall apply to the activities of the authority.

2. The provisions of section 6-108.1 of the administrative code of the city of New York with respect to the award of contracts to locally based enterprises shall apply to contracts entered into by the authority provided, however, that the authority shall exercise the powers of the mayor set forth in such section with respect to: the establishment of procedures for the certification of businesses; the approval or granting of waivers of the requirements of such section; the promulgation of rules and regulations for the purpose of implementing the provisions of such section; and the submission of annual reports concerning the administration of the program established pursuant to such section. Notwithstanding the foregoing, the limitation on gross receipts of qualified locally based enterprises set forth in clause (a) of subdivision six of paragraph a of section 6-108.1 of the administrative code of the city of New York may be raised by the authority upon a determination that a higher limitation is necessary to meet the goals of the locally based enterprise program.

3. The provisions of executive order fifty of the mayor of the city of New York, dated April twenty-fifth, nineteen hundred eighty, as amended, shall apply to contracts of the authority; provided, however, that with respect to such order, or any other program concerning equal employment opportunity or affirmative action to which contracts entered into by the authority are subject, such program shall be administered by an officer of the authority designated by the authority, and no other agency shall have jurisdiction over the compliance by the authority with the requirements of any such program.

§ 1744. Claims and actions against the authority

1. No action or proceeding shall be prosecuted or maintained against the authority, or any member, officer, agent, or employee thereof, for personal injury, death or damage to real or personal property alleged to have been sustained by reason of the negligence or wrongful act of the authority or of any such member, officer, agent or employee thereof, or for any other alleged tort of the authority or of such member, officer, agency or employee thereof, unless (i) it shall appear by and as an allegation in the complaint or moving papers that a notice of claim shall have been made and served upon the authority, within the time limit prescribed by and in compliance with section fifty-e of the general municipal law, and that at least thirty days have elapsed since the service of such notice and that adjustment or payment thereof has been neglected or refused, and (ii) the action or proceeding shall be commenced within one year after the happening of the event upon which the claim is based.

2. No action or proceeding for any cause whatever, other than the one for personal injury, death, property damage or tort, which shall be governed by subdivision one of this section, relating to the design, construction, reconstruction, improvement, rehabilitation, repair, furnishing or equipping of educational facilities, shall be prosecuted or maintained against the authority or any member, officer, agent, or employee thereof, unless (i) it shall appear by and as an allegation in the complaint or moving papers, that a detailed,

on the payment of any and all charges, charges for services provided by the city's actions or proceedings brought against proceedings concerning any of the above by such actions or proceedings shall be tion of the authority at the sole expense to any such property pass to the city of document of sale, release or conveyance

nd debts of the state or debts of the city.

am and minority and women-owned

ision of law, sections 8-107 and 8-108.1 rk shall apply to the activities of the

ministrative code of the city of New York sed enterprises shall apply to contracts that the authority shall exercise the with respect to: the establishment of approval or granting of waivers of the rules and regulations for the purpose and the submission of annual reports established pursuant to such section. ross receipts of qualified locally based of paragraph a of section 6-108.1 of ay be raised by the authority upon a to meet the goals of the locally based

mayor of the city of New York, dated ended, shall apply to contracts of the o such order, or any other program mative action to which contracts en- m shall be administered by an officer o other agency shall have jurisdiction requirements of any such program.

r maintained against the authority, or r personal injury, death or damage to ained by reason of the negligence or r, officer, agent or employee thereof, of such member, officer, agency or as an allegation in the complaint or made and served upon the authority, ce with section fifty-e of the general psed since the service of such notice glected or refused, and (ii) the action fter the happening of the event upon

ver, other than the one for personal e governed by subdivision one of this ruction, improvement, rehabilitation, es, shall be prosecuted or maintained t, or employee thereof, unless (i) it t or moving papers, that a detailed,

ielations by strikeouts-

written, verified notice of each claim upon which any part of such action or proceeding is founded was presented to the board within three months after the accrual of such claim, that at least thirty days have elapsed since such notice was so presented and that the authority or the officer or body having the power to adjust or pay said claim has neglected or refused to make an adjustment or payment thereof, and (ii) the action or proceeding shall have been commenced within one year after the happening of the event upon which the claim is based; provided, however, that nothing contained in this subdivision shall be deemed to modify or supersede any provision of law or contract specifying a shorter period of time in which to commence such action or proceeding, or to excuse compliance with any other conditions required by contract to be satisfied prior to the commencement of such action or proceeding.

3. The notice of each claim presented pursuant to subdivision two of this section must set forth in detail with respect to such claim; (i) the amount of the claim; (ii) a specific and detailed description of the grounds for the claim, relating the dollar amount claimed to the event purportedly giving rise to the claim and indicating how the dollar amount is arrived at; and (iii) the date of the event allegedly underlying the claim.

4. The provisions of subdivision two of section twenty-five hundred sixty-two of the education law shall apply to all claims made against the authority.

5. The authority shall have power to settle or adjust all claims in favor of or against the authority.

6. Whenever a notice of claim is served upon the authority alleging personal injury, it shall have the right to demand a physical examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, in accordance with the provisions of section fifty-h of the general municipal law.

7. The rate of interest to be paid by the authority upon any judgment for which it is liable, shall not exceed the rate of interest on judgments and accrued claims against municipal corporations as provided in the general municipal law from time to time.

§ 1745. Limited liability

Neither the members of the board nor any officers or employee of the authority acting on behalf thereof, while acting within the scope of such person's authority, shall be subject to any liability resulting from carrying out any of the powers expressly given in this title. A trustee, officer or employee of the authority shall be deemed an "employee" for the purposes of section fifty-k of the general municipal law, provided, however, that any trustee appointed by the governor or any employee of the state shall be deemed an "employee" for the purposes of section eighteen of the public officers law for any actions relating to their activities as a trustee of the authority created by this title.

§ 1746. Audit, annual and quarterly reports

1. Beginning in nineteen hundred ninety and every year thereafter, the authority shall, within one hundred twenty days of the end of the city's fiscal year, submit to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly, the chairs of the senate and assembly education committees and the chairs of the senate and assembly committees on corporations, authorities and commissions, the chairman of the senate committee on investigations, taxation, and government operations, the chairman of the assembly committee on oversight, analysis, and investigations, the mayor and the city board a report on its operations during such fiscal year. An annual audit of the authority shall be conducted by an independent certified public accountant, and the authority's independently audited financial statements shall be included in this report.

2. Beginning in nineteen hundred ninety, and every year thereafter, the authority shall, on the last day of April, July, October, and January, submit to all persons set forth in subdivision one of this section a report detailing the extent of completion of all projects for construction, reconstruction, improvement, rehabilitation, maintenance, repair, furnishing, equipping of or otherwise providing for educational facilities for the city board, including, by project, identified shortfalls in schedule performance and providing explana-

tion for such shortfalls. Such reports shall detail the extent of completion as existed on the last day of the month preceding each report, respectively.

§ 1747. Effect of inconsistent provisions

Insofar as the provisions of this title are inconsistent with the provisions of any other law, general, special or local or of the city charter or any local law, ordinance or resolution of the city, the provision of this title shall be controlling, provided that nothing contained in this section shall be held to supplement or otherwise expand the powers or duties of the authority otherwise set forth in this title.

§ 15. Paragraph a of section 11.00 of the local finance law is amended by adding a new subdivision eighty-four to read as follows:

84. Educational facilities. The acquisition, construction, reconstruction, improvement, rehabilitation, repair, furnishing or equipping of, or other provision for educational facilities, as defined in section twenty-five hundred ninety-a of the education law, or the implementation of the five-year educational facilities capital plan of the board of education of the city school district of the city of New York, thirty years.

§ 16. There shall be no layoffs of members of the bargaining unit as a result of the transfer of certain functions or work currently being performed by employees of the division of school buildings of the board of education of the city school district of the city of New York to the New York city school construction authority (hereinafter referred to as the "authority"). The mechanism for the transfer of employees to the authority from the division of school buildings ("the plan") and the early retirement program to be offered shall be the subject of negotiations between the appropriate public employee organization, the board of education of the city school district of the city of New York, (hereinafter referred to as the "city board") and the authority. Furthermore, any employee to be transferred to the authority pursuant to the plan shall be given the option to remain at the city board. Any employee to be retained at the division of school buildings pursuant to the plan shall be able to protest the decision pursuant to the procedures set forth in section seventy of the civil service law. Subject to budget capacity, all current employees of the division of school buildings affected by the transfer of certain functions or work to the authority shall be provided the opportunity to take early retirement through an early retirement program to be adopted by the city board.

§ 17. The applicability of the provisions of section seventeen hundred thirty-five of the public authorities law shall be conditioned upon the adoption of a resolution by the board of directors of the municipal assistance corporation for the city of New York authorizing such corporation to enter into an agreement with the governor and the mayor of the city of New York to make available to the New York city school construction authority six hundred million dollars in the corporation's fiscal years commencing in nineteen hundred eighty-nine through and including nineteen hundred ninety-six in accordance with a stated schedule. The amounts of such schedule shall be incorporated in the five-year appropriations described in subdivision four of section twenty-five hundred ninety-p of the education law.

§ 18. If any clause, sentence, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this title directly involved in the controversy in which the judgment shall have been rendered.

§ 19. This act shall take effect immediately, provided, however, that the provisions of subdivision six of section two hundred nine of the civil service law, as added by section four of this act, shall expire and be deemed repealed on and after June thirtieth, nineteen hundred ninety-one, and further provided that the provisions of section seventeen hundred thirty-five of the public authorities law, as added by section fourteen of this act, shall expire and be deemed repealed on July first, nineteen hundred ninety-four.

STATE OF NEW YORK

NYC School
Construction
Authority

S. 9334--A

A. 9189--C
R. R. 1338

1987-1988 Regular Sessions

SENATE - ASSEMBLY

November 23, 1988

IN SENATE -- Introduced by Sens. DONOVAN, GOODMAN, LACK, MARCHI, MEGA, VELELLA, OHRENSTEIN, GOLD, HALPERIN, LEICHTER, MASIELLO -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Cities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- Introduced by M. of A. M. H. MILLER, SIEGEL, SERRANO -- Multi-Sponsored by -- M. of A. BARRAGA, CLARK, Del TORO, FELDMAN, GENOVESI, GRANNIS, HIKIND, JACOBS, JENKINS, NADLER, NOLAN, PRESCOTT, SANDERS, STRANIERE, VANN -- (at request of the Governor)-- read once and referred to the Committee on Corporations, Authorities and Commissions -- reference changed to the Committee on Ways and Means -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules -- Amended on special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- passed by Assembly and delivered to the Senate, recalled from Senate, vote reconsidered, bill amended, ordered reprinted and restored to the special order of third reading

AN ACT to amend the administrative code of the city of New York, the civil service law, the education law, the public authorities law and the local finance law, in relation to establishing the New York City school construction authority and prescribing its powers and duties with respect to the provision of educational facilities for the board of education of the city school district of the city of New York and repealing certain provisions of the education law relating thereto and providing for the repeal of certain provisions of the civil service law and the public authorities law upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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

LBD15737-13-8

1 Section 1. Legislative findings and declaration. The legislature
2 hereby finds and declares that the elementary and secondary schools of
3 the city of New York are in deplorable physical condition. Many of the
4 schools are overcrowded, unsafe, unhealthy and unusable. The physical
5 deterioration of the schools is a serious impediment to learning and
6 teaching. If the quality of education in New York city is to be im-
7 proved, the city's schools must be modernized, expanded and restored to
8 a state of good repair.

9 The legislature finds that the New York city board of education, which
10 is responsible for the physical condition of school facilities, has been
11 unable to take corrective action because of inefficient bureaucratic
12 practices and lengthy review and approval processes. In addition, limi-
13 tations on the construction process have proven to be inefficient,
14 wasteful and incapable of yielding quality construction on time and at a
15 reasonable cost.

16 The legislature finds that extraordinary measures must be taken to
17 reverse this deterioration of educational facilities. Since the need to
18 improve the efficiency, economics and quality of the process by which
19 the city's schools are renovated and constructed is immediate and long-
20 term, a new public authority should be established to manage the ac-
21 quisition, design, construction and major rehabilitation of New York
22 city schools. In order to ensure the effectiveness of the new authority,
23 it should be exempt from local laws and regulations concerning the
24 provision of school buildings.

25 The legislature further finds that many construction companies have
26 been unwilling to engage in construction because of outmoded require-
27 ments and unfair contract requirements. Accordingly, the legislature de-
28 clares that a priority of the new authority should be to establish a
29 more equitable procedure for dispute resolution. In addition, the
30 legislature declares that it shall be the responsibility of the
31 authority to keep abreast of changes in building science, technology and
32 materials. The legislature also finds that use of construction managers
33 and project managers is a preferred tool in improving construction
34 efficiency.

35 The legislature further finds and declares that repairing and replac-
36 ing New York city's schools must begin immediately and must proceed
37 without obstruction. There can be no higher priority than creating a
38 physical environment in the schools that fosters rather than impedes,
39 the education of our children.

40 § 2. Paragraph b of subdivision three of section 13-101 of the admin-
41 istrative code of the city of New York is amended to read as follows:

42 b. Service as a paid employee of the triborough bridge authority, the
43 Henry Hudson parkway authority, the Marine parkway authority, the New
44 York city tunnel authority, the New York city parkway authority, the New
45 York city housing authority, the triborough bridge and tunnel authority,
46 the New York city transit authority, the New York city housing develop-
47 ment corporation, the New York city health and hospitals corporation,
48 the New York city off-track betting corporation, the New York city
49 school construction authority, the transit construction fund and the New
50 York city sports authority and the New York city rehabilitation mortgage
51 insurance corporation shall constitute city-service as herein defined.

52 § 3. Paragraph one of subdivision c of section 13-133 of such code is
53 amended by adding a new subparagraph (C) to read as follows:

retirement

arbitration

retirement

1 (C) The New York city school construction authority shall make monthly
2 payments, in twelve equal installments, with respect to obligations
3 which it incurs to pay sums to the retirement system.

4 § 4. Section two hundred nine of the civil service law is amended by
5 adding a new subdivision six to read as follows:

6 6. In the event that the public employment relations board certifies
7 that a voluntary resolution of the contract negotiations between the New
8 York city school construction authority and a public employee organiza-
9 tion certified or recognized to represent employees of the authority
10 cannot be effected, or upon the joint request of the authority-employer
11 and any such affected employee organization, such board shall refer the
12 dispute to a public arbitration panel, consisting of one member ap-
13 pointed by the public employer, one member appointed by the employee or-
14 ganization and one public member appointed jointly by the public em-
15 ployer and the employee organization who shall be selected within ten
16 days after receipt by the board of a petition for creation of the arbi-
17 tration panel. If either party fails to designate its member to the pu-
18 blic arbitration panel, the board shall promptly, upon receipt of a
19 request by either party, designate a member associated in interest with
20 the public employer or employee organization he is to represent. Each of
21 the respective parties is to bear the cost of its member appointed or
22 designated to the arbitration panel and each of the respective parties
23 is to share equally the cost of the public member. The procedure for the
24 selection of the public member and the procedures for the arbitration
25 process shall be the same as those set forth in subdivision five of this
26 section. The panel shall make a just and reasonable determination of
27 matters in dispute. In arriving at such determination of matters in
28 dispute, the panel shall specify the basis for its findings, taking into
29 consideration the same criteria as applicable as contained in said sub-
30 division five, and such procedures shall continue to apply for purposes
31 of this subdivision notwithstanding expiration of such subdivision five,
32 and regardless of any subsequent renumbering of such subdivision, which
33 occurs prior to the expiration of this subdivision. The panel shall have
34 full authority to resolve the matters in dispute before it and issue a
35 determination which shall be final and binding upon the parties,
36 notwithstanding any other provision of this article. Except for the pur-
37 poses of judicial review, any provision of a determination of the arbi-
38 tration panel, the implementation of which requires an enactment of law,
39 shall not become binding until the appropriate legislative body enacts
40 such law.

41 § 5. Subparagraph one of paragraph (j) of subdivision sixteen of sec-
42 tion twenty-five hundred seventy-five of the education law, as amended
43 by chapter nine hundred fifty-seven of the laws of nineteen hundred
44 eighty-one, is amended to read as follows:

45 (1) The board of education or the New York city school construction
46 authority shall make monthly payments, in twelve equal installments,
47 with respect to the respective obligations which such board or authority
48 incurs to pay sums to the retirement system.

49 § 6. Subparagraph ten of paragraph (b) of subdivision seventeen of
50 section twenty-five hundred seventy-five of such law, as added by chap-
51 ter nine hundred ten of the laws of nineteen hundred eighty-five, is
52 amended to read as follows:

53 (10) "Education service." Service as a paid official or employee of
54 the board of education of the city of New York as now constituted, or of
55 any prior board, body or agency of which it is the successor in school

1 affairs in the territory now comprised within the city and school dis-
 2 trict of New York, or the New York city school construction authority,
 3 and allowable as provided in section four of the rules and regulations.

4 § 7. Subparagraph six of paragraph (a) of subdivision eighteen of sec-
 5 tion twenty-five hundred seventy-five of such law, as added by chapter
 6 five hundred thirty-six of the laws of nineteen hundred eighty-six, is
 7 amended to read as follows:

8 (6) "Education service". Service as a paid official or employee of the
 9 board of education or the New York city school construction authority,
 10 and allowable as provided in section four of the rules and regulations,
 11 or, in the case of a tier II member or a tier IV member, allowable pur-
 12 suant to the provisions which respectively govern the service credit of
 13 such a member of the board of education retirement system, *education*

14 § 8. Section ~~twenty-five hundred seventy-six~~ of such law is amended by
 15 adding a new subdivision ten to read as follows:

16 10. In any city with a population of one million or more, amounts ap-
 17 propriated to effectuate the implementation of a five-year educational
 18 facilities capital plan for such city shall be appropriated as a single
 19 item in such city's capital budget in accordance with subdivision four
 20 of section twenty-five hundred ninety-p of this chapter.

21 § 9. Section twenty-five hundred ninety-a of such law is amended by
 22 adding two new subdivisions nine and ten to read as follows:

23 9. Educational facilities. The term "educational facilities" shall
 24 mean land and the improvements thereon for use in connection with any
 25 educational activity to be undertaken or provided by the city board or
 26 any community school board or any facility attendant thereto or any
 27 facility necessary, useful or desirable in connection with such
 28 activity.

29 10. Project. The term "project" shall mean, with respect to an educa-
 30 tional facilities capital plan, (a) the performance, at a specified edu-
 31 cational facility, of one or more program elements, as defined in para-
 32 graph a, b, c or d of subdivision two of section twenty-five hundred
 33 ninety-p of this article; or (b) the performance of the program elements
 34 defined in paragraphs f and g of such subdivision or any system replace-
 35 ment identified in paragraph e of such subdivision.

36 § 10. Subdivisions thirteen, fourteen, fifteen, sixteen, seventeen and
 37 eighteen of section twenty-five hundred ninety-e of such law are
 38 REPEALED.

39 § 11. Section twenty-five hundred ninety-g of such law is amended by
 40 adding four new subdivisions seventeen, eighteen, nineteen and twenty to
 41 read as follows:

42 17. Approve an educational facilities master plan, and any revisions
 43 thereto, as defined in section twenty-five hundred ninety-o of this ar-
 44 article, which shall be submitted by the chancellor.

45 18. Approve a five-year educational facilities capital plan, and any
 46 amendments thereto, as defined in section twenty-five hundred ninety-p
 47 of this article, which shall be submitted by the chancellor.

48 19. Enter into agreements with the New York city school construction
 49 authority for implementation of the five-year capital plan and other
 50 projects pursuant to which the authority will be responsible for the ac-
 51 quisition, design, construction, reconstruction, improvement, rehabili-
 52 tiation, maintenance, repair, furnishing, equipping of and otherwise
 53 providing for educational facilities for the city board.

54 20. Enter into agreements with the New York city school construction
 55 authority pursuant to which the city board may make available to such

*3rd-7ed. employees
 may work for
 4 year at new authority*

1 authority the services of employees of the city board who are contem-
 2 plated to be transferred to the authority pursuant to a plan for such
 3 transfers for the purpose of rendering assistance in establishing the
 4 operations of the authority; provided, however, that such employees
 5 shall no longer be available to the authority pursuant to the terms of
 6 this subdivision beyond one year following the effective date of this
 7 subdivision.

8 § 12. Section twenty-five hundred ninety-h of such law is amended by
 9 adding two new subdivisions twenty-three and twenty-four to read as
 10 follows:

11 23. Develop an educational facilities master plan, and revisions
 12 thereto, as defined in section twenty-five hundred ninety-o of this
 13 article.

14 24. Develop and implement a five-year educational facilities capital
 15 plan, and amendments thereto, as defined in section twenty-five hundred
 16 ninety-p of this article, and appoint a person, who reports directly to
 17 the chancellor, to assist in the development and implementation of such
 18 plan and amendments thereto and to oversee the school buildings program.

19 § 13. Such law is amended by adding two new sections twenty-five hun-
 20 dred ninety-o and twenty-five hundred ninety-p to read as follows:

21 § 2590-o. Educational facilities master plan. 1. In accordance with
 22 the schedule set forth in subdivision two of this section, the chancel-
 23 lor shall prepare an educational facilities master plan to take effect
 24 on July first, nineteen hundred eighty-nine, which shall set forth all
 25 the actions necessary to restore the city's educational facilities to a
 26 state of good repair by January first, two thousand. The plan shall (i)
 27 set forth the minimum acceptable standards for each type of educational
 28 facility and the number and identity to the extent ascertainable of
 29 facilities of each such type that the chancellor believes do not curren-
 30 tly meet such minimum standards, (ii) identify those facility defects
 31 and shortcomings that most seriously impede learning and teaching, (iii)
 32 describe the remedial measures proposed to be taken, (iv) establish
 33 priorities for their initiation and completion, including a list of
 34 prioritized projects to the extent ascertainable and (v) list each
 35 proposed new educational facility and set forth a justification, includ-
 36 ing demographic data, documenting the longterm need therefor. In addi-
 37 tion, the master plan shall include an estimate of its cost and such
 38 other information as the chancellor shall determine.

39 2. No later than January sixth, nineteen hundred eighty-nine, the
 40 chancellor shall, in conjunction with the submission of the five-year
 41 educational facilities capital plan required by section twenty-five hun-
 42 dred ninety-p of this chapter, submit the master plan to each community
 43 school board, which shall conduct a public hearing on both the educa-
 44 tional facilities master plan and the five-year educational facilities
 45 capital plan and shall prepare and submit recommendations to the
 46 chancellor on or before February twentieth, nineteen hundred eighty-nine
 47 with respect to matters in the plans that involve that school district.
 48 The chancellor shall consider the recommendations received from the com-
 49 munity school boards, and, on or before March eighth, nineteen hundred
 50 eighty-nine, shall submit a final educational facilities master plan to
 51 the city board for its approval. On or before March twenty-second,
 52 nineteen hundred eighty-nine, the city board shall approve the educa-
 53 tional facilities master plan submitted by the chancellor or such plan
 54 as is determined by the city board.

Master Plan

5-4 year plan

revisions to master plan

1 3. No later than January first, nineteen hundred ninety-three, the
 2 chancellor shall prepare and submit a preliminary proposed revision to
 3 the educational facilities master plan to the city board and to each
 4 community school board. This proposed revision shall reflect the pro-
 5 gress achieved during the first three years of the master plan and shall
 6 incorporate such changes to the master plan as the chancellor deems
 7 necessary. Each such community school board shall conduct a public hear-
 8 ing and shall prepare and submit recommendations to the chancellor on or
 9 before March first, nineteen hundred ninety-three with respect to mat-
 10 ters in the plan that involve that school district. The chancellor shall
 11 consider the recommendations received from the community school boards,
 12 and, on or before April first, nineteen hundred ninety-three, shall sub-
 13 mit a final proposed revision to the master plan to the city board for
 14 its approval. On or before May first of such year, the city board shall
 15 approve the revision to the educational facilities master plan submitted
 16 by the chancellor or such plan as is determined by the city board.

17 § 2590-p. Educational facilities capital plan. 1. In accordance with
 18 subdivision three of this section, the chancellor shall prepare proposed
 19 five-year educational facilities capital plans. Each such plan shall
 20 describe each program element proposed in the plan, and shall set forth
 21 an estimate of the cost of each program element, an estimate of the
 22 capital funding required each year and the expected sources of such
 23 funding. The plan shall also set forth an estimate of the cost of each
 24 project identified in the plan, shall assign priorities to the projects
 25 included therein and shall state the year in which each such project's
 26 design and construction is proposed to be initiated and estimated to be
 27 completed.

28 2. Program elements shall mean the following categories of work and,
 29 with respect to each such category, the plan shall include the following
 30 information:

31 a. New construction: The plan shall identify the type, approximate
 32 size in terms of gross square footage and student capacity and approxi-
 33 mate location of each proposed new educational facility, and if the con-
 34 struction of such new facility is to result in the closing or replace-
 35 ment of an existing educational facility or facilities, the plan shall
 36 identify each such facility to be closed or replaced.

37 b. Building additions: The plan shall identify each educational facil-
 38 ity for which a building addition is proposed and describe the nature,
 39 purpose and approximate size of such addition.

40 c. Major modernization and rehabilitation: The plan shall identify
 41 each educational facility at which a rehabilitation or major moderniza-
 42 tion is to be performed, describe the general scope of such work at each
 43 such facility and describe the nature and estimated cost of the arrange-
 44 ments proposed in order to accommodate any students who will be tem-
 45 porarily displaced as a result of the work.

46 d. Athletic fields, playgrounds and pools: The plan shall identify
 47 each educational facility at which an athletic field, playground or pool
 48 is to be constructed or at which an existing athletic field, playground
 49 or pool is to be the subject of a major repair or rehabilitation.

50 e. System replacements: The plan shall identify (i) each particular
 51 system to be replaced, in part or in its entirety, including electrical,
 52 plumbing, boilers, elevators, heating, ventilation and air conditioning,
 53 roof replacement, window replacement, kitchens and warming pantries,
 54 lighting, exterior masonry and painting and plaster, (ii) the general
 55 standards to be adopted for such replacement systems and (iii) the num-

1 ber, and to the extent ascertainable, the identity of educational facil-
2 ities in each borough at which each such system replacement is to be
3 performed.

4 f. Security: The plan shall describe the nature of security devices
5 and systems proposed to be installed at educational facilities and the
6 number, and to the extent ascertainable, the identity of facilities in
7 each borough at which such a security system is to be installed.

8 g. Educational enhancements: The plan shall describe programs for the
9 redesign and reconfiguration of space within educational facilities in
10 order to enhance educational activities therein, including the installa-
11 tion of wiring or other facilities to permit or facilitate the use of
12 computers or other educational devices and equipment and shall identify
13 the number, and to the extent ascertainable, the identity of educational
14 facilities in each borough at which such educational enhancement pro-
15 grams shall be undertaken.

16 h. Emergency, unspecified and miscellaneous: The plan shall include an
17 estimate of the funding requirements to perform emergency projects, un-
18 specified projects and miscellaneous capital activities; provided, how-
19 ever, that the cost of such program element shall not exceed five per-
20 cent of the total estimated cost of the five-year capital plan.

21 3. a. No later than January sixth, nineteen hundred eighty-nine, the
22 chancellor shall, in conjunction with the submission of the educational
23 facilities master plan required by section twenty-five hundred ninety-o
24 of this chapter, submit the initial proposed five-year educational
25 facilities capital plan to each community school board, which shall con-
26 duct a public hearing on both the educational facilities master plan and
27 the five-year educational facilities capital plan and shall prepare and
28 submit recommendations to the chancellor on or before February twen-
29 tieth, nineteen hundred eighty-nine with respect to matters in the plans
30 that involve that school district. The chancellor shall consider the
31 recommendations received from the community school boards on both the
32 proposed educational facilities master plan and the proposed five-year
33 educational facilities capital plan, and, on or before March eighth,
34 nineteen hundred eighty-nine, shall submit a final proposed five-year
35 educational facilities capital plan to the city board for its approval.
36 On or before March twenty-second, nineteen hundred eighty-nine, the city
37 board shall approve the five-year educational facilities capital plan
38 submitted by the chancellor or such plan as is determined by the city
39 board, which shall take effect on July first, nineteen hundred eighty-
40 nine.

41 b. Commencing on November first, nineteen hundred ninety-three, and
42 every five years thereafter, the chancellor shall submit a proposed
43 five-year educational facilities capital plan to take effect on the suc-
44 ceeding July first to each community school board, which shall conduct a
45 public hearing and shall prepare and submit recommendations to the
46 chancellor on or before January first of the ensuing year with respect
47 to matters in the plan that involve that school district. The chancellor
48 shall consider the recommendations received from the community school
49 boards, and, on or before February first of such year, shall submit a
50 final proposed five-year educational facilities capital plan to the city
51 board for its approval. On or before March first of such year, the city
52 board shall approve the five-year educational facilities capital plan
53 submitted by the chancellor or such plan as is determined by the city
54 board.

initial five-year plan

rolling five-year plans

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4. Following approval by the city board of a five-year educational facilities capital plan, the chancellor shall transmit such plan to the mayor, the board of estimate and the council of the city of New York. After consultation with the chancellor and the city board, the mayor shall include in the city's executive capital budget for the fiscal year in which the five-year plan is to commence an appropriation for educational facilities in an amount he recommends as sufficient to provide for the funding of a five-year capital program for the city board and shall specify amounts for each fiscal year within such five year period. Such five-year appropriation, which shall specify the annual amounts for each fiscal year to be made available, shall be subject to adoption, veto and, except as hereinafter provided, amendment in accordance with the procedures set forth in the charter of the city of New York. Upon adoption of a five-year appropriation pursuant to such process, the capital program of the city board shall, if the amount so appropriated differs from the cost estimated in the plan approved by the city board, be amended to reflect the funding so provided. No reduction shall thereafter be made by the city in the amount of such appropriation until completion of the plan unless (i) the city board shall so recommend or (ii) a general, across-the-board reduction is made in the city's capital appropriations in order to accommodate an unforeseen reduction in the availability of city capital funds. In the event the city board so recommends or such a reduction is made, the appropriation may be reduced in accordance with such recommendation or proportionately to the reduction in the city's general capital appropriations. In the event the city board requests additional appropriations from such city during the five-year period of the then effective plan, the city board shall specify the needs to be met by such additional appropriations. The city may appropriate additional amount for the five-year educational facilities capital plan, provided that in no event shall such an additional appropriation be conditioned upon a reduction or alteration of the five-year plan then in effect. The authority may not spend more in any fiscal year of the capital program than the amount specified in the five-year city appropriation therefor, as amended from time to time; provided that any amounts not expended during a fiscal year may be expended in any succeeding fiscal year, and provided further that the mayor may authorize funds to be expended at a rate faster than the amounts so specified, within the balance of the five-year appropriation available therefor.

5. a. The chancellor may in his discretion submit amendments to an approved five-year educational facilities capital plan to the city board for its approval.

b. The chancellor shall submit such amendments in the event (i) the estimated cost of any program element shall increase by more than ten percent from the estimate contained in the plan, (ii) a project will not be commenced within six months from the date set forth in the plan, (iii) a project to be performed at an identified educational facility is proposed to be performed at a different educational facility or (iv) a project not identified in the plan, other than projects to be performed pursuant to paragraph h of subdivision two of this section, is proposed to be initiated.

c. In the event the city shall appropriate an amount less than the amount proposed to be funded by the city in the then approved five-year educational facilities capital plan, or in the event an appropriation shall be reduced below such level as provided in subdivision four of this section, the chancellor shall prepare and submit to the city board

1 for its approval an amendment to such plan to reflect the reduced amount
2 of funding from the city.
3 d. If the effect of any plan amendment would require an additional ap-
4 propriation by the city, no such amendment shall be implemented unless
5 and until the city shall make such additional appropriation.
6 e. Amendments submitted by the chancellor as described in paragraph c
7 and in clauses (iii) and (iv) of paragraph b of this subdivision shall
8 also be submitted to each affected community school board, which may
9 conduct a public hearing and prepare and submit recommendations to the
10 city board within forty-five days of such submission.
11 6. a. For each project included in an approved five-year educational
12 facilities capital plan, the chancellor shall develop a detailed scope
13 of the project, which shall include the following: (i) the purposes and
14 public to be served, (ii) the programs to be conducted in the facility,
15 (iii) the gross amounts of space and bulk for any building or structure,
16 (iv) identification of the intent to use architectural, engineering or
17 other consultant services and estimated fees for such consultant ser-
18 vices (v) the schedule of design and construction, (vi) the total esti-
19 mated project costs, including costs for site acquisition, preparation
20 and tenant relocation, design, construction and equipment, (vii) maximum
21 estimated expenditures for the project for each fiscal year until its
22 completion, (viii) costs associated with maintenance and operation of
23 the physical plant and (ix) such other information as the chancellor
24 shall specify. In the event, a project consists of a program element
25 without identification of the particular education facility at which
26 such project is to be performed, the detailed scope of the project shall
27 specify the nature of the work to be performed, applicable price and
28 quality standards, a list of the schools eligible for such work, annual
29 performance targets and the total estimated costs of such project during
30 each fiscal year until its completion.
31 b. The chancellor may request the New York city school construction
32 authority, and the authority shall be authorized, to develop preliminary
33 plans for each project, to assist the chancellor in the development of
34 the detailed scope of project, to proceed with site acquisition for such
35 project and to assist in responding to emergency projects undertaken
36 pursuant of paragraph h of subdivision two of this section. The
37 authority may expend moneys for such purposes for projects to be funded
38 pursuant to subdivision four of this section in such amounts as are con-
39 sistent with the city capital budget appropriation therefor.
40 c. The chancellor shall prepare preliminary scopes (i) for each pro-
41 ject contained within the program elements defined in paragraphs a and b
42 of subdivision two of this section and, where appropriate, paragraph g
43 of subdivision two of this section, (ii) for each major modernization
44 project contained in paragraph c of such subdivision two, and (iii) for
45 each new construction project contained in paragraph d of such subdivi-
46 sion two, and shall transmit such preliminary scopes to the affected
47 community school boards. The community school board may hold hearings on
48 such scope, provided, however, that the community school board must sub-
49 mit any comments to the chancellor no later than thirty days following
50 the date of submission. The chancellor shall consider the comments in
51 preparing the scope that he will submit to the director of management
52 and budget of the city pursuant to paragraph d of this subdivision.
53 d. For projects to be funded pursuant to subdivision four of this sec-
54 tion, the chancellor shall transmit the detailed scope of each such pro-
55 ject to the director of management and budget of the city for approval.

1 (i) Except as provided in paragraph b of this subdivision, no expenses
2 shall be incurred by the city board or the authority for any such pro-
3 ject prior to approval of the detailed scope of any such project.

4 (ii) No detailed scope of project shall be approved unless the total
5 estimated costs of such project, together with the aggregate estimated
6 costs of all projects for which a detailed scope has theretofore been
7 approved, are within city capital budget appropriations available
8 therefor. A detailed scope of project that is not disapproved by the
9 director of management and budget within thirty days of its submission
10 shall be deemed approved. To the extent the director disapproves all or
11 part of a scope, he shall set forth in writing the reasons therefor.

12 (iii) Upon approval of the detailed scope of project, the chancellor
13 shall refer such project to the New York city school construction
14 authority for implementation in accordance with an agreement between the
15 authority and the city board and shall transmit the approved project
16 scope to the comptroller whereupon the total estimated costs of such
17 project as set forth in such approved project scope shall be available
18 for expenditure.

19 (iv) Approval of the director of management and budget shall be
20 required for any material change in the approved detailed scope of pro-
21 ject or for any increase in the total cost of such project in excess of
22 any reserve provided in the approved detailed scope of project. Such ap-
23 proval shall be given or deemed given in the manner provided herein.

24 (v) The provisions of this paragraph shall not apply to emergency
25 projects undertaken pursuant to paragraph h of subdivision two of this
26 section, the estimated costs of which, together with the costs of other
27 projects undertaken pursuant to said paragraph h, does not exceed the
28 amount set forth in the educational facilities capital plan for activi-
29 ties pursuant to paragraph h of subdivision two of this section.

30 e. For projects contained within a five-year educational facilities
31 capital plan and not funded in whole or in part by the city, the
32 chancellor shall refer such projects to the New York city school con-
33 struction authority for implementation in accordance with any agreement
34 between the authority and the city board.

35 f. The chancellor and the president of the New York city school con-
36 struction authority shall notify the mayor of the amount of appropriated
37 funds projected to be spent for (i) development of detailed scopes, (ii)
38 development of preliminary plans, (iii) site acquisition and (iv)
39 emergencies, and the mayor shall thereupon authorize the issuance of
40 bonds therefor in accordance with the local finance law and shall notify
41 the city comptroller of his authorization to expend such amounts for
42 such purposes. Such notice shall be given or amended at least ten days
43 prior to any expenditure included therein; provided that the chancellor,
44 the president of the authority and the mayor shall develop procedures to
45 expedite authorization of emergency expenditures. Neither the city board
46 nor the authority shall expend funds for such purposes in excess of the
47 amounts specified in such notice until the chancellor shall have amended
48 such notice to reflect such excess. Upon approval of the detailed scope
49 of a project, the mayor shall authorize the issuance of bonds therefor
50 in accordance with the local finance law and shall notify the city comp-
51 troller of his authorization to expend appropriated funds for the entire
52 estimated cost of such project.

53 7. The provisions of paragraph b of section two hundred nineteen of
54 the charter of the city of New York shall not apply to a proposed five-
55 year appropriation made in accordance with subdivision four of this sec-

1 tion, and the provisions of paragraph b of section two hundred twenty-
2 five of such charter shall apply only after the end of the fifth year of
3 a five-year appropriation made pursuant to such subdivision. To the ex-
4 tent any other provision of chapter nine of such charter is inconsistent
5 with the provisions of this section, the provisions of this section
6 shall govern.

7 § 14. Article eight of the public authorities law is amended by adding
8 a new title six to read as follows:

9 TITLE 6

10 THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY ACT

11 Section 1725. Short title.

12 1726. Definitions.

13 1727. New York city school construction authority.

14 1728. Powers and duties of the authority.

15 1729. Transfer of property.

16 1730. Exemption from land use review procedures and other
17 requirements.

18 1731. Community participation.

19 1732. Board of estimate approval of sites.

20 1733. Compliance with codes.

21 1734. Contracts of the authority.

22 1735. Certain contracts of the authority.

23 1736. Funding of the authority.

24 1737. Civil service.

25 1738. Retirement of employees.

26 1739. Collective negotiation.

27 1740. Use of outside design, drafting or inspection services.

28 1741. Deposit and investment of moneys of the authority.

29 1742. Exemption of the authority.

30 1743. Equal employment opportunity program and minority and
31 women-owned business enterprise program.

32 1744. Claims and actions against the authority.

33 1745. Limited liability.

34 1746. Audit, annual and quarterly reports.

35 1747. Effect of inconsistent provisions.

36 § 1725. Short title. This title shall be known and may be cited as the
37 "New York city school construction authority act".

38 § 1726. Definitions. As used or referred to in this title, unless a
39 different meaning clearly appears from the context:

40 1. "Authority" shall mean the New York city school construction
41 authority.

42 2. "Board" shall mean the board of trustees of the New York city
43 school construction authority.

44 3. "Board of estimate" shall mean the board of estimate of the city of
45 New York or any official public body next succeeding to the powers of
46 such board.

47 4. "Chancellor" shall mean the chancellor of the city school district
48 of the city of New York.

49 5. "City" shall mean the city of New York.

50 6. "City board" shall mean the board of education of the city school
51 district of the city of New York.

52 7. "Comptroller" shall mean the comptroller of the city of New York.

53 8. "Director of management and budget" shall mean the director of
54 management and budget of the city of New York.

1 9. "Educational facilities" shall have the meaning set forth in sub-
2 division nine of section twenty-five hundred ninety-a of the education
3 law.

4 10. "Mayor" shall mean the mayor of the city of New York.

5 11. "Project" shall have the meaning set forth in subdivision ten of
6 section twenty-five hundred ninety-a of the education law.

7 12. "State" shall mean the state of New York.

8 § 1727. New York city school construction authority. 1. There is
9 hereby established a public benefit corporation to be known as the "New
10 York city school construction authority".

11 2. The authority shall be governed by and its powers shall be exer-
12 cised by a board of trustees consisting of three members. The members
13 shall be the chancellor, or acting chancellor if the position of
14 chancellor is vacant, and two members, one to be appointed by the gover-
15 nor and one to be appointed by the mayor. The appointee of the mayor
16 shall serve as the chairman of the board of trustees. No member of the
17 city board or of a community school board shall be one of the appointed
18 members of the board, nor shall an officer or employee of the city or
19 state be one of the appointed members of the board. The appointed mem-
20 bers shall serve at the pleasure of the appointing authority.

21 3. Each appointed member shall continue in office until a successor
22 has been appointed and qualifies. In the event a vacancy occurs in the
23 office of an appointed member, the vacancy shall be filled in the same
24 manner as was the original appointment of the trustee whose office
25 became vacant.

26 4. Appointed members may engage in private employment, or in a profes-
27 sion or business; provided, however, that notwithstanding any provision
28 of general law, the members shall be subject to the limitations con-
29 tained in sections twenty-six hundred four, twenty-six hundred five,
30 twenty-six hundred six and twenty-six hundred seven of the New York city
31 charter. The authority shall, for the purposes of such sections be a
32 "city agency" and such trustees shall be "officers" of the authority for
33 the purposes of such sections.

34 5. The board shall provide for the holding of regular meetings and
35 such special meetings at the call of the chairman, as may be necessary.
36 A majority of the whole number of trustees shall constitute a quorum for
37 the transaction of business. The powers of the board shall be vested in
38 and exercised by a majority of the whole number of the members thereof.

39 6. Trustees shall receive no compensation for their services, but
40 shall be reimbursed for the actual and necessary expenses incurred by
41 them in the performance of their official duties as trustees of the
42 authority.

43 7. The board shall appoint as president of the authority an individual
44 who has extensive executive-level construction experience. The presi-
45 dent, who shall not be a member of the board, shall be the chief exe-
46 cutive officer of the authority and shall be responsible for the dis-
47 charge of the executive and administrative functions and powers of the
48 authority. The president shall serve at the pleasure of the board.

49 8. The authority shall continue in its corporate existence until ter-
50 minated by law. Upon termination of the existence of the authority, all
51 of the property interests of the authority shall pass to and vest in the
52 city and the city shall assume any outstanding contractual duties or
53 obligations of the authority, except as otherwise may be specified by
54 law.

1 9. The authority shall continue in its corporate existence until ter-
2 minated by law or until such time as the size or composition of the city
3 board as set forth in chapter nine hundred fifteen of the laws of
4 nineteen hundred seventy-three is amended, altered or modified. Upon
5 termination of the existence of the authority, all of the property in-
6 terests of the authority shall pass to and vest in the city and the city
7 shall assume any outstanding contractual duties or obligations of the
8 authority, except as otherwise may be specified by law.

9 § 1728. Powers and duties of the authority. The authority shall have
10 the following powers and duties:

- 11 1. To sue and be sued;
- 12 2. To have a seal or alter the same at pleasure;
- 13 3. To make and alter by-laws for the organization and the management
14 and regulation of its affairs;
- 15 4. To appoint officers and employees and fix their compensation;
- 16 5. To design, construct, reconstruct, improve, rehabilitate, maintain,
17 furnish, repair, equip and otherwise provide for educational facilities,
18 as defined in section twenty-five hundred ninety-a of the education law,
19 for the city board pursuant to agreements with the city board;
- 20 6. To acquire real and personal property, or any interest therein, by
21 any method, including but not limited to purchase or condemnation, for
22 the purpose of constructing, reconstructing, improving, rehabilitating,
23 maintaining, repairing, furnishing, equipping or otherwise providing for
24 educational facilities for the city board; provided, however, that the
25 authority shall use such condemnation power only if the authority is un-
26 able to purchase property by negotiation or bidding and provided further
27 that, except to the extent permitted by subdivision two of section
28 seventeen hundred twenty-nine of this title, the authority may not con-
29 demn property dedicated to use, used or mapped as a city street or any
30 other property owned by, or subject to any interest therein, of the city
31 of New York;

32 7. To make and execute contracts and all other instruments necessary
33 or convenient for the exercise of its functions, powers and duties,
34 provided that the authority may not unless otherwise specifically
35 authorized by law issue negotiable bonds or notes;

36 8. To engage the services of private consultants on a contract basis
37 for rendering professional and technical assistance and advice;

38 9. To enter into agreements with the city board pursuant to which the
39 authority will be responsible for the acquisition, design, construction,
40 reconstruction, improvement, rehabilitation, maintaining, repairing,
41 furnishing, equipping of and otherwise providing for educational facili-
42 ties for the city board, provided, however, that (i) any agreement under
43 which the authority shall engage in maintenance shall be limited to
44 maintenance that is attendant to the authority's implementation of a
45 five-year educational facilities capital plan; (ii) nothing herein shall
46 be deemed to diminish the rights of school custodians and custodian en-
47 gineers as established in the existing collective bargaining agreement
48 with the city board or other custodian or maintenance employees as esta-
49 blished in their respective collective bargaining agreements; and (iii)
50 further provided that the authority is not empowered to engage in custo-
51 dial operations;

52 10. Notwithstanding the provisions of section two thousand five hun-
53 dred four of the insurance law or any other law, to procure insurance on
54 behalf of itself and others against any loss in connection with its ac-
55 tivities, properties and other assets, in such amounts and from such in-

1 surers as it deems desirable; provided that the authority may enter into
2 agreements with the city, acting either by the mayor alone or by resolu-
3 tion of the board of estimate, providing for indemnification by the city
4 of the authority against tort and contract judgments and claims, which
5 agreements may contain provisions requiring legal representation of the
6 authority by the corporation counsel of the city and specifying any in-
7 surance to be carried by the authority, which provisions shall supersede
8 any agreements with the city board on such subject;

9 11. Upon completion of the design, construction, reconstruction, im-
10 provement, rehabilitation, maintaining, repairing, furnishing, equipping
11 of or otherwise providing for educational facilities, to convey title to
12 any such facilities to the city for use as educational facilities by the
13 city board. In the case of educational facilities leased by the
14 authority, the city board may occupy or sublet such facilities from the
15 authority without compensation and without further approval and, upon
16 transfer or assignment of the authority's interest in these facilities
17 to the city board, the city board shall assume all rights and obliga-
18 tions of the authority under such lease;

19 12. To dispose of personal property and, with the consent of the
20 city, acting by resolution of the board of estimate, to dispose of real
21 property, or any interest therein, held by the authority and not
22 required for educational purposes of the city board, by sale, lease, su-
23 blease or otherwise, provided that such disposition is pursuant to the
24 implementation of a five-year educational facilities capital plan;

25 13. To enter into agreements with the city's department of city plan-
26 ning to render any services the authority may request, including but not
27 limited to professional and technical assistance by planning experts,
28 engineers, architects and any other staff as may be necessary, and the
29 use of the premises, personnel, equipment and personal property of the
30 department of city planning. The authority shall provide for reimburse-
31 ment to the department of city planning from the authority for any ex-
32 penses incurred by the department of city planning in carrying out the
33 terms of any such agreements;

34 14. To enter into agreements with the city board to render services,
35 including but not limited to the use of the premises, personnel and per-
36 sonal property of the city board, and to provide for reimbursement to
37 the city board from the authority for any expenses incurred by the city
38 board in carrying out the terms of these agreements;

39 15. To enter into agreements with the city board pursuant to which
40 the city board may make available to the authority the services of em-
41 ployees of the city board who are contemplated to be transferred to the
42 authority pursuant to a plan for such transfers for the purpose of rend-
43 ering assistance in establishing the operations of the authority;
44 provided, however, that such employees shall no longer be available to
45 the authority pursuant to the terms of this subdivision beyond one year
46 following the effective date of this title;

47 16. To apply for or accept any gifts, grants or loans of funds or
48 property or financial or other aid in any form from the federal govern-
49 ment or any agency or instrumentality thereof, from the state or any
50 agency or instrumentality thereof, from the city or any agency or in-
51 strumentality thereof or from any other source, for any or all of the
52 purposes specified in this title, and it may comply, subject to the
53 provisions of this title, with the terms and conditions thereof; and

54 17. To do any and all things necessary or convenient to carry out and
55 exercise the powers given and granted by this section.

1 § 1729. Transfer of property. 1. The city board and the city, acting
2 either by the mayor alone or by resolution of the board of estimate, may
3 convey or transfer to the authority, with or without consideration and
4 without any further authorization, any real, personal or mixed property
5 (including inalienable property of the city, except for land mapped as
6 parks), or any interest therein, in order to assist the authority in im-
7 plementing a five-year educational facilities capital plan.

8 2. In the event the authority wishes to obtain city property for use
9 as an educational facility pursuant to an approved five-year educational
10 facilities capital plan, the authority shall request such property in
11 writing and shall submit such request directly to the mayor. The mayor
12 shall have thirty days to respond to such request. If the request is
13 denied, the mayor shall set forth in writing the reasons for such
14 denial, including whether the city intends to use such property for
15 other public uses. Such response shall be made available to the public
16 upon request. If the mayor fails to respond to such request, the
17 authority may, at the expiration of the thirty-day period, condemn such
18 property pursuant to its powers under subdivision six of section seven-
19 teen hundred twenty-eight of this title.

20 § 1730. Exemption from land use review procedures and other
21 requirements. 1. Except for the provisions of article eight of the en-
22 vironmental conservation law and article fourteen of the parks, recrea-
23 tion and historic preservation law, neither (a) the establishment or
24 amendment of an educational facilities capital plan and actions relating
25 to the financing thereof, nor (b) the establishment or revision of an
26 educational facilities master plan and actions relating to the financing
27 thereof, nor (c) the selection of sites for educational facilities pur-
28 suant to a five-year educational facilities capital plan, nor (d) any
29 conveyance or other grant of property or of any interest therein by the
30 city, the city board or any other person, firm or organization to the
31 authority or to the city board pursuant to a five-year educational
32 facilities capital plan, nor (e) the design, construction, reconstruction,
33 improvement, rehabilitation, maintaining, furnishing, repairing,
34 equipping or use of educational facilities by the authority, including
35 any contracts, approvals, consents, agreements, permits or authoriza-
36 tions necessary to accomplish the same, which are pursuant to a five-
37 year educational facilities capital plan, nor (f) the reconveyance or
38 transfer of property to the city board or to the city by the authority
39 or any disposition of property pursuant to a five-year educational
40 facilities capital plan, shall be subject to the provisions of any gen-
41 eral, special or local law, city charter, administrative code, ordinance
42 or resolution governing uniform land use review procedures, any other
43 land use planning review and approvals, historic preservation proce-
44 dures, architectural reviews, franchise approvals and other state or
45 local review and approval procedures governing the use of land and the
46 improvements thereon within the city. Capital projects for educational
47 facilities to be undertaken by the authority shall not be subject to the
48 provisions of the charter of the city relating to site selection, land
49 use review procedures, art commission review procedures, general stan-
50 dards and cost limits, project scope and design procedures, or contract
51 registration and vouchering procedures.

52 2. The authority shall be deemed the lead agency for purposes of the
53 implementation of the environmental review procedures prescribed by ar-
54 ticle eight of the environmental conservation law and the rules and req-

1 ulations promulgated by the department of environmental conservation
2 pursuant thereto.

3 3. The authority shall be subject to zoning regulations to the same
4 extent that the city board is subject to such regulations, if at all.

5 § 1731. Community participation. 1. Prior to the commencing of new
6 construction or building additions of an educational facility, or the
7 acquisition of real property or any interest therein for such purpose,
8 the authority shall file a copy of the site plan of such facility in its
9 offices and shall provide a copy thereof to the city board, the city
10 planning commission and the community school board and community board
11 of the district in which the facility will be located. Upon request, any
12 other person shall be furnished with such plan or a summary thereof. The
13 authority shall publish in a newspaper of general circulation in the
14 city a notice of the filing of such plan and the availability of the
15 plan and a summary thereof. Such plan shall include, in the case of any
16 project for which the acquisition of real property or interest therein
17 is proposed, the recommended site, any alternate sites considered, and
18 any rationale as to why the alternate sites were not selected.

19 2. Within thirty days after publication of the notice required under
20 subdivision one of this section, a public hearing with sufficient public
21 notice shall be held by each affected community school board on any or
22 all aspects of the site plan and by each affected community board on
23 aspects of the site plan which relate to the general public use of the
24 educational facility and to its impact on the surrounding community. The
25 affected board may request the attendance of representatives of the
26 authority or the city board at a hearing and the authority or the city
27 board shall comply with such requests. If the proposed project affects
28 two or more school districts or community boards, then a hearing may be
29 held jointly by the affected community school boards and/or the affected
30 community boards. Any affected community school board, together with any
31 affected community board, may at their mutual discretion, elect to con-
32 duct a hearing jointly.

33 3. Within forty-five days after publication of such notice, each af-
34 ected community school board or community board shall prepare and sub-
35 mit to the authority, written comments on the site plan. Any other or-
36 ganization or person shall also have the opportunity to present written
37 comments on the plan during this period. Each comment received by the
38 authority on such plan at any time prior to action being taken by the
39 authority on the plan shall be considered by the authority in connection
40 with such action.

41 4. After due consideration of such comments, if any, the authority may
42 affirm, modify or withdraw the plan.

43 5. Nothing herein shall preclude the authority from holding hearings
44 on the site plan, provided, however, that any such hearings on the site
45 plan shall be conducted within the period specified in subdivision three
46 of this section.

47 § 1732. Board of estimate approval of sites. 1. Following the hearings
48 held pursuant to section seventeen hundred thirty-one of this title, but
49 prior to initiating construction of new educational facilities, the
50 authority shall submit the site plan of such projects to the board of
51 estimate for review, provided, however, that such review shall be lim-
52 ited to the site selected for the project.

53 2. The board of estimate may approve or disapprove such site plan,
54 provided however that (a) if the board of estimate fails to act within
55 twenty days of such submission by the authority, the site plan shall be

1 deemed to be approved and (b) any vote to disapprove such site plan
2 shall require a two-thirds vote of the total number of board of estimate
3 vote. For purposes of such vote, the twenty day notice provision con-
4 tained herein shall be deemed sufficient for board of estimate action
5 notwithstanding any provision of law, local or general, or charter to
6 the contrary.

7 3. The board of estimate may not require the authority to conduct any
8 further hearings or seek any further approvals as a condition for
9 receiving board of estimate approval.

10 4. If the board of estimate disapproves the site plan, (a) the
11 authority may, after consultation with the city board, revise such site
12 plan for resubmission pursuant to section seventeen hundred thirty-one
13 of this title and this section or (b) the authority may, with the
14 agreement of the city board and chancellor, eliminate such site plan
15 from the five-year educational facilities capital plan.

16 § 1733. Compliance with codes. The authority shall, in the design,
17 construction, reconstruction, improvement, rehabilitation, maintenance,
18 repair, furnishing, equipping of or otherwise providing for educational
19 facilities, comply with the requirements of the city building code, fire
20 code and electrical code.

21 § 1734. Contracts of the authority. l. a. All contracts for the con-
22 struction, reconstruction, improvement, rehabilitation, maintenance,
23 repair, furnishing, equipping of or otherwise providing for educational
24 facilities for the city board may be awarded in accordance with the
25 provisions of this section, notwithstanding the provisions of section
26 eight of the public buildings law, section one hundred three of the gen-
27 eral municipal law, section one hundred thirty-five of the state finance
28 law, section seven of the New York state financial emergency act for the
29 city of New York or of any other provision of general, special or local
30 law, charter or administrative code.

31 b. The authority shall be subject to the provisions of section one
32 hundred one of the general municipal law.

33 2. a. Except as otherwise provided in this section, all purchase con-
34 tracts for supplies, materials or equipment involving an estimated ex-
35 penditure in excess of ten thousand dollars and all contracts for public
36 work involving an estimated expenditure in excess of fifty thousand dol-
37 lars shall be awarded by the authority to the lowest responsible bidder
38 after obtaining sealed bids in the manner hereinafter set forth. For
39 purposes hereof, contracts for public work shall exclude contracts for
40 personal, engineering and architectural, or professional services.

41 b. The authority may reject all bids and obtain new bids in the manner
42 provided by this section when it deems it in the public interest to do
43 so or, in cases where two or more responsible bidders submit identical
44 bids which are the lowest bids, award the contract to any of such bid-
45 ders or obtain new bids from such bidders. Nothing herein shall obligate
46 the authority to seek new bids after the rejection of bids or after
47 cancellation of an invitation to bid. Nothing in this section shall pro-
48 hibit the evaluation of bids on the basis of costs or savings including
49 life cycle costs of the item to be purchased, discounts, and inspection
50 services so long as the invitation to bid reasonably sets forth the
51 criteria to be used in evaluating such costs or savings. Life cycle
52 costs may include but shall not be limited to costs or savings associ-
53 ated with installation, energy use, maintenance, operation and salvage
54 or disposal.

1 3. a. Notwithstanding the provisions of paragraph a of subdivision two
2 of this section, the authority shall establish guidelines governing the
3 qualifications of bidders entering into contracts for the construction,
4 reconstruction, improvement, rehabilitation, maintenance, repair, fur-
5 nishing, equipping of or otherwise providing for educational facilities
6 for the city board. The bidding may be restricted to those who have
7 qualified prior to the receipt of bids according to standards fixed by
8 the authority; provided, however, that the award of contracts shall, to
9 the extent not inconsistent with this paragraph, be in accordance with
10 paragraph b of subdivision two of this section.

11 b. In determining whether a prospective bidder qualifies for inclusion
12 on a list of pre-qualified bidders, the authority shall consider (1) the
13 experience and past performance of the prospective bidder; (2) the
14 prospective bidder's ability to undertake work; and (3) the financial
15 capability, responsibility and reliability of prospective bidders. The
16 authority may also consider such other factors as it deems appropriate.

17 c. The authority shall, not less than twice each year, publish, in a
18 newspaper of general circulation in the city of New York, an advertise-
19 ment requesting prospective bidders to submit qualification statements.
20 Lists of pre-qualified bidders shall be reviewed and updated not less
21 than annually by the authority. The authority shall delete from the list
22 of pre-qualified bidders any bidder who has failed to perform adequately
23 or satisfactorily for the authority, the city board or any other city or
24 state agency or authority.

25 d. Lists of pre-qualified bidders may be established on a project-
26 specific basis; provided, however, that any such list shall have no less
27 than five bidders.

28 4. a. Advertisement for bids, when required by this section, shall be
29 published at least once in a newspaper of general circulation in the
30 city of New York. Publication in such a newspaper shall not be required
31 (i) if bids for contracts for supplies, materials or equipment are of a
32 type regularly purchased by the authority and are to be solicited from a
33 list of potential suppliers, if such list is or has been developed con-
34 sistent with the provisions of subdivision six of this section or (ii)
35 if bids are to be solicited from a list of pre-qualified bidders pur-
36 suant to the provisions of paragraph d of subdivision three of this
37 section. Any such advertisement shall contain a statement of the time
38 and place where all bids received pursuant to such notice will be publi-
39 cly opened and read. At least fourteen days shall elapse between the
40 first publication of such advertisement or the solicitation of bids, as
41 the case may be, and the date of opening and reading of bids.

42 b. The authority may designate any officer or employee to open the
43 bids at the time and place bids are to be opened and may designate an
44 officer to award the contract to the lowest responsible bidder. Such
45 designee shall make a record of all bids in such form and detail as the
46 authority shall prescribe. All bids received shall be publicly opened
47 and read at the time and place specified in the advertisement or at the
48 time of solicitation, or to which the opening and reading have been ad-
49 journed by the authority. All bidders shall be notified of the time and
50 place of any such adjournment.

51 5. Notwithstanding the foregoing, the authority may by resolution ap-
52 proved by a vote of its members declare (i) that competitive bidding for
53 non-construction contracts is impractical or inappropriate because of
54 the existence of any of the circumstances hereinafter set forth or (ii)
55 that competitive bidding for construction contracts is impractical or

1 inappropriate because of the existence of the circumstances set forth in
2 paragraph a of this subdivision. Thereafter the authority may proceed to
3 award contracts without complying with the requirements of subdivision
4 two or three of this section. In each case where the authority declares
5 competitive bidding impractical or inappropriate, it shall state the
6 reason therefor in writing and summarize any negotiations that have been
7 conducted and shall be made available upon request. Except for contracts
8 awarded pursuant to paragraphs a, b and c of this subdivision, the
9 authority shall not award any contract pursuant to this subdivision
10 earlier than thirty days from the date on which the authority declares
11 that competitive bidding is impractical or inappropriate. Competitive
12 bidding may only be declared impractical or inappropriate where:

13 a. the existence of an emergency involving danger to life, safety or
14 property requires immediate action and cannot await competitive bidding
15 or the item to be purchased is essential to efficient operation or the
16 adequate provision of service by the city board or the authority and as
17 a consequence of unforeseen circumstance such purchase cannot await com-
18 petitive bidding;

19 b. the authority receives no responsive bids or only a single respon-
20 sive bid in response to an invitation for competitive bids;

21 c. the item is available through an existing contract between a vendor
22 and (i) another public authority provided that such other authority
23 utilized a process of competitive bidding or a process of competitive
24 requests for proposals to award such contracts, or (ii) the city board,
25 or (iii) the state of New York, or (iv) the city of New York, provided
26 that in any case when under this paragraph the authority determines that
27 obtaining such item thereby would be in the public interest and sets
28 forth the reason for such determination. The authority shall accept sole
29 responsibility for any payment due the vendor as a result of the
30 authority's order; or

31 d. the authority determines that it is in the public interest to award
32 contracts pursuant to a process for competitive requests for proposals
33 as hereinafter set forth. For purposes of this section, a process for
34 competitive requests for proposals shall mean a method of soliciting
35 proposals and awarding a contract on the basis of a formal evaluation of
36 the characteristics, such as quality, cost, delivery schedule and
37 financing of such proposals against stated selection criteria. Public
38 notice of the requests for proposals shall be given in the same manner
39 as provided in subdivision three of this section and shall include the
40 selection criteria. In the event the authority makes a material change
41 in the selection criteria from those previously stated in the notice, it
42 will inform all proposers of such change and permit proposers to modify
43 their proposals.

44 (i) The authority may award a contract pursuant to this paragraph only
45 after a resolution approved by a vote of its members at a public meeting
46 of the authority with such resolution (A) disclosing the other proposers
47 and the substance of their proposals, (B) summarizing the negotiation
48 process including the opportunities, if any, available to proposers to
49 present and modify their proposals, and (C) setting forth the criteria
50 upon which the selection was made.

51 (ii) Nothing in this paragraph shall require or preclude (A) negotia-
52 tions with any proposers following the receipt of responses to the
53 request for proposals or (B) the rejection of any or all proposals at
54 any time. Upon the rejection of all proposals, the authority may solicit
55 new proposals or bids in any manner prescribed in this section.

1 6. Upon the adoption of a resolution by the authority stating, for
2 reasons of efficiency, economy, compatibility or maintenance reliabil-
3 ity, that there is a need for standardization, the authority may esta-
4 blish procedures whereby particular supplies, materials or equipment are
5 identified on a qualified products list. Such procedures shall provide
6 for products or vendors to be added to or deleted from such list and
7 shall include provisions for public advertisement of the manner in which
8 such lists are compiled. The authority shall review such list no less
9 than twice a year for the purpose of making such modifications. Con-
10 tracts for particular supplies, materials or equipment identified on a
11 qualified products list may be awarded by the authority to the lowest
12 responsible bidder after obtaining sealed bids in accordance with this
13 section or without competitive sealed bids in instances when the item is
14 available from only a single source, except that the authority may
15 dispense with advertising provided that it mails copies of the invita-
16 tion to bid to all vendors of the particular item on the qualified pro-
17 ducts list.

18 7. The authority shall compile a list of potential sources of sup-
19 plies, materials or equipment regularly purchased. The authority shall,
20 by resolution, set forth the procedures it has established to identify
21 new sources and to notify such new sources of the opportunity to bid for
22 contracts for the purchase of supplies, materials or equipment. Such
23 procedures shall include, but not be limited to advertising in trade
24 journals.

25 8. The authority shall be subject to the provisions of section
26 twenty-eight hundred seventy-nine of this chapter in awarding contracts
27 for personal services.

28 9. The board shall, by resolution, establish procedures for the fair
29 and equitable resolution of contract disputes. Prior to the establish-
30 ment of such policy, the board shall publish in appropriate publications
31 a notice of such policy and invite comment from interested parties, in-
32 cluding, but not limited to representatives of construction
33 organizations. Such notice shall also state that the authority will hold
34 a public hearing to consider the policy at a specified time and place on
35 a date not less than ten days after such publication, and the authority
36 shall conduct the public hearing pursuant to such notice.

37 10. The provisions of article eight of the labor law shall be applica-
38 ble to all contracts entered into directly or indirectly by the
39 authority.

40 11. The provisions of subdivision one of section one hundred six-b of
41 the general municipal law shall apply to the authority, provided, how-
42 ever, that the authority may retain up to four times the value of any
43 remaining items to be completed.

44 § 1735. Certain contracts of the authority. 1. Notwithstanding the
45 provisions of paragraph b of subdivision one of section seventeen hun-
46 dred thirty-four of this title, the award of construction contracts by
47 the authority between July first, nineteen hundred eighty-nine and June
48 thirtieth, nineteen hundred ninety-four, shall not be subject to the
49 provisions of section one hundred one of the general municipal law;
50 provided, however, that the value of contracts awarded between July
51 first, nineteen hundred ninety-three and June thirtieth, nineteen hun-
52 dred ninety-four pursuant to this subdivision shall not exceed one hun-
53 dred forty percent of the highest annual value of contracts awarded in
54 any previous fiscal year in which contracts are awarded pursuant to this
55 section.

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1 2. Notice of the invitation for bids for contracts to be awarded pur-
2 suant to this section shall state the time and place of the receipt and
3 opening of bids.

4 3. All bidders shall submit to the authority, prior to the opening of
5 a bid for the award of a contract under this section, a sealed list
6 identifying the names of each subcontractor each contractor proposes to
7 utilize under the contract for the performance of the following subdivi-
8 sions of work:

9 a. Plumbing and gas fitting;
10 b. Steam heating, hot water heating, ventilating and air conditioning
11 apparatus; and
12 c. Electric wiring and standard illuminating fixtures.

13 The low bidder shall specify in such list the estimated value to be
14 paid each such subcontractor for the work to be performed by such
15 subcontractor. After the authority has announced the low bidder at the
16 bid opening, the authority shall open only such low bidder's separate
17 sealed list and shall read aloud such subcontractors listed therein. All
18 such sealed lists except those of the low bidder shall be returned un-
19 opened to their respective contractors following the awarding of a
20 contract.

21 4. The authority shall establish a committee to review and report on
22 contracts issued pursuant to this section and on the procedures and
23 methodology of the authority in awarding such contracts. The review
24 shall include, but not be limited to, the degree to which contractors
25 awarded contracts pursuant to such paragraph, and the subcontractors
26 utilized by them, utilize employees who are represented by labor organi-
27 zations, comply with existing labor standards, maintain harmonious labor
28 relations and recognize state approved apprentice programs. The commit-
29 tee shall, from time to time, issue economic and statistical reports
30 dealing with the costs of construction under this article. Such reports
31 shall deal with the costs of labor, material, equipment and profit. The
32 committee shall have no authority to approve or disapprove contracts.
33 The committee shall be composed of two representatives from the
34 authority, one representative from the board, two representatives from
35 construction-related labor organizations and two representatives from
36 the construction industry. The president of the authority shall desig-
37 minate the members of the committee, provided, however, that the president
38 shall designate the representatives of labor organizations from a list
39 of names submitted by the New York state AFL-CIO.

40 5. In awarding contracts pursuant to this section the authority shall,
41 in addition to the factors set forth in subdivision three of section
42 seventeen hundred thirty-four of this title, consider the following fac-
43 tors when establishing a list of pre-qualified bidders for construction
44 work: (a) the degree to which a contractor or subcontractor utilizes em-
45 ployees who are represented by a labor organization; (b) the absence of
46 any intentional misrepresentation with regard to lists of subcontractors
47 previously submitted pursuant to the provisions of subdivision two of
48 this section; and (c) the record of the bidder in complying with exist-
49 ing labor standards, maintaining harmonious labor relations and recog-
50 nizing state approved apprentice programs.

51 6. The authority shall provide in its construction, erection or alter-
52 ation contracts which implement a five year educational facilities capi-
53 tal plan a provision that shall require each contractor to make prompt
54 payment to its subcontractors performing each subdivision of work listed
55 in subdivision three of this section. Within seven calendar days of the

1 receipt of any payment from the authority, the contractor shall pay to
2 each such subcontractor that portion of the proceeds of such payment re-
3 presenting the value of the work performed by such subcontractor, based
4 upon the actual value of the subcontract, which has been approved and
5 paid for by the authority, less an amount necessary to satisfy any
6 claims, liens or judgments against the subcontractor which have not been
7 suitably discharged and less any amount retained by the contractor as
8 provided herein. For such purpose, the subcontract may provide that the
9 contractor may retain not more than five per centum of each payment to
10 the subcontractor or not more than ten per centum of each such payment
11 if prior to entering into the subcontract the subcontractor is unable or
12 unwilling to provide, at the request of the contractor, a performance
13 bond and a labor and material bond both in the amount of the
14 subcontract.

15 At the time of making a payment to the contractor for work performed
16 by the subcontractors set forth in subdivision three of this section,
17 the authority shall file in its office for review a record of such
18 payment. If any such subcontractor shall notify the authority and the
19 contractor in writing that the contractor has failed to make a payment
20 to it as provided herein and the contractor shall fail, within five
21 calendar days after receipt of such notice, to furnish either proof of
22 such payment or notice that the amount claimed by the subcontractor is
23 in dispute, the authority shall withhold from amounts then or thereafter
24 becoming due and payable to the contractor, other than from amounts
25 becoming due and payable to the contractor representing the value of
26 work approved by the authority and performed by other subcontractors and
27 which the contractor is required to pay to such subcontractors within
28 seven calendar days as herein provided, an amount equal to that portion
29 of the authority's prior payment to the contractor which the subcontractor
30 claims to be due it, shall remit the amount when and so withheld to
31 the subcontractor and deduct such payment from the amounts then other-
32 wise due and payable to the contractor, which payment shall, as between
33 the contractor and the authority, be deemed a payment by the authority
34 to the contractor. In the event the contractor shall notify the
35 authority as above provided that the claim of the subcontractor is in
36 dispute, the authority shall withhold from amounts then or thereafter
37 becoming due and payable to the contractor, other than from amounts
38 becoming due and payable to the contractor representing the value of
39 work approved by the authority and performed by other subcontractors and
40 which the contractor is required to pay to such subcontractors within
41 seven calendar days as herein provided, an amount equal to that portion
42 of the authority's prior payment to the contractor which the subcontractor
43 claims to be due it and deposit such amount when and so withheld in
44 a separate interest-bearing account pending resolution of the dispute,
45 and the amount so deposited together with the interest thereon shall be
46 paid to the party or parties ultimately determined to be entitled
47 thereto, or until the contractor and subcontractor shall otherwise agree
48 as to the disposition thereof. In the event the authority shall be
49 required to withhold amounts from a contractor for the benefit of more
50 than one subcontractor, the amounts so withheld shall be applied to or
51 for such subcontractors in the order in which the written notices of
52 nonpayment have been received by the authority, and if more than one
53 such notice was received on the same day, proportionately based upon the
54 amount of the subcontractor claims received on such day. Nothing herein
55 contained shall prevent the authority from commencing an interpleader

1 action to determine entitlement to a disputed payment in accordance with
2 section one thousand six of the civil practice law and rules, or any
3 successor provision thereto.

4 Payment to a subcontractor shall not relieve the contractor from
5 responsibility for the work covered by the payment. Except as otherwise
6 provided, nothing contained herein shall create any obligation on the
7 part of the authority to pay any subcontractor, nor shall anything
8 provided herein serve to create any relationship in contract or other-
9 wise, implied or expressed, between the subcontractor and the authority.

10 The provisions of this subdivision shall not be applicable to the sub-
11 contractors of a contractor whose contract is limited to the performance
12 of a single subdivision of work listed in subdivision three of this
13 section.

14 7. The provisions of this section shall cease to be in effect in the
15 event any of the provisions of this section shall be adjudged to be in-
16 valid by the final judgment of a court of competent jurisdiction from
17 which judgment all appeals or applications for relief have been ex-
18 hausted or the time therefor has expired, provided, however, that such
19 appeals or applications are pursued promptly.

20 § 1736. Funding of the authority. 1. Each year the authority shall
21 prepare and the board shall adopt an itemized estimate of the sum of
22 money it deems necessary from the city board to cover the authority's
23 operating expenses for the ensuing fiscal year. Such estimate shall take
24 into account any prior year's surplus and shall be delivered to the city
25 board for review at least ten business days prior to the date for sub-
26 mission of the city board's annual estimate pursuant to section twenty-
27 five hundred seventy-six of the education law and shall be included as
28 part of such city board estimate. Upon appropriation of the city's ex-
29 penditure budget for such ensuing fiscal year, the amount of the authority's
30 estimate shall be paid to the authority by the city in twelve equal
31 payments, each payable on the first day of each month of the fiscal
32 year. The authority shall not be required to present any vouchers for
33 such payments, but shall issue quarterly reports not later than thirty
34 days after the end of each quarter comparing actual expenditures to es-
35 timated expenditures and analyzing any significant variances. The
36 authority shall develop procedures to ensure that it operates at all
37 times within the amounts payable to it pursuant to this section, after
38 taking into account funds available to the authority for such purpose
39 from sources other than the city. Expenditures of the authority from
40 funds paid to it by the city shall be subject to audit by the comp-
41 troller, who may recommend procedures designed to improve the
42 authority's accounting and expenditure control expenditures. In the
43 event the authority's cash flow projections require that funds be ad-
44 vanced more rapidly during a fiscal year than would occur pursuant to
45 the payment dates set forth in this section, the authority shall advise
46 the city board, the director of management and budget and the comp-
47 troller of such requirement. Such officials shall, in consultation with
48 the authority, develop a schedule of advance payments to the authority
49 designed to cover projected cash shortfalls during a fiscal year and to
50 provide the authority with cash balances at all times sufficient to per-
51 mit prompt payment of the authority's creditors.

52 2. The authority shall present vouchers for payment of costs incurred
53 for projects the detailed scope of which approval has been obtained and
54 for activities for which no such scope approval is required as provided
55 in section twenty-five hundred ninety-p of the education law to the

1 comptroller, which vouchers shall contain the following information: the
2 amounts to be paid; the payees; the project or purpose for which the
3 costs were incurred; a statement that the amounts to be paid are within
4 city capital budget appropriations available therefor; and, with respect
5 to projects for which scope approval has been obtained, a statement that
6 the amounts to be paid are in accordance with such approved project
7 scope. The authority shall not be required to furnish any additional in-
8 formation prior to payment of a voucher pursuant to this subdivision,
9 and the comptroller is hereby authorized and directed to take such ac-
10 tions as may be necessary to make such payment.

11 3. The authority shall not be deemed a "covered organization" as
12 defined in the New York state financial emergency act for the city of
13 New York.

14 § 1737. Civil service. 1. a. The authority, for the purpose of admin-
15 istering the state civil service law, shall be deemed to be a municipal
16 commission provided, however, that (i) the authority may elect to dele-
17 gate the administration of any or all of the provisions of the civil
18 service law, except article fourteen of such law, to the department of
19 personnel of the city of New York with respect to titles established at
20 the authority and which the city has also established and promulgates;
21 (ii) the civil service commission of the city of New York shall exercise
22 on behalf of the authority the powers and duties of review assigned un-
23 der sections fifty, seventy-two, and seventy-six of the civil service
24 law; and (iii) the New York city office of administrative trials and
25 hearings will be designated the hearing office and shall conduct on
26 behalf of the authority such hearings as are required by sections
27 seventy-one, seventy-two, seventy-three, seventy-five and eighty-one of
28 the civil service law.

29 b. In the event the authority elects to delegate administration of any
30 or all of the provisions of the civil service law pursuant to paragraph
31 a of this subdivision, the city department of personnel shall enter into
32 a contract with such authority for the rendition of such services. The
33 authority shall compensate the city of New York for such services only
34 with respect to such services rendered for or on behalf of the
35 authority. If the city of New York and the authority cannot agree on
36 the amount of such compensation, the city comptroller shall determine
37 the fair and reasonable value of such services and the authority shall
38 pay such sum to the city of New York.

39 2. a. Any person on an eligible list for a position with the city
40 board in effect on the effective date of this title shall continue to
41 hold such position on such list and shall be entitled to the same civil
42 service rights.

43 b. The authority shall continue to use any new or existing civil ser-
44 vice lists promulgated by the city department of personnel until such
45 time as successor titles are established.

46 3. With respect to persons employed by the city board on the effec-
47 tive date of this section, the authority and the city board shall be
48 deemed to be the same public employer only for purposes of transfer of
49 employment under the civil service law. No civil service right of an em-
50 ployee of the city board employed on the effective date of this title
51 shall be lost, impaired or affected by reason of the enactment of this
52 section into law.

53 4. A tripartite panel shall be established, consisting of one person
54 representing the authority, one person representing the appropriate pu-
55 blic employee organization and an impartial person selected by these

1, representatives. This panel shall hear complaints filed by such public
2 employee organization with respect to the creation and classification of
3 new titles and shall render non-binding written recommendations to the
4 public employee organization and the authority prior to the public hear-
5 ing required of a municipal civil service commission pursuant to section
6 twenty of the civil service law, provided that the hearing of the tri-
7 partite panel shall be expedited so as to avoid delay.

8 § 1738. Retirement of employees. Employees of the authority shall be
9 eligible to join the board of education retirement system as established
10 in section twenty-five hundred seventy-five of the education law and
11 pursuant to the usual rules of that system, provided that a new employee
12 who upon appointment by or transfer to the authority is a member of the
13 New York city employees retirement system may remain a member of the New
14 York city employees retirement system if, within ninety days of the ef-
15 fective date of the transfer to or appointment by the authority, the em-
16 ployee exercises an election to do so. Furthermore, the retirement
17 rights of employees of the city board employed on the effective date of
18 this title shall not be impaired by reason of the enactment of this
19 title into law.

20 § 1739. Collective negotiation. 1. For the purpose of article fourteen
21 of the civil service law, the authority shall be deemed to be the public
22 employer and as such shall negotiate with and enter into written
23 agreements with employee organizations representing the staff of the
24 authority that have been certified or recognized under such article. In
25 carrying on such negotiations, the authority shall consult with and seek
26 assistance from the office of labor relations and collective bargaining
27 of the city board and the New York city office of municipal labor
28 relations. The state public employment relations board shall have exclu-
29 sive jurisdiction for the purpose of administering the provisions of
30 such article and the provisions of section two hundred twelve of such
31 article shall not be applicable to any such negotiations.

32 2. Employees transferred from the city board to the authority shall be
33 included in an appropriate employer-employee negotiating unit pursuant
34 to article fourteen of the civil service law except for those employees
35 who are designated managerial or confidential. With respect to such em-
36 ployees, the existing public employee organization recognized or certi-
37 fied to represent the employees of the existing negotiating unit shall
38 be recognized as the representative for the negotiating unit of the
39 authority.

40 3. Future alterations of the negotiating unit shall be made pursuant
41 to article fourteen of the civil service law.

42 4. a. The authority shall consult with the appropriate public employee
43 organization on the establishment of, and bargain all terms and condi-
44 tions of, any new titles it establishes which have a community of in-
45 terest with titles already represented by the public employee organiza-
46 tion which presently has representation rights for those titles at the
47 city board or at the city of New York.

48 b. Any such titles for which terms and conditions are bargained pur-
49 suant to paragraph a of this subdivision shall be deemed to be successor
50 titles within the meaning of applicable law and, so long as the respon-
51 sibilities of employees in these titles are reasonably related to the
52 responsibilities of employees currently represented by a public employee
53 organization, shall be accreted to the appropriate bargaining certifi-
54 cates for which such public employee organization shall be voluntarily

1 recognized as the bargaining agent under procedures acceptable to the
2 state public employment relations board.

3 § 1740. Use of outside design, drafting or inspection services. 1. All
4 design, drafting or inspection services necessary in connection with the
5 approved educational facilities capital plan shall be performed by ap-
6 propriate employees of the authority, except as otherwise provided in
7 this section.

8 2. a. The authority will undertake design, drafting and inspection
9 services with employees of the authority so that (i) not less than
10 twenty percent of such work performed in the years ending June thir-
11 tieth, nineteen hundred eighty-nine, and June thirtieth, nineteen hun-
12 dred ninety will be so undertaken; (ii) not less than thirty percent of
13 such work performed in the year ending June thirtieth, nineteen hundred
14 ninety-one will be so undertaken; and (iii) not less than forty percent
15 of such work performed in the year ending June thirtieth, nineteen hun-
16 dred ninety-two and thereafter will be so undertaken. Each such percen-
17 tage shall be determined by the value of the work performed for its
18 respective fiscal year for such design, drafting and inspection services
19 in the approved educational facilities capital plan.

20 b. Notwithstanding the provisions of paragraph a of this subdivision,
21 design, drafting and inspection services may be performed by persons
22 other than employees of the authority in any given fiscal year when the
23 amount of services allowed to be performed by persons other than em-
24 ployees of the authority pursuant to the provisions of this subdivision
25 have been exhausted for that fiscal year, and when:

26 (1) Performance by persons other than employees of the authority is
27 necessary to avoid a conflict of interest, as defined in regulations
28 promulgated by the authority, and is a direct consequence of an accident
29 or other unforeseen circumstance; or

30 (2) (A) Current employees of the authority are otherwise engaged and
31 cannot be reassigned to perform the services; (B) new employees cannot
32 be hired within a reasonable time to perform such services; and (C) such
33 services are needed in connection with work undertaken in response to an
34 emergency. For purposes of this subparagraph, the term "emergency" shall
35 mean a situation involving danger to life, safety or property which
36 requires immediate action, is essential to efficient operation or the
37 adequate provision of service by the city board or the authority, and is
38 a direct consequence of an accident or other unforeseen circumstance.

39 3. a. Design, drafting or inspection services above the minimum per-
40 centages reserved for employees of the authority pursuant to paragraph a
41 of subdivision two of this section may be performed by other than appro-
42 priate employees of the authority if to do so is (i) cost effective,
43 (ii) required to obtain special expertise not available through the ap-
44 propriate employees of the authority, (iii) required to perform a ser-
45 vice of short duration, (iv) required to respond to an emergency, or (v)
46 required to avoid a conflict of interest.

47 b. Prior to executing a contract for design, drafting or inspection
48 services pursuant to paragraph a of this subdivision, the authority
49 shall prepare a specific statement which sets forth the objective data
50 supporting the reasons why the proposed contract meets one or more of
51 the requirements set forth in such paragraph. Where use of the contract
52 is stated to be in compliance with subparagraph (i) of such paragraph,
53 such statement shall include certification that the contract will not
54 cause the displacement of authority employees.

1 c. (1) Prior to the scheduled award of the contract proposed to be
2 awarded pursuant to paragraph a of this subdivision, the authority shall
3 provide all employee organizations that represent authority employees
4 who would otherwise perform such work with copies of the statement rend-
5 ered pursuant to paragraph b of this subdivision and the proposed con-
6 tract so that each such employee organization shall have at least fif-
7 teen days to object to the proposed contract. Any employee organization
8 which provides a timely written notice of objection and the reasons
9 therefor shall, unless the authority agrees in writing to withdraw the
10 proposed contract, be permitted to be heard by the authority's trustees
11 prior to the award of the contract.

12 (2) Notwithstanding the provisions contained within subparagraph one
13 of this paragraph, the employee organization may be provided less than
14 the required fifteen days to object to the proposed contract when the
15 contract is required to respond to an emergency as defined in subpara-
16 graph two of paragraph b of subdivision two of this section; provided,
17 however, that all other provisions of such clause shall be observed.

18 4. No later than ten days prior to the date set by the city charter
19 for the holding of hearings on the mayor's annual preliminary budget
20 statements for capital projects, the authority shall prepare a report
21 specifying the projects from the approved educational facilities plan
22 which the authority plans to commit to during the next fiscal year. If
23 the authority intends to contract for design, drafting or inspection
24 services in connection with any project so specified, the report shall
25 further specify (i) for which projects the services are needed; (ii) the
26 type of services to be provided pursuant to contract; (iii) the esti-
27 imated cost of the contract; and (iv) the reason or reasons why award of
28 the contract is consistent with this subdivision. The report shall be
29 filed in the authority's office and in the office of the city board, and
30 shall be available to the public upon request. The authority shall file
31 revisions to the report so as to provide advance notice of not less than
32 thirty days of additional projects that the authority plans to undertake
33 on which the authority intends to contract for design, drafting or in-
34 spection services. Such revisions shall be in accordance with the
35 criteria of this subdivision. Such revisions shall also identify
36 projects which the authority included in its report but which the
37 authority does not intend to pursue in the applicable fiscal year. The
38 authority shall file such revisions in the authority's office and in the
39 office of the city board, and such revisions shall be available to the
40 public upon request. Such report and revisions shall not preclude the
41 authority from entering into contracts or undertaking projects.

42 5. Nothing herein shall be deemed to create a cause of action against
43 the authority challenging the board's determination to award a contract
44 pursuant to subdivision three of this section, except to challenge a
45 failure by the authority to adhere to the process set forth in para-
46 graphs b and c of subdivision three of this section.

47 § 1741. Deposit and investment of moneys of the authority. 1. The
48 authority may establish and maintain funds for the purpose of receiving
49 and expending moneys received by the authority.

50 2. All moneys of the authority from whatever source derived shall be
51 paid to the authority and shall be deposited in accounts held in the
52 authority's name in the bank or banks in the state designated by the
53 authority. The moneys in such accounts shall be paid out on checks of
54 the authority upon requisition by the chairman or such other officer or
55 officers as the authority may authorize to make such requisitions.

1 3. Any moneys on deposit in the accounts of the authority not required
2 for immediate expenditure shall be invested in obligations in which a
3 municipality may be authorized to invest in accordance with section
4 eleven of the general municipal law, provided, however, that such funds
5 shall not be invested in instruments commonly known as repurchase
6 agreements.

7 4. The authority shall provide the city with records and other in-
8 formation regarding (i) the nature of work performed by the authority's
9 employees so as to enable the city to determine the extent to which the
10 cost of such services may be treated as capital costs of the city and
11 the educational facilities to which such costs pertain and (ii) the in-
12 vestment of funds received from the city so as to enable the city to
13 comply with the requirements of federal tax laws and preserve the tax-
14 exempt status of obligations issued by the city. The authority shall
15 cooperate with the city in all respects to ensure that all investments
16 are made in a manner that preserves the tax-exempt status of such
17 obligations.

18 § 1742. Exemption of the authority. 1. Notwithstanding any other
19 provision of law, any real or personal property, while owned or subject
20 to any rights of the authority, shall be exempt from all taxes, special
21 assessments and special ad valorem levies and from the payment of any
22 and all charges, rents or other payments to the city, other than charges
23 for services provided by the city's water and sewer systems. In addi-
24 tion, any in rem actions or proceedings brought against such property by
25 the city or any other actions or proceedings concerning any of the above
26 brought against the authority by the city, and any such actions or
27 proceedings shall be void and shall be subject to dismissal upon appli-
28 cation of the authority at the sole expense of the city of New York. In
29 no instance shall title to any such property pass to the city of New
30 York except by deed or other appropriate document of sale, release or
31 conveyance executed by the authority.

32 2. Debts of the authority shall not be considered debts of the state
33 or debts of the city.

34 § 1743. Equal employment opportunity program and minority and women-
35 owned business enterprise program. 1. Notwithstanding any other incon-
36 sistent provision of law, sections 8-107 and 8-108.1 of the administra-
37 tion code of the city of New York shall apply to the activities of the
38 authority.

39 2. The provisions of section 6-108.1 of the administrative code of the
40 city of New York with respect to the award of contracts to locally based
41 enterprises shall apply to contracts entered into by the authority
42 provided, however, that the authority shall exercise the powers of the
43 mayor set forth in such section with respect to: the establishment of
44 procedures for the certification of businesses; the approval or granting
45 of waivers of the requirements of such section; the promulgation of
46 rules and regulations for the purpose of implementing the provisions of
47 such section; and the submission of annual reports concerning the admin-
48 istration of the program established pursuant to such section.
49 Notwithstanding the foregoing, the limitation on gross receipts of
50 qualified locally based enterprises set forth in clause (a) of subdivi-
51 sion six of paragraph a of section 6-108.1 of the administrative code of
52 the city of New York may be raised by the authority upon a determination
53 that a higher limitation is necessary to meet the goals of the locally
54 based enterprise program.

1 3. The provisions of executive order fifty of the mayor of the city of
2 New York, dated April twenty-fifth, nineteen hundred eighty, as amended,
3 shall apply to contracts of the authority; provided, however, that with
4 respect to such order, or any other program concerning equal employment
5 opportunity or affirmative action to which contracts entered into by the
6 authority are subject, such program shall be administered by an officer
7 of the authority designated by the authority, and no other agency shall
8 have jurisdiction over the compliance by the authority with the require-
9 ments of any such program.

10 § 1744. Claims and actions against the authority. 1. No action or
11 proceeding shall be prosecuted or maintained against the authority, or
12 any member, officer, agent, or employee thereof, for personal injury,
13 death or damage to real or personal property alleged to have been
14 sustained by reason of the negligence or wrongful act of the authority
15 or of any such member, officer, agent or employee thereof, or for any
16 other alleged tort of the authority or of such member, officer, agency
17 or employee thereof, unless (i) it shall appear by and as an allegation
18 in the complaint or moving papers that a notice of claim shall have been
19 made and served upon the authority, within the time limit prescribed by
20 and in compliance with section fifty-e of the general municipal law, and
21 that at least thirty days have elapsed since the service of such notice
22 and that adjustment of payment thereof has been neglected or refused,
23 and (ii) the action or proceeding shall be commenced within one year af-
24 ter the happening of the event upon which the claim is based.

25 2. No action or proceeding for any cause whatever, other than the one
26 for personal injury, death, property damage or tort, which shall be gov-
27 erned by subdivision one of this section, relating to the design, con-
28 struction, reconstruction, improvement, rehabilitation, repair, furnish-
29 ing or equipping of educational facilities, shall be prosecuted or main-
30 tained against the authority or any member, officer, agent, or employee
31 thereof, unless (i) it shall appear by and as an allegation in the com-
32 plaint or moving papers, that a detailed, written, verified notice of
33 each claim upon which any part of such action or proceeding is founded
34 was presented to the board within three months after the accrual of such
35 claim, that at least thirty days have elapsed since such notice was so
36 presented and that the authority or the officer or body having the power
37 to adjust or pay said claim has neglected or refused to make an adjust-
38 ment or payment thereof, and (ii) the action or proceeding shall have
39 been commenced within one year after the happening of the event upon
40 which the claim is based; provided, however, that nothing contained in
41 this subdivision shall be deemed to modify or supersede any provision of
42 law or contract specifying a shorter period of time in which to commence
43 such action or proceeding, or to excuse compliance with any other condi-
44 tions required by contract to be satisfied prior to the commencement of
45 such action or proceeding.

46 3. The notice of each claim presented pursuant to subdivision two of
47 this section must set forth in detail with respect to such claim; (i)
48 the amount of the claim; (ii) a specific and detailed description of the
49 grounds for the claim, relating the dollar amount claimed to the event
50 purportedly giving rise to the claim and indicating how the dollar
51 amount is arrived at; and (iii) the date of the event allegedly un-
52 derlying the claim.

53 4. The provisions of subdivision two of section twenty-five hundred
54 sixty-two of the education law shall apply to all claims made against
55 the authority.

1 5. The authority shall have power to settle or adjust all claims in
2 favor of or against the authority.

3 6. Whenever a notice of claim is served upon the authority alleging
4 personal injury, it shall have the right to demand a physical examina-
5 tion of the claimant relative to the occurrence and extent of the in-
6 juries or damages for which claim is made, in accordance with the provi-
7 sions of section fifty-h of the general municipal law.

8 7. The rate of interest to be paid by the authority upon any judgment
9 for which it is liable, shall not exceed the rate of interest on judg-
10 ments and accrued claims against municipal corporations as provided in
11 the general municipal law from time to time.

12 § 1745. Limited liability. Neither the members of the board nor any
13 officers or employee of the authority acting on behalf thereof, while
14 acting within the scope of such person's authority, shall be subject to
15 any liability resulting from carrying out any of the powers expressly
16 given in this title. A trustee, officer or employee of the authority
17 shall be deemed an "employee" for the purposes of section fifty-k of the
18 general municipal law, provided, however, that any trustee appointed by
19 the governor or any employee of the state shall be deemed an "employee"
20 for the purposes of section eighteen of the public officers law for any
21 actions relating to their activities as a trustee of the authority
22 created by this title.

23 § 1746. Audit, annual and quarterly reports. 1. Beginning in nineteen
24 hundred ninety and every year thereafter, the authority shall, within
25 one hundred twenty days of the end of the city's fiscal year, submit to
26 the governor, the temporary president of the senate, the speaker of the
27 assembly, the minority leader of the senate, the minority leader of the
28 assembly, the chairs of the senate and assembly education committees and
29 the chairs of the senate and assembly committees on corporations,
30 authorities and commissions, the chairman of the senate committee on in-
31 vestigations, taxation, and government operations, the chairman of the
32 assembly committee on oversight, analysis, and investigations, the mayor
33 and the city board a report on its operations during such fiscal year.
34 An annual audit of the authority shall be conducted by an independent
35 certified public accountant, and the authority's independently audited
36 financial statements shall be included in this report.

37 2. Beginning in nineteen hundred ninety, and every year thereafter,
38 the authority shall, on the last day of April, July, October, and Janu-
39 ary, submit to all persons set forth in subdivision one of this section
40 a report detailing the extent of completion of all projects for con-
41 struction, reconstruction, improvement, rehabilitation, maintenance,
42 repair, furnishing, equipping of or otherwise providing for educational
43 facilities for the city board, including, by project, identified short-
44 falls in schedule performance and providing explanation for such
45 shortfalls. Such reports shall detail the extent of completion as ex-
46 isted on the last day of the month preceding each report, respectively.

47 § 1747. Effect of inconsistent provisions. Insofar as the provisions
48 of this title are inconsistent with the provisions of any other law,
49 general, special or local or of the city charter or any local law, ordi-
50 nance or resolution of the city, the provision of this title shall be
51 controlling, provided that nothing contained in this section shall be
52 held to supplement or otherwise expand the powers or duties of the
53 authority otherwise set forth in this title.

54 § 15. Paragraph a of section 11.00 of the local finance law is amended
55 by adding a new subdivision eighty-four to read as follows:

1 84. Educational facilities. The acquisition, construction, reconstruc-
2 tion, improvement, rehabilitation, repair, furnishing or equipping of,
3 or other provision for educational facilities, as defined in section
4 twenty-five hundred ninety-a of the education law, or the implementation
5 of the five-year educational facilities capital plan of the board of
6 education of the city school district of the city of New York, thirty
7 years.

8 § 16. There shall be no layoffs of members of the bargaining unit as a
9 result of the transfer of certain functions or work currently being per-
10 formed by employees of the division of school buildings of the board of
11 education of the city school district of the city of New York to the New
12 York city school construction authority (hereinafter referred to as the
13 "authority"). The mechanism for the transfer of employees to the
14 authority from the division of school buildings ("the plan") and the
15 early retirement program to be offered shall be the subject of negotia-
16 tions between the appropriate public employee organization, the board of
17 education of the city school district of the city of New York,
18 (hereinafter referred to as the "city board") and the authority. Fur-
19 thermore, any employee to be transferred to the authority pursuant to
20 the plan shall be given the option to remain at the city board. Any em-
21 ployee to be retained at the division of school buildings pursuant to
22 the plan shall be able to protest the decision pursuant to the proce-
23 dures set forth in section seventy of the civil service law. Subject to
24 budget capacity, all current employees of the division of school build-
25 ings affected by the transfer of certain functions or work to the
26 authority shall be provided the opportunity to take early retirement
27 through an early retirement program to be adopted by the city board.

28 § 17. The applicability of the provisions of section seventeen hundred
29 thirty-five of the public authorities law shall be conditioned upon the
30 adoption of a resolution by the board of directors of the municipal as-
31 sistance corporation for the city of New York authorizing such corpora-
32 tion to enter into an agreement with the governor and the mayor of the
33 city of New York to make available to the New York city school construc-
34 tion authority six hundred million dollars in the corporation's fiscal
35 years commencing in nineteen hundred eighty-nine through and including
36 nineteen hundred ninety-six in accordance with a stated schedule. The
37 amounts of such schedule shall be incorporated in the five-year appro-
38 priations described in subdivision four of section twenty-five hundred
39 ninety-p of the education law.

40 § 18. If any clause, sentence, paragraph, section or part of this act
41 be adjudged by any court of competent jurisdiction to be invalid, the
42 judgment shall not affect, impair or invalidate the remainder thereof,
43 but shall be confined in its operation to the clause, sentence, para-
44 graph, section or part of this title directly involved in the contro-
45 versy in which the judgment shall have been rendered.

46 § 19. This act shall take effect immediately, provided, however, that
47 the provisions of subdivision six of section two hundred nine of the
48 civil service law, as added by section four of this act, shall expire
49 and be deemed repealed on and after June thirtieth, nineteen hundred
50 ninety-one, and further provided that the provisions of section seven-
51 teen hundred thirty-five of the public authorities law, as added by sec-
52 tion fourteen of this act, shall expire and be deemed repealed on July
53 first, nineteen hundred ninety-four.

*Governed
by permissible
Maintenance Costs
for City Capital
budgets*