

Please note that this is an unofficial version of statutes relating to the Massachusetts School Building Authority and is intended for informational purposes only.

**STATUTES RELATING TO THE
MASSACHUSETTS SCHOOL BUILDING AUTHORITY**

CHAPTER 10: DEPARTMENT OF THE STATE TREASURER

Section 35BB. (a) As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:-

“Authority”, the Massachusetts School Building Authority, established under section 1A of chapter 70B.

“Dedicated sales tax revenue amount”, all moneys received by the commonwealth equal to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b 1/2) of *section 10 of chapter 152* of the acts of 1997 or within the meaning of subsection (b½) of said section 10 of said chapter 152 or any portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of said chapter 64H.

“Receipts from sales”, gross receipts from nonexempt sales, less amounts abated or reimbursed.

“Sales price of purchases”, sales price of nonexempt purchases, less amounts abated or reimbursed.

(b) There shall be established on the books of the commonwealth a separate fund, to be known as the School Modernization and Reconstruction Trust Fund. There shall be credited to the fund the dedicated sales tax revenue amount. Annual receipts into the fund on account of any fiscal year shall be considered to meet the full obligation of the commonwealth to the authority for such fiscal year.

(c) Amounts in the fund shall be held by the state treasurer or his designee, as trustee and not on account of the commonwealth, exclusively for the purposes of the authority, and the state treasurer shall disburse amounts in the fund to the authority, without further appropriation, upon the request from time to time of the executive director of the authority. All amounts in the fund, including investment earnings, shall be available for expenditure by the authority for any lawful purpose, including without limitation payment of debt service on debt obligations issued by the authority, and may be pledged to secure debt of the authority in such manner and according to such priority as the authority may determine.

(d) The authority shall certify annually to the treasurer as trustee with copies provided to the clerks of the house and senate and to the house and senate committees on ways and means that it has made provision in its annual budget and its capital plan under section 17 of chapter 70B for sufficient amounts to be available to meet debt service payments or other payments due under financing obligations, including, without limitation, leases or grant obligations.

(e) Subject to applicable restrictions contained in any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority, including without limitation coverage requirements, if the authority shall determine that the balance of the fund exceeds the amount necessary to achieve the purposes of the authority, including, without limitation, to meet debt service payments, lease payments and grant obligations, the authority may transfer the excess amount to the commonwealth.

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(f) In order to increase the marketability of any bonds or notes of the trust which may be secured by or payable from amounts held in the fund, the sums to be credited to the fund are hereby impressed with a trust for the benefit of the trust and the holders from time to time of the bonds or notes, and in consideration of the acceptance of payment for the bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of the bonds or notes that while the bond or note shall remain outstanding, and so long as the principal of or interest on the bond or note shall remain unpaid, the sums to be credited to the fund shall not be diverted from the control of the trust and, so long as the sums are necessary, as determined by the authority in accordance with any applicable bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the trust, for the purposes for which they have been pledged, the rates of the excises imposed by said chapters 64H and 64I shall not be reduced below the rates prescribed by this section. [Ch. 210 of the Acts of 2004, §1]

CHAPTER 70B. SCHOOL BUILDING ASSISTANCE PROGRAM

Chapter 70B: Section 1 School building assistance program; establishment

Section 1. Whereas the school building assistance program is the largest capital grant program operated by the commonwealth and is necessary for the establishment of public school buildings in the commonwealth; and whereas the costs of the school building assistance program are increasing at an unsustainable rate and local governments need flexibility in school building assistance to ensure that local needs for school facility space, downtown development, open space and community space are met; and to promote the thoughtful planning and construction of school facility space in order to insure safe and adequate plant facilities for the public schools, and to assist towns in meeting the cost thereof, there is hereby established a school building assistance program. It is in the best interests of the commonwealth and its citizens to create an authority to achieve the objectives of effective management and planning of the commonwealth's investments in school building assets, promoting positive educational outcomes, ensuring the health, safety, security and well-being of students, easing and preventing overcrowding, maintaining good repair, efficient and economical construction and maintenance, financial sustainability of the school building assistance program, thoughtful community development, smart growth and accessibility. [Ch. 208 of the Acts of 2004, §1]

Section 1A. (a) There is hereby created a body politic and corporate and a public instrumentality to be known as the Massachusetts School Building Authority, which shall be an independent public authority not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth except as specifically provided in any general or special law. The exercise by the authority of the powers conferred by this chapter shall be considered to be the performance of an essential public function.

(b) The authority shall consist of the state treasurer, who shall serve as chairperson, the secretary of administration and finance, the commissioner of education, and 4 additional members appointed by the state treasurer, 2 of whom shall have practical experience in educational facilities planning, school building construction, or architecture and school design, and 2 of whom shall be persons in the field of education with demonstrated knowledge of Massachusetts curriculum frameworks and other relevant federal and state educational standards, each of whom shall serve a term of 2 years; but, a person appointed to fill a vacancy shall serve only for the unexpired term. An appointed member of the authority shall be eligible for reappointment. The authority shall annually elect 1 of its members to serve as vice-chairperson. Each member of the authority serving ex officio may appoint a designee pursuant to section 6A of chapter 30.

(c) Four members of the authority shall constitute a quorum, and the affirmative vote of 4 members of the authority shall be necessary and sufficient for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and duties of the authority. Members shall serve without pay but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. The chairperson of the authority shall report to the governor and to the general court no less than annually, to assist the executive and legislative branches in coordinating educational, community development and fiscal policies of the commonwealth.

(d) Any action of the authority may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the authority shall be subject to section 11A 1/2 of chapter

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30A; but, said section 11A 1/2 shall not apply to any meeting of members of the authority serving ex officio in the exercise of their duties as officers of the commonwealth so long as no matters relating to the official business of the authority are discussed and decided at the meeting. The authority shall be subject to all other provisions of said chapter 30A, and records pertaining to the administration of the authority shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the authority shall be considered to be public funds for purposes of chapter 12A. The operations of the authority shall be subject to chapter 268A and chapter 268B and all other operational or administrative standards or requirements to the same extent as the office of the state treasurer. [Ch. 208 of the Acts of 2004, §2]

Chapter 70B: Section 2 Definitions

Section 2. For the purposes of this chapter, the following words shall have the following meanings:-

“Additional Revenues”, any moneys that are not defined as the dedicated sales tax revenue amount that are appropriated, gifted, granted, pledged, or otherwise made available to the authority by the commonwealth, any local government entity, the federal government, not-for-profit organizations, for-profit organizations, or private individuals. [Ch. 122 of the Acts of 2006, §27]

“Advisory board”, the school building advisory board.

“Alternatives to construction”, approved school facilities projects that do not include capital construction, major reconstruction or building renovation, but no alternative project shall be reimbursed if it is determined by the authority to be more costly than construction necessary to achieve the same end.

“Approved school project”, a school project approved by the authority.

“Assisted facility”, a school facility that has received a total facilities grant pursuant to this chapter.

“Authority”, the Massachusetts School Building Authority.

“Capital construction project”, any capital project, other than a major reconstruction project, for the construction, the enlargement or original equipping of any public schoolhouse in any city or town, or a project for the renovation or partial renovation of an existing structure for use as a schoolhouse; or the renovation or partial renovation of an existing schoolhouse.

“Construction manager”, construction manager as defined by section 38A 1/2 of chapter 7.

“Dedicated sales tax revenue amount”, all moneys received by the commonwealth equal to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services, and upon the storage, use or other consumption of tangible property or of services, including interest thereon or penalties, but not including any portion of the taxes that constitute special receipts within the meaning of subsection (b) of section 10 of chapter 152 of the acts of 1997 or any portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of chapter 64H. [Ch. 122 of the Acts of 2006, §28]

“Eligible applicant”, a city, town, regional school district or independent agricultural and technical school.

“Energy efficient construction rating”, rating given to eligible applicants by the authority based upon a determination that the construction techniques of an approved school project meet or exceed energy efficiency standards established by the board of building regulations and the National Institute of Standards and Technology and which meet the purposes of subsection (c) of section 4E of chapter 40J.

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“Innovative community use”, approved school facilities projects that combine community resources to streamline the costs of and utilize other funding sources for the facilities project.

“Maintenance rating”, rating given to schools and school districts by the board, based on a maintenance assessment conducted by the authority.

“Major reconstruction project”, any capital school facilities or extraordinary maintenance project including, but not limited to, the retrofitting of a school for the purpose of providing wireless or other learning technologies, the replacement of a roof or heating plant if it is determined by the board that such project has not been necessitated, in whole or in part, by the failure of an eligible applicant to make adequate and prudent provisions for the care and maintenance of said school.

“Nonstate fundraising”, third party monies made available to the eligible applicant for approved school facilities projects including, but not limited to, private donations and federal grants.

“Project manager”, a person designated or assigned by an eligible applicant, and approved by the authority, to manage and coordinate daily administration of a school facility or building project to completion including, but not limited to, school district or municipal staff person or a volunteer with appropriate experience and expertise.

“Prototypical school plans”, school building project architectural designs and plans collected and maintained by the authority for consultation by eligible applicants.

“Regional school”, any public school established under law by the action of two or more cities or towns. For the purposes of this chapter, the agricultural schools maintained by the counties of Bristol and Norfolk shall be deemed to be regional schools.

“Regional school district”, any instrumentality of the commonwealth, established by two or more cities and towns for the purpose of operating a regional school.

“School project”, any capital construction or major reconstruction projects; the lease of buildings or modular facilities; arrangements with higher education facilities or other nonprofit or municipal entities; use of swing space between school buildings in the district; tuition arrangements with other school districts to prevent overcrowding; and other school facilities projects. The cost of tuition arrangements in existence prior to project application shall not be eligible for reimbursement as an approved school project.

“Total facilities grant”, the total grant with respect to an approved school project and which is calculated as follows: In the case of a grant for an approved project of a city or town, the total facilities grant shall be the product of multiplying the final approved costs of such project, including costs referred to in section 4, by the reimbursement percentage determined pursuant to section 10 for the year in which the project is approved. [Ch. 139 of the Acts of 2006, §43]

(1) In the case of a grant for an approved project of a regional school district or a county, the total facilities grant shall be the sum of the grants computed separately for each city and town which is a member of said regional school district or located in said county as hereinafter provided. For purposes of this computation, each member city's and town's share of the combined grant shall be equal to the total approved project cost, including costs referred to in section 4, multiplied by the product of the reimbursement percentage listed in subsection (a) of section 10, multiplied by the percentage of district or county capital costs that would be apportioned to such city or town in accordance with the applicable regional school district agreement or law for capital costs incurred in the fiscal year in which the grant is approved. The amount of the total capital costs apportioned to a member city or town in any fiscal year on account of an approved school project of a regional school or county, determined in accordance with the applicable regional school district agreement or law, shall be reduced by an amount equal to the amount of the grant payable on account of such project in such fiscal year multiplied by a fraction the numerator of which is the city's or town's reimbursement percentage, determined as aforesaid, multiplied by the percentage of capital costs apportioned to the city or town for such fiscal year in accordance with the applicable regional school

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district agreement or law and the denominator of which is the sum of the percentages so derived as the numerators for all of the member cities and towns.

(2) In the case of a grant for an approved project of an independent agricultural and technical school, the total facilities grant shall be the sum of the grants computed separately for each city and town in which students of said school reside averaged by means of a weighted average multiplied by the final approved costs.

“Trust”, the Massachusetts School Modernization and Reconstruction Trust, established by section 35BB of chapter 10. [Ch. 208 of the Acts of 2004, §§3-11]

Chapter 70B: Section 3 Purpose of program; board of education; general policy and review standards; specific powers of board

Section 3. There is hereby established a school building assistance program. The purpose of said program is generally to encourage and foster the thoughtful establishment and maintenance of school facility space in and among the cities and towns of the commonwealth; to conduct surveys and studies relative thereto; and to administer the provisions of this chapter relative to grants to cities and towns for the planning and construction of school building and school facility projects.

The purposes of the program shall be the provision of financial assistance to cities, towns and regional school districts as beneficiaries of the trust to finance and refinance the costs of approved school projects as provided in, and as necessary to implement this chapter, including without limitation providing for the payment of grants and loans approved pursuant to this chapter and the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations. [Ch. 139 of the Acts of 2006, §44]

The authority shall establish general policy and review standards regarding school building construction, renovation, maintenance and facility space and administer the school building assistance program in accordance with this chapter. In carrying out its duties, the authority shall be guided by the following principles: preservation of open space and minimization of loss of such open space, emphasis on thoughtful community development, and project flexibility that addresses the needs of individual communities and municipalities. In accordance with the terms of any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority secured by amounts provided to the trust in accordance with section 35BB of chapter 10, the holders of indebtedness and the providers of any credit enhancement, surety bond or insurance policy shall also be beneficiaries of the trust. The authority shall apply and disburse moneys and revenues of the trust without further appropriation or allotment. [Ch. 210 of the Acts of 2004, §2]

The authority, shall establish general policy and review standards regarding school building construction, renovation, maintenance and facility space, administer the school building assistance program in accordance with this chapter and coordinate the distribution of school facilities grants in accordance with this chapter. The authority shall be responsible for the oversight and management of the school building assistance program as established herein and referred to hereafter as the “program”. In carrying out its duties, the authority shall be guided by the following principles: preservation of open space and minimization of loss of such open space; emphasis on thoughtful community development; and project flexibility that addresses the needs of individual communities and municipalities.

Specific powers of the authority shall include, but not be limited to, the following:

(a) review, approve or deny grant applications, waivers and other requests submitted to the program; review, approve and recommend changes to grant payment schedules or suspend said schedules for program projects such as refinancings, audit findings and such other circumstances that may warrant such action;

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- (b) provide architectural or other technical advice and assistance, training and education, to cities and towns or to joint committees thereof and to general contractors, subcontractors, construction or project managers, designers and others in the planning, maintenance and establishment of school facility space;
- (c) recommend to the general court such legislation as it may deem desirable or necessary to further the purposes of this chapter;
- (d) develop a formal enrollment projection model or consider using projection models already available;
- (e) to apply for, receive, administer and comply with the conditions and requirements respecting any grant, gift or appropriation of property, services or moneys;
- (f) to enter into contracts, arrangements and agreements with other persons and execute and deliver all trust agreements, grant agreements and other instruments necessary or convenient to the exercise of the powers of the trust;
- (g) to borrow and repay money by issuing bonds or notes of the trust, to apply the proceeds thereof as provided in this chapter and to pledge or assign or create security interests in any revenues, receipts or other assets or funds of the trust to secure bonds or notes; [Ch. 210 of the Acts of 2004, §3]
- (h) develop a project priority system;
- (i) collect and maintain a clearinghouse of prototypical school plans which may be consulted by eligible applicants;
- (j) determine eligibility of cost components of projects for reimbursement, including partial or full eligibility for project components for which the benefit is shared between the school and other municipal entities;
- (k) establish appropriate rules and regulations as may be necessary to carry out the purposes of this chapter;
- (l) prepare an annual budget for the administration of the program;
- (m) collect and maintain data on all the public school facilities in the commonwealth, including information on size, usage, enrollment, available facility space and maintenance;
- (n) perform or commission a needs survey to ascertain the capital construction, reconstruction, maintenance and other capital needs for schools in the commonwealth;
- (o) develop a long term capital plan in accordance with needs and projected funding;
- (p) adopt and amend bylaws and such rules, regulations and procedures for the conduct of the business of the trust as the board shall deem necessary to carry out the provisions of this chapter;
- (q) establish and maintain reserves;
- (r) disburse amounts due to cities, towns and regional school districts under grants approved by the authority to finance or refinance costs of approved school projects and, in conjunction therewith, finance or refinance the local share of costs of these projects, through the purchase of bonds, notes or other evidences of local indebtedness, at the rates and on the terms that the authority may in its discretion determine, and provide for the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations; [Ch. 139 of the Acts of 2004, §45]
- (s) invest the funds of the trust in such investments as may be legal investments for funds of the commonwealth or any fiduciary in the commonwealth;
- (t) obtain insurance and enter into agreements of indemnification necessary or convenient to the exercise of the powers of the trust;
- (u) sue and be sued and to prosecute and defend actions relating to the affairs of the trust; but the trust shall not be authorized to become a debtor under the United States Bankruptcy Code;
- (v) engage accounting, management, legal, financial, consulting and other professional services necessary to the operations of the trust; and
- (w) do all things necessary or convenient to carry out the purposes of this chapter.

The chairperson of the authority shall appoint an executive director, who shall supervise the administrative affairs and general management and operations of the authority and who shall also serve as secretary of the authority, ex officio. The executive director shall receive a salary commensurate with the duties of the office, and may be removed by the board for cause. The executive director may appoint other officers of the authority necessary to the functioning of the authority. The executive director shall designate no fewer than 1 employee to be a municipal liaison to assist cities and towns with concerns regarding the construction of schools. Sections 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not

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apply to the executive director or any other employees of the authority. The executive director shall, with the approval of the authority:

- (i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the authority;
- (ii) employ professional and clerical staff as necessary;
- (iii) report to the authority on all operations under his control and supervision;
- (iv) prepare an annual budget and manage the administrative expenses of the authority; and
- (v) undertake any other activities necessary to implement the powers and duties set forth in this chapter.

[Ch. 208 of the Acts of 2004, §§12-15]

Chapter 70B: Section 3A School building advisory board; establishment; members

Section 3A. (a) There shall be a school building advisory board comprised of the state auditor or his designee, the inspector general or his designee, and the executive director of the authority, who shall serve as the secretary to the advisory board and shall be a nonvoting member of the board, and 15 members to represent the following nongovernmental organizations, to be appointed by those organizations: the Massachusetts Municipal Association, the Massachusetts Association of School Committees, the Massachusetts Mayors Association, the Massachusetts Association of School Superintendents, the Massachusetts Association of Regional Schools, the Massachusetts Building Trades Council, the Massachusetts chapter of the Associated Builders and Contractors, the Massachusetts Alliance of Small Contractors, the American Council of Engineering Companies of Massachusetts, the Associated Subcontractors of Massachusetts, the American Institute of Architects- Massachusetts, the Massachusetts Smart Growth Alliance, the Massachusetts Taxpayers Foundation, Associated General Contractors of Massachusetts and acting jointly, the Massachusetts Teachers Association and Massachusetts Federation of Teachers. The advisory board shall assist the authority in the development of general policy regarding school building construction, renovation, reconstruction, maintenance and facility space, preservation of open space and minimization of loss of open space, thoughtful community development, cost management and shall provide technical advice and input to the authority. The advisory board shall meet at least quarterly. [Ch. 208 of the Acts of 2004, §16]

Section 3B. (a) The authority may provide by resolution for the issuance from time to time of bonds for any purpose of the trust, which bonds may be issued as general obligations of the authority or as special obligations payable solely from particular revenues or moneys of the authority. Bonds of the authority shall not be considered to be a debt of the commonwealth or of any of its political subdivisions. The bonds of each issue may be dated, may bear interest at such rate or rates, including rates variable from time to time, and may mature or otherwise be payable or redeemable at such times as the authority may determine. The authority shall determine the denominations of bonds, the details of their execution and authentication and their places of payment within or without the commonwealth. Before initial issuance of each series of bonds the authority shall advise the finance advisory board of the terms of the bonds and the timing of their issuance. In case any member or officer of the authority whose signature appears on any bonds shall cease to be such officer before their delivery, the signature shall nevertheless be valid and sufficient as if the officer had remained in office until delivery. Bonds may be issued in certificated or uncertificated form, payable to bearer or registered owners, and, if notes, may be made payable to bearer or to order. The authority may sell the bonds of the authority at public or private sale, at par or for such premium or discount price as it may determine. The authority may by resolution delegate to any member or officer of the authority the power to determine any of the matters set forth in this section. The aggregate principal amount of all bonds issued under this chapter shall not exceed \$10,000,000,000 outstanding at any time. The principal amount of bonds for the payment or redemption of which, either at or before maturity, refunding bonds shall have been issued, shall be excluded from the aggregate principal amount of bonds issued under this chapter for purposes of computing the limit on outstanding bonds under this section.

(b) Bonds of the authority may be secured by a trust agreement between the authority and the bond owners or a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement may pledge or assign, in whole or in part, any receipts, fees, revenues or other payments received or to be received by the authority, including

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without limitation amounts provided to the trust in accordance with section 35BB of chapter 10, grants, appropriations or other assistance from the commonwealth or the United States or any political subdivision or instrumentality of either, investment earnings on its funds and accounts and any other fees, charges or other income received or receivable by the authority and any contract or other rights to receive the same, whether then existing or thereafter coming into existence, and whether then held or thereafter acquired by the trust, and the proceeds thereof. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration and may also contain restrictions on remedies by individual bondholders. A trust agreement may also contain covenants of the trust concerning the custody, investment and application of moneys, the issuance of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. At the request of the authority, the state treasurer shall join in any trust agreement or to otherwise agree with the authority, any lender or any trustee for bondholders to hold the School Modernization and Reconstruction Trust Fund, established pursuant to said section 35BB of said chapter 10, in compliance with any covenants and provisions relating thereto in any trust agreement.

(c) Bonds may be issued by the authority in the form of lines of credit or other banking arrangements under terms and conditions determined by the authority. In addition to other lawful security, bonds may be secured, in whole or in part, by financial guaranties, by insurance, by letters or lines of credit or by other credit enhancement issued to the authority or to a trustee or other person, by any bank, trust company, insurance or surety company or other financial institution, within or without the commonwealth. The authority may pledge or assign, in whole or in part, revenues, funds or other assets or property held or to be received by the authority, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and the proceeds thereof, as security for any such guaranties or insurance or for the reimbursement to any issuer of a line or letter of credit.

(d) The authority may by resolution provide for the issuance by the authority of interim receipts or temporary bonds, exchangeable for definitive bonds when the bonds are executed and are available for delivery. The authority may also provide for replacement of mutilated, destroyed or lost bonds. The authority may purchase and invite offers to tender for purchase any outstanding bonds; provided, however, that no purchase by the authority shall be made at a price, exclusive of accrued interest, if any, exceeding the principal amount of the bond or, if greater, the redemption price of the bond when next redeemable at the option of the authority. The authority may resell any bonds it purchases in such manner and for such price as it may determine.

(e) The authority may also provide for issuance by the authority of temporary notes in anticipation of bonds, grants, revenues or appropriations. The issuance of the notes shall be governed by this chapter relating to the issuance of bonds. The authority may also issue refunding bonds of the authority for the purpose of paying any bonds at or before maturity. Refunding bonds may be issued at any time at or before the maturity or redemption or purchase of the refunded bonds. Refunding bonds may be issued in sufficient amounts to pay or provide for payment of the principal of the bonds being refunded, together with any redemption premium thereon, any interest or discount accrued or to accrue to the date of payment, costs of issuance and other expenses and reserves reasonably necessary to achieve the refunding.

(f) Bonds of the authority are securities in which public officers and agencies, insurance companies, financial institutions, investment companies, executors, administrators, trustees and others may properly invest funds including capital within their control and securities which may be deposited with any public officer or any agency for any purpose for which the deposit of bonds is authorized by law.

(g) Bonds of the authority shall be considered to be investment securities under chapter 106. Bonds, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth. The authority shall not be required to pay any taxes, assessments or excises upon its income, existence, operation, assets, moneys or revenues.

(h) It shall be lawful for any bank or trust company to act as a depository or trustee under a trust agreement, provided it furnishes such indemnification and reasonable security as the authority may require. Any assignment or pledge of revenues, funds or other assets or property made by the authority shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then held or thereafter acquired or received by the authority shall immediately be subject to the lien of the pledge without any physical delivery or segregation or further act, and the lien of the pledge

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shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the authority, whether or not the parties have notice thereof. The trust agreement by which a pledge is created need not be filed or recorded to perfect the pledge except in the records of the trustees and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the authority is an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment. Any holder of a bond and any trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may bring suit upon the bonds and may pursue any other legal action to protect and enforce its rights and compel performance of all duties required to be performed by the trust and the authority. [Ch. 208 of the Acts of 2004, §17]

Section 3C. The authority and its existence shall continue until terminated by law, but no such law shall take effect so long as the authority shall have bonds outstanding unless adequate provision has been made for the payment or satisfaction thereof. Upon termination of the authority, the title to all properties of the authority that remain after provision for the payment or satisfaction of all bonds of the authority shall vest in the commonwealth. The obligations, debts and liabilities of the authority shall be assumed by and imposed upon the commonwealth and shall be transferred to the state treasurer or to such other successor as may be provided by law. [Ch. 208 of the Acts of 2004, § 17]

The commonwealth, subject to appropriation and article 62 of the constitution of the commonwealth, may appropriate, pledge its credit, guaranty, or support the funding of capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized and funded from additional revenues by legislation enacted by the general court after July 1, 2004.

The authority shall not be obligated to make any expenditures for any commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized or mandated for which the necessary additional revenues to complete these commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, or any other projects to conform to federal statutory mandates, have not been made available to the authority by the commonwealth.

Any commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, any other projects to conform to federal statutory mandates, or projects specifically authorized or mandated for which the necessary additional revenues to complete these commitments, improvements, repairs, renovations, capital construction projects, major reconstruction projects, capital improvements required under the Americans With Disabilities Act, new construction, other improvements, major repairs or renovations, or any other projects to conform to federal statutory mandates, so authorized or mandated and for which additional revenues have been made available shall be subject to the rules, laws and regulations of the authority. [Ch. 122 of the Acts of 2006, §29]

Section 3D. The authority, in cooperation with the state treasurer, shall at all times keep accounts of all receipts, expenditures and disbursements and all assets and liabilities of the authority, which shall be open to inspection by any officer or duly appointed agent of the commonwealth. The authority shall submit an annual report, in writing, to the governor and the clerks of the house of representatives and the senate, who shall forward the same to the president of the senate, the speaker of the house of representatives, the chairpersons of the house and senate committees on ways and means and the house and senate chairpersons of the joint committee on education, arts and humanities. The report shall include financial statements relating to the operations, assets and expenditures of the authority maintained in accordance with generally

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accepted accounting principles so far as applicable and audited by an independent certified public accountant firm. [Ch. 208 of the Acts of 2004, § 17]

Section 3E. In addition to other remedies of the authority under any bond, note or other evidence of indebtedness, if at any time any amount is distributable or payable by the commonwealth to any city, town or regional school district, and a sum is due to the authority from that city, town or regional school district, for any cause whatsoever, the sum due to the authority, as certified by the authority to the state treasurer, shall be deducted by the state treasurer from the amount distributable or payable to the city, town or regional school district and shall be paid promptly to the authority. Payment by the state treasurer under this section shall continue to be made until the deficiency on the part of the city, town or regional school district has been offset by the payments from the state treasurer. The authority may also recover from that city, town or regional school district, in an action in superior court, any amount due the authority, together with any other actual damages the authority shall have sustained from the failure or refusal of that city, town or regional school district to make payments owing to the authority. [Ch. 139 of the Acts of 2006, §46]

Chapter 70B: Section 4 Reimbursement for incidental educational, engineering and architectural services; application and documentation

Section 4. Any eligible applicant may apply to the board for reimbursement, in whole or in part, of any expenses incurred for educational, engineering and architectural services incidental to the planning of a regional school or any expenses incurred for surveys made of school building needs and conditions, the contract for which has been approved by the authority. Such application shall be accompanied by information and documentation that the authority may require. [Ch. 208 of the Acts of 2004, §19]

Chapter 70B: Section 5 School facilities grant applications.

Section 5. An eligible applicant may submit to the authority a statement of interest which shall be approved by a vote of the applicable local governing body or bodies as set forth and in a form prescribed by the authority, and which shall state what the eligible applicant believes are the deficiencies in said eligible applicant's respective school facilities that meet one or more of the statutory priorities set forth in section 6, 8 and 9 of this chapter or in such additional regulations as the authority may promulgate. Said statement of interest shall be accompanied by such additional forms, documents, and information as the authority shall deem necessary to review the statement. The submission for a statement of interest shall not commit the authority to accept any further application materials, approve an application, or provide a grant or any other type of funding, or place any other obligation or requirement upon the authority. The authority shall notify an eligible applicant if the authority determines that the statement of interest has not met the criteria established in said sections 6, 8, and 9.

If the authority determines that the statement of interest and associated material merits further consideration, the authority may, in its discretion, invite the eligible applicant to apply to the authority for a school facilities grant to meet in part the cost of a school project; but, a city, town, regional school district or independent agricultural and technical school shall not have an entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter. Application shall mean a series of documents, forms, letters, statements, certifications, plans, studies, drawings, and other data and information required by the authority to be submitted within the deadlines and in the format prescribed by the authority and shall be accompanied or supplemented by drawings, plans, estimates of cost and proposals for defraying the costs or any additional information the authority may require, before construction is undertaken. The authority shall promulgate regulations establishing the procedural steps by which applications must be made and reviewed, and may at any time during the application process determine that the application does not warrant further consideration, pursuant to the priority criteria established in said sections 6, 8, and 9, and by the authority's regulations.

In the event that an eligible applicant undertakes construction before approval is obtained, the eligible applicant shall remain subject to the authority's approval process as if the construction were not undertaken. An eligible applicant who is eligible for aid under this chapter and establishes extended courses

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of instruction in a vocational school, as provided in section 37A of chapter 74, and wishes to enlarge or construct a school for the purpose of maintaining extended courses of instruction on a technical institute level shall be eligible to apply for financial assistance in the construction or enlargement of such school in the manner and to the extent provided by this chapter. If the authority invites an eligible applicant to apply, but is unable to approve the application due solely to the limit on total facilities grants established by section 7, at the request of the eligible applicant, the application shall be retained by the authority for 1 year and reviewed in the year immediately following the year of the application; provided that in said review, the project shall be ranked and evaluated using the priorities established by section 8 and if the application is not approved by the authority during the review, the applicant shall be required to submit a new application; provided, further, that the authority shall require a new application from an applicant seeking to make a substantial change in scope of the project which is the subject of the application subsequent to disapproval by the authority. [Ch. 122 of the Acts of 2006, §30]

Chapter 70B: Section 6 Examination of application by board of education; notice of approval or rejection

Section 6. (a) Upon receipt of an application under section 5, from time to time, the authority may designate approved school projects. The authority shall examine forthwith the applications and any facts, estimates, or other information relative thereto, and shall make the following findings in order to designate a school project as an approved school project:

- (1) The school project is in the best interests of the commonwealth and the eligible applicant, with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, energy efficiency, and otherwise.
- (2) The school project is necessary to meet educational standards of the curriculum frameworks established by the board of education pursuant to section 1E of chapter 69 for anticipated enrollment levels.
- (3) The school project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the project.
- (4) The school project is not at a school that has been the site of an approved school project pursuant to this chapter or to chapter 645 of the acts of 1948 within the 10 years prior to the project application date, or the approved school project is unrelated to such previously approved project in the same school.
- (5) The school project is within the capacity of the authority to finance within revenues projected to be available to the trust, established pursuant to section 35BB of chapter 10.
- (6) The commissioner of education has certified that adequate provisions have been made in the school project for children with disabilities, as defined in section 1 of chapter 71B, and, in the case of elementary facilities, that adequate provisions consistent with local policy have been made for all-day kindergarten, pre-kindergarten classes and for extended day programs; provided, however, that no district shall be required to adopt the classes or programs. The authority shall also consider the availability of funds projected in the trust and other financial obligations of the authority, the authority's long term capital plan, the results of needs surveys, the order of priorities under section 8 and construction procedures and standards under section 9 and otherwise as prescribed by law and regulation. With respect to a regional school district, the authority shall also consider whether the school project represents an economy of scale that benefits the commonwealth and the municipalities of the region.

(b) Within a reasonable time after receipt of the application the authority shall notify the applicant of its approval or rejection thereof, and, in the event of its rejection, of the reasons therefor. Notice of approval hereunder shall be accompanied by a statement of the estimated approved cost as determined by the authority, and an estimate of the amount of total facilities grant under section 10.

(c) If the authority designates a school project to be an approved school project, the authority shall compute the estimated approved cost of the project, which cost may be equal to the estimated cost furnished by the eligible applicant or a lesser amount, and compute the amount estimated of facilities grant under section 10, such computation being based on said approved cost. The final approved cost shall be determined by the authority within a reasonable time after the acceptance of the completed project by the local school committee. Final audits shall be conducted promptly by the authority. Final payments shall be determined based on the final approved cost.

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(d) Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant, may borrow from time to time to finance that portion of the cost of the approved school project not being paid by such grant, in such amount approved by the board of selectmen, mayor or city manager of the city or town, or the regional district school committee of the regional school district, and may issue bonds or notes therefor which shall bear on their face the words —(name of city, town or regional school district) School Project Loan, chapter 70B. Each authorized issue shall constitute a separate loan, and the loans shall be paid in not more than 25 years from their dates. Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant may issue and renew temporary notes. The authority shall issue regulations relative to issuance of temporary notes for school construction. Indebtedness incurred under this chapter shall be outside the statutory debt limit but shall, except as herein provided, be subject to chapter 44. [Ch. 208 of the Acts of 2004, §21]

(e) A city, town or regional school district may borrow for a term of not more than 5 years for the cost of such feasibility studies as may be required to apply for a school facilities grant under this chapter. [Ch. 302 of the Acts of 2008, §13]

Chapter 70B: Section 7 Determinations to be made before board of education approves school projects; appropriation items

Section 7. There shall be a limit on the estimated amount of grants approved by the authority during a fiscal year. For fiscal year 2008, the limit shall be \$500,000,000. For each fiscal year thereafter, the limit shall be the limit for the previous fiscal year plus the lower of the rate of growth in the dedicated sales tax revenue amount, as defined in subsection (a) of section 35BB of chapter 10, or 4.5 per cent. [Ch. 139 of the Acts of 2004, §47]

Chapter 70B: Section 8 Order of priorities for approval of school projects and reimbursements; deferral of approval or disapproval of project applications

Section 8. The authority shall approve school projects and reimbursements under this chapter in accordance with the following order of priorities:

- (1) priority shall be given to school projects needed in the judgment of said board to replace or renovate a building which is structurally unsound or otherwise in a condition seriously jeopardizing the health and safety of school children, where no alternative exists;
- (2) priority shall be given to school projects to eliminate existing severe overcrowding;
- (3) priority shall be given to school projects needed in the judgment of said authority to prevent loss of accreditation;
- (4) priority shall be given to school projects needed in the judgment of said authority to prevent severe overcrowding expected to result from increased enrollments which must be substantiated;
- (5) priority shall be given to projects needed in the judgment of said authority for the replacement, renovation or modernization of the heating system in any schoolhouse to increase energy conservation and decrease energy related costs in said schoolhouse;
- (6) priority shall be given to any school project needed in the judgment of said authority for short term enrollment growth;
- (7) priority shall be given to school projects needed in the judgment of said authority to replace or add to obsolete buildings in order to provide for a full range of programs consistent with state and approved local requirements; and
- (8) priority shall be given to projects needed in the judgment of said authority to transition from court-ordered and board approved racial balance school districts to walk-to, so-called, or other school districts.

Notwithstanding the provisions of section 6, the authority may defer its approval or disapproval of any project application if such deferral is necessary for the effective implementation of the provisions of this section. The authority may issue regulations to define the procedures pursuant to which the priorities established by this section will be implemented. Notwithstanding the foregoing, the authority shall not

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approve any project for any school district which fails to spend in the year preceding the year of application at least 50 per cent of the sum of said school district's calculated foundation budget amounts for the purposes of foundation utility and ordinary maintenance expenses, and extraordinary maintenance allotment as defined in chapter 70, for said purposes. From fiscal year 1999 forward, no school district shall be approved for a project nor receive school facilities funds unless said district has spent at least 50 per cent of the sum of said district's calculated foundation budget amounts in each of the fiscal years including and succeeding fiscal year 1999. All projects which received first school building assistance payments prior to July 1, 2000 shall be exempted from the provisions of this paragraph. Upon a request of a school district, the board may grant a waiver from said requirement for unanticipated or extraordinary changes in maintenance spending as determined by said departments including, but not limited to, the impact on said spending due to the opening of a new school building, the closing of an existing school building or the completion of a major renovation project. [Ch. 208 of the Acts of 2004, §§23, 24]

Chapter 70B: Section 9 Cost effective production of efficient and creative school projects; standards and procedures; regulations

Section 9. (a) In order to maximize the cost effective production of efficient and creative school projects, the authority shall require that every school project conform to standards and procedures as the authority considers appropriate, including, but not limited to, the following: (1) that the applicant fully consider all available options for satisfying the described need, including tuition agreements with adjacent school districts, rental or acquisition and any necessary rehabilitation or usage modification of any existing building which could be made available for school use; (2) that the applicant's site selection is based on the cost and environmental factors, including an awareness of soil conditions and their probable effect on foundation and site development costs, transportation effects, dislocation of site occupants and relationship to other community facilities; (3) that the applicant enter into contracts, using forms satisfactory to the authority for such competent architectural, engineering and other services as may be required; and (4) that procedures satisfactory to the board are followed by the applicant throughout the planning and construction of the project such as will assure maximum attention to the operating and capital cost effects of program and design decisions, materials and systems selections.

(b) The authority shall issue annually, as hereinafter provided, maximum eligible cost standards and size standards for school projects. These standards may take into account the type and location of a proposed school project and may also take into account the difficulty of siting school facilities in dense urban areas in which there exists a shortage of available municipally-owned sites and the increased cost of construction and major renovation in such urban areas. The program standards shall define prototype school design and space recommendations for each specified program activity eligible for state financial assistance. The program standards shall, in the judgment of the authority, be in conformity with the minimum requirements of state law and shall also reflect consideration of cost effects, prevailing educational standards in the commonwealth and the needs of efficient and creative school projects. The cost standards shall be based on the price experience of recently completed and recently bid school projects, taking into account the cost effectiveness of design, construction and programming techniques utilized in such school projects. For the purpose of calculating the total construction grant under section 10, the estimated approved cost and the final approved cost for a school project shall not exceed the cost that would result if the project conformed to prototype school standards. The provisions of this section shall not be deemed to preclude an eligible applicant from exceeding prototype school standard; provided, however, the cost of such additional facilities and design shall not be included in the estimated cost and final approved cost on the basis of which the state construction grant is calculated.

(c) On or before March 1 in each year, the authority shall adopt interim regulations, including minimum program standards and maximum cost standards, for the implementation of this section. Upon the adoption of such regulations, the authority shall forthwith file copies thereof with the clerk of the house of representatives who shall refer such regulations to an appropriate committee of the general court. Within 30 days after such filing, said committee may hold a public hearing on the regulations, shall issue a report, and file a copy thereof with the board. Said board shall adopt final regulations making such revisions in the interim regulations as it deems appropriate in view of such report and shall forthwith file a copy of the regulations with the chairperson of the committee of the general court to which the interim regulations were referred. Not earlier than 30 days after the date of such filing, the board shall file the final regulations with the state secretary and the said regulations shall thereupon take effect. [Ch. 208 of the Acts of 2004, §27]

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(d) A city, town, regional school district or independent agricultural and technical school shall not have entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter. [Ch. 122 of the Acts of 2006, §33]

Chapter 70B: Section 10 Facilities grants for approved projects; formula

Section 10. The grant percentage for approved school projects shall be calculated based on the following formula, but no grant percentage shall be greater than 80 per cent. [Ch. 208 of the Acts of 2004, §30]

- (a) The percentage the commonwealth shall pay towards an approved school facilities project shall be determined by the following formula: Base Percentage (A) + Community Income Factor (B1) + Community Property Wealth Factor (B2) + Community Poverty Factor (B3) + Incentive Percentage (C).

(A) Base Percentage = 31 percentage points.

(B) Ability to pay percentage points (income/wealth factor) is determined as follows:

(1) Community Income Factor = per capita income, as determined by the department of revenue, for a municipality as a per cent of the statewide average per capita income. The Community Income Factor is then determined by using the chart below.

Municipality's per capita income as per cent of statewide average per capita income	Income	Community income factor percentage points
0 -9%		12.00
10-19%		11.37
20-29%		10.74
30-39%		10.11
40-49%		9.47
50-59%		8.84
60-69%		8.21
70-79%		7.58
80-89%		6.95
90-99%		6.32
100-109%		5.68
110-119%		5.05
120-129%		4.42
130-139%		3.79
140-149%		3.16
150-159%		2.53
160-169%		1.89
170-179%		1.26
180-189%		0.63
190% +		0.00

(2) Community Property Wealth Factor = Equalized property valuation per capita as determined by the department of revenue, for the municipality as a per cent of the statewide average equalized property valuation per capita.

The Community Property Wealth Factor is then determined by using the chart below.

Municipality's EQV as per cent of statewide average EQV	Equalized Property Valuation	Community property wealth factor percentage points
0 -9%		28.00

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10-19%	26.53
20-29%	25.05
30-39%	23.58
40-49%	22.11
50-59%	20.63
60-69%	19.16
70-79%	17.68
80-89%	16.21
90-99%	14.74
100-109%	13.26
110-119%	11.79
120-129%	10.32
130-139%	8.84
140-149%	7.37
150-159%	5.89
160-169%	4.42
170-179%	2.95
180-189%	1.47
190% +	0.00

(3) Community Poverty Factor = Proportion of low income students, as determined by federal eligibility for free or reduced price lunch, for the district as a per cent of the statewide average proportion of low income students.

The Community Poverty Factor is then determined by using the chart below.

School district proportion of low income students as per cent of state average proportion of low income students	Poverty	Community poverty factor percentage points
0-99%		0.00
100-102%		1.42
103-105%		2.83
106-108%		4.25
109-111%		5.67
112-114%		7.08
115-117%		8.50
118-120%		9.92
121-123%		11.33
124-126%		12.75
127-129%		14.17
130-132%		15.58
133%+		17.00

(C) Incentive percentage points may be awarded by the authority. Incentive percentage points granted, if any, shall be in the sole discretion of the authority. The authority may issue regulations delineating the type and amounts of any such incentive percentage points; provided, however, that no individual category of incentive points shall exceed 6 additional points; and provided further, that no district shall receive more than 18 incentive percentage points. Such incentive points may be awarded for a district's use of efficient construction delivery methods; regionalization with other districts; superior maintenance practices of a district; energy efficient and sustainable design and construction; major renovation rather than building new construction; the use of model schools as adopted by the authority; and other incentives as determined by the board of the authority in order to encourage the most cost-effective and quality construction.

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(b) In the case of regional school districts, B1 and B2 shall be determined by calculating the relationship to the statewide average for each municipality of the regional district as stated in this section. For purposes of this computation, each member city's and town's share of the total cost shall be determined by multiplying the total approved cost by the percentage of district or county capital costs that would be apportioned to such city or town in accordance with the applicable regional school district agreement or law for capital costs incurred in the fiscal year in which the grant is approved. The amount of the total capital costs apportioned to a member city or town in any fiscal year on account of an approved school project of a regional school or county, determined in accordance with the applicable regional school district agreement or law, shall be reduced by an amount equal to the amount of the grant payable on account of such project in such fiscal year multiplied by a fraction the numerator of which is the city's or town's reimbursement percentage, determined as aforesaid, multiplied by the percentage of capital costs apportioned to the city or town for such fiscal year in accordance with the applicable regional school district agreement or law, and the denominator of which is the sum of the percentages so derived as the numerators for all of the member cities and towns.

In the case of independent agricultural and technical schools, B1 and B2 shall be determined by calculating the relationship to the statewide average for each municipality of the school as stated in this section. A weighted average will then be determined for these municipalities, weighted as compared to the number of students attending the school from each member municipality, which will be used to determine the final B1 and B2 factors.

(c) For approved school projects in districts which have a racial desegregation plan approved by the board of education not later than June 30, 2000, the reimbursement percentage shall be the sum of: (a) the percentage calculated pursuant to subsections (a) and (b); and (b) for projects designated as approved school projects on or before June 30, 2006, 10 percentage points, or, for projects designated as approved school projects on or before June 30, 2012, 5 percentage points. Only new project applications which present clear and convincing evidence that the proposed school building project will promote the objectives of achieving racial balance expressed in sections 37C and 37D of chapter 71 for the students attending the new, renovated, or repaired school will be eligible for the added percentage points. The total reimbursement percentage shall in no circumstances exceed the maximum grant percentage under the first paragraph of this section. [Ch. 208 of the Acts of 2004, §§30-34]

Chapter 70B: Section 11 School projects financed from proceeds of sales of bonds or notes; payment of facilities construction grants

Section 11. Grants for approved school projects shall be paid in accordance with a disbursement schedule approved by the authority. [Ch. 208 of the Acts of 2004, §35]

Chapter 70B: Section 12 Reimbursement for payments required for admission to regional school districts; grants

REPEALED [Ch. 208 of the Acts of 2004, §36]

Chapter 70B: Section 13 Projects placed on school building assistance priority list; temporary loans; refunding notes REPEALED [Ch. 208 of the Acts of 2004, §36]

Chapter 70B: Section 14 Approved alternative projects; allowable costs

Section 14. For approved projects that are an alternative to construction or renovation, the authority shall establish eligible cost criteria, and on a case by case basis, shall determine the allowable cost of the project. Eligible costs may include but shall not be limited to furnishings and equipment, lease costs, rental fees, tuition costs and transportation costs. In no event shall an alternative project be reimbursed if it is determined by the authority to be more costly than construction necessary to achieve the same end. [Ch. 208 of the Acts of 2004, §37]

Chapter 70B: Section 15 Sale or lease of school buildings for which school facilities project applicant receives grant payments

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Section 15 (a) In the event that an eligible applicant sells or leases an assisted structure or facility, or a portion of that structure or facility, on account of which it is receiving grant payments for an approved school project or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in the preceding 20 years, under this chapter or under chapter 645 of the acts of 1948, the sale or lease of the assisted structure or facility, or portion of that structure or facility, shall be for no less than fair market value as determined by independent appraisal, unless the eligible applicant receives prior written approval from the authority to do otherwise, and the proceeds from the sale or lease shall be divided between the authority and the general funds of the applicable eligible applicant in proportion to the commonwealth's and authority's prior investments in the assisted structure or facility under this chapter or said chapter 645, as applicable. In the case of an approved school project approved before July 1, 2004, the authority's share of the proceeds shall reduce the balance of outstanding grant payments that would otherwise be payable except for this section and shall not exceed that amount. An eligible applicant which sells, leases or otherwise removes from use by the eligible applicant as a schoolhouse an approved school project on account of which it is receiving grant payments or, in the case of an approved school project approved on or after July 1, 2004, on account of which it has received at least 1 grant payment in the preceding 20 years, under this chapter or under said chapter 645, shall report the sale, lease or removal to the authority in the form and manner and within the time prescribed by the authority. The authority may issue regulations to recapture commonwealth and authority assistance for an approved school facilities projects for school buildings that are removed from service. [Ch. 122 of the Acts of 2006, §34]

(b) In the event an eligible applicant sells or leases an assisted structure or if the assisted structure was not used as a schoolhouse for at least half of the preceding fiscal year, the amount of outstanding grant payments remaining after reductions under the provisions of subsection (a), shall be deducted from each city, town or regional school district's cherry sheets, so-called, as an assessment in accordance with the provisions of section 21 of chapter 59, according to a schedule agreed to between the city or town and the authority; provided, however, that at the discretion of the authority, deductions authorized from said cherry sheets under the provisions of this subsection may be waived for an assisted structure or facility which has been removed from use as a schoolhouse by a city, town or regional school district, pursuant to a plan approved by said city, town or regional school district and the authority, which provides for the reuse of the assisted structure or facility as a schoolhouse within two years of the adoption of the plan or prior to the expiration of the term of any bonds or notes issued to finance the project for which the grant was approved, whichever is the earliest.

(c) Any eligible applicant which applies for a grant pursuant to this chapter and which has, prior to such application, sold, leased or otherwise removed from service any schoolhouse operated by said eligible applicant shall be eligible for such grant only if the authority determines either that the grant is not for the purpose of replacing a schoolhouse sold, leased or otherwise removed from service in the past ten years or that the need for the project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased or otherwise removed from service.

(d) The provisions of this section, at the discretion of the authority, shall not apply to sales or leases of such assisted structures or facilities for nonprofit public purposes. [Ch. 208 of the Acts of 2004, §§38, 39]

Chapter 70B: Section 16 Maintenance assessment program for school buildings

Section 16. The authority shall create a maintenance assessment program for school buildings. Such assessment program shall include a review of all major building components, maintenance records, existing staff and vendor contracts. The authority shall use such assessment program to issue ratings of the building conditions for each school district; survey current conditions, develop a model plan for the proper maintenance of school buildings, and provide technical assistance and information to municipalities and school districts. [Ch. 208 of the Acts of 2004, §40]

Chapter 70B: Section 17 Annual report; anticipated needs for school facilities projects

Section 17. (a) On or before June 30 of each year, the authority shall submit a report to the governor, the house and senate committees on ways and means, the joint committee on education, arts and humanities, the joint committee on natural resources, the house and senate committees on long-term debt and capital

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expenditures and the joint committee on local affairs which analyzes the anticipated financial needs for school facilities projects of the kind that qualify for assistance under this chapter. The report shall include a listing of each school building within the commonwealth, together with a description of its size, capacity, age and state of maintenance and whether it is likely to require construction, enlargement, reconstruction, rehabilitation or improvement due to such factors as deterioration, lack of adequate facilities to meet educational standards and anticipated increases in school- age population.

- (b) The authority shall also conduct periodic surveys of the cities, towns and regional school districts to determine the need for new school facility construction to meet demand.
- (c) The authority shall develop a long-term capital plan in accordance with needs and funding projected to be available in the trust under this chapter for purposes of planning and guiding the policies of the authority.
- (d) The capital plans, needs surveys and reports of the authority shall not give rise to any claim, legal or moral, or enforceable right in any party to benefits or funds from the trust or from other sources.

[Ch. 208 of the Acts of 2004, §41]

Chapter 70B: Section 18 Grants approved prior to enactment of this chapter
REPEALED [Ch. 208 of the Acts of 2004, §36]

Chapter 70B: Section 19 Notification of actual interest rate for bond issuance

Section 19. Municipalities and school districts shall notify the authority no later than 14 days before refinancing any bond for which the municipality or district will receive state reimbursement under chapter 645 of the acts of 1948 or other law. The authority shall reimburse municipalities or districts at the actual interest rate obtained. The authority shall encourage municipalities and school districts to refinance any bond for which the municipality or district will receive state reimbursement where the refinancing would result in savings for the commonwealth or the municipality or school district and where the refinancing is otherwise in accordance with the law. [Ch. 208 of the Acts of 2004, §42, and amended by Ch. 122 of the Acts of 2006, §35]

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The following provisions are non-codified sections from Chapter 208 of the Acts of 2004, as amended:

SECTION 43. Section 329 of chapter 159 of the acts of 2000 is hereby repealed.

SECTION 44. Chapter 26 of the acts of 2003 is hereby amended by striking out section 668 and inserting in place thereof the following section:- Section 668. Notwithstanding any general or special law to the contrary, the board of education and the school building authority established pursuant to section 1A of chapter 70B of the General Laws shall not accept an application for the school building assistance program established in said chapter 70B until after July 1, 2007.

SECTION 45. On or before August 1, 2004, the commissioner of education shall submit to the Massachusetts School Building Authority a list of school projects consisting of: (i) all projects approved in accordance with chapter 645 of the acts of 1948 for which the state has outstanding liability as of July 1, 2004; (ii) all approved school projects that were approved by the board of education in accordance with section 6 of chapter 70B of the General Laws on or before June 30, 2004, for which the state has outstanding liability as of July 1, 2004; (iii) all projects on the school building assistance priority waiting list maintained by the department of education as of July 1, 2004; and (iv) projects in Quincy and Swampscott which, prior to the effective date of this act, were eligible for funding under section 668 of chapter 26 of the acts of 2003. The list shall identify for each project: (i) total estimated construction costs; (ii) total estimated short-term and long-term interest costs; (iii) reimbursement rate pursuant to chapter 70B of the General Laws as in effect prior to the effective date of this act, section 329 of chapter 159 of the acts of 2000 as in effect prior to the effective date of this act, and section 668 of chapter 26 of the acts of 2003 as in effect prior to the effective date of this act; (iv) year of application; (v) year of approval, if approved; (vi) rank order on the waiting list; and (vii) other information as appropriate upon the request of the Massachusetts School Building Authority. Projects included on the list submitted pursuant to this section shall not be counted toward the limit found in section 7 of chapter 70B of the General Laws on aggregate estimated amount of total facilities grants approved.

SECTION 46. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority may accept an application for an emergency situation capital school construction grant for the city of Springfield under chapter 70B of the General Laws and may add the project to the list submitted pursuant to section 45 of this act at the reimbursement rate in effect on June 30, 2003. For the purposes of this section, an emergency situation shall consist of: (i) a school that has been determined to be underperforming by the board of education and has lost or is at risk of losing its accreditation; and (ii) a determination by the commissioner that such project is needed to address significant deficiencies which cannot be cost- effectively addressed through major reconstruction or repair work. The application shall meet all requirements of said chapter 70B and the regulations promulgated therefor.

SECTION 47. (a) As of July 1, 2004, the Massachusetts School Building Authority shall succeed to all powers previously granted to the board of education and the department of education with respect to projects on the list submitted under section 45. As soon as practicable following July 1, 2004, the commissioner of education shall transfer to the Authority all records and documents which immediately before that date are in the custody of the board of education or the department of education and which relate to or are maintained for the purpose of the school building assistance program.

(b) The amendments made in this act to chapter 70B of the General Laws shall not affect the schedule of payment for any approved project on the list submitted under section 45 receiving payment as of July 1, 2004, except as specifically provided in this section and in sections 48 to 53, inclusive, of this act. The reimbursement rate paid by the Authority for approved project costs for projects on the list submitted under section 45 shall not be altered from the reimbursement rate under chapter 70B of the General Laws as in effect before the effective date of this act, section 329 of chapter 159 of the acts of 2000 as in effect before July 1, 2004, and section 668 of chapter 26 of the acts of 2003 in effect before July 1, 2004 as a result of the amendments made by this act to said chapter 70B.

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(c) Grants for the Authority's share of approved costs of projects on the list submitted under section 45 shall be payable by the Massachusetts School Building Authority rather than by legislative appropriations.

(d) For projects which, before July 1, 2004, were approved by the board of education under either section 6 of chapter 70B of the General Laws, as in effect prior to July 1, 2004, or chapter 645 of the acts of 1948 and for projects on the list submitted under section 45 with respect to which bonds or long-term indebtedness shall have been issued before July 1, 2004, the final approved cost of the project shall include, only to the extent eligible for reimbursement and allowed by the department of education and board of education

(i) the eligible interest payable on the authority's share of bonds or long-term indebtedness issued to finance the project,

(ii) the eligible interest payable on the authority's share of temporary notes issued to finance the project on or after July 1, 2004 but before receipt of any funding from the authority, and

(iii) may, in the discretion of the authority, include eligible principal of any bonds issued before July 1, 2004. For projects on the list submitted by the department of education under section 45 and not approved by the board of education under either section 6 of chapter 70B of the General Laws, as in effect before July 1, 2004, or chapter 645 of the acts of 1948 for which no bonds or long-term indebtedness have been issued before July 1, 2004, approved project costs shall include the authority's share of eligible interest on temporary notes issued to finance the project, paid before the receipt of a grant, but shall not include interest or principal on bonds or long-term indebtedness.

(e) Grants for approved projects shall be paid under a disbursement schedule approved by the authority.

(f) In no event shall the authority be responsible for paying or reimbursing any costs, including but not limited to, project costs, interest or principal on any notes, bonds or long-term indebtedness that were disallowed by the department of education or board of education under any statute, rule, regulation, policy, or established practice. [Ch. 122 of the Acts of 2006, §58]

SECTION 48. (a) The Massachusetts School Building Authority shall complete final audits on all projects on the list submitted pursuant to section 45 for which a final audit had not been completed as of the effective date of this act, and shall adjust payments in accordance with the result of those audits. For projects for which a final audit was complete as of the effective date of this act and for which substantial new information has become available since the completion of the audit, the authority may, at the request of a city, town, regional school district or independent agricultural and technical school, review the audit and make adjustments to approved project costs. (b) For the purposes of expediting the payout of school building assistance grants, at the written request of a city, town, regional school district, or independent agricultural and technical school, the authority may in its discretion expedite the timing of a final audit. The requesting municipality shall assume responsibility for the cost of the expedited auditing services, if the services are authorized by the authority under this section. (c) Any additional amounts owed to the city of Lynn as a result of audits performed shall be paid to the city by the authority in 7 annual installments. The first such installment shall be made in fiscal year 2005. (d) For a project for which, prior to the effective date of this act, delays of 5 or more years between project completion and completion of the final audit resulted in a reduction in annual payments of greater than 35 per cent, at the request of a city, town, regional school district or independent agricultural and technical school, the authority shall return the level of annual payments to the level of annual payments for that project prior to the completion of the final audit and make payments over a shorter number of years; provided, however, that the total payment shall not exceed the amount identified in the final audit.

SECTION 49. Projects on the list submitted pursuant to section 45 shall be funded by the Massachusetts School Building Authority with no substantial changes in scope except: (i) those changes in scope which had received preliminary or final approval from the board of education prior to the effective date of this act; or (ii) those changes in scope which result in a total grant amount owed to the municipality or district equal

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to or less than the total grant amount owed as of the effective date of this act. The Massachusetts School Building Authority shall work with cities, towns, regional school districts and independent agricultural and technical schools to finalize modified applications for projects with preliminary approval for modification of the scope in a manner consistent with the preliminary approval granted by the commissioner of education prior to the effective date of this act.

SECTION 50. The School Building Assistance Authority shall provide financial assistance under this act for projects on the list submitted pursuant to section 45 and not yet approved by the board of education prior to the effective date of this act in the order in which they appear on the list; provided, however, that the authority may deviate from the order if it determines that it is necessary to do so in order to comply with federal income tax laws or regulations related to the tax exemption of indebtedness incurred by the authority or to provide grants to municipalities or districts whose short-term borrowing would otherwise terminate prior to the award of a grant. The authority shall notify the house and senate committees on ways and means and the joint committee on education, arts, and humanities within 30 days whenever changes in list order will result in a project getting funds more than a year earlier or later than would have been the case had the authority provided funds to districts in the order in which they appear on the list. Projects with respect to which, in the reasonable judgment of the authority, no substantial progress has been made by July 1, 2009 may be removed by the authority from the list. Any project so removed from the list may be the subject of a new grant application to the authority under chapter 70B of the General Laws but shall have no specific entitlement to funding under this act.

SECTION 51. Notwithstanding section 17 of chapter 44 of the General Laws, the officers of a city, town or regional school district authorized to issue bonds, notes or certificates of indebtedness for a school construction project on the list submitted pursuant to section 48, may refund, by the issuance of refunding notes, a temporary loan issued in anticipation of money to be derived from the sale of the bonds, notes or certificates, but the period from the date of issue of the original temporary loan to the final maturity of any such refunding notes shall not exceed 7 years; but the period from the date of issue of the original temporary loan to the final maturity of all school construction project financing shall not exceed 30 years. The refunding notes shall not be required to be paid in part from revenue funds of the city, town or regional school district until the end of the fiscal year following the fiscal year in which the board of education or the Massachusetts School Building Authority as applicable approves the project for a school construction grant. The time within which the serial bonds, notes or certificates of indebtedness issued to pay refunding temporary notes issued hereunder shall be due and payable shall be extended by the period from the date of the original temporary loan to: (a) the date of issue of such serial bonds, notes or certificates; or (b) the end of the fiscal year in which the board of education or the Massachusetts School Building Authority as applicable approves the project for a school construction grant, whichever date is earlier.

SECTION 52. Subject to appropriation, cities and towns receiving reimbursement pursuant to section 12 of chapter 70B of the General Laws in fiscal year 2004 shall continue to be reimbursed in accordance with said section 12 of said chapter 70B, as in effect prior to the effective date of this act.

SECTION 53. Notwithstanding any general or special law to the contrary and except as specifically provided in this act, no city, town, regional school district or independent agricultural and technical school shall have any entitlement to funds under chapter 70B of the General Laws except at the discretion of the Massachusetts School Building Authority in accordance with said chapter 70B. If an eligible applicant undertakes construction for a project not included in the list submitted pursuant to section 45 or incurs indebtedness for such a project not yet designated as an approved school project, as defined in section 2 of said chapter 70B, the applicant shall remain subject to the authority's approval process as if the construction had not been undertaken or the indebtedness had not been incurred. Applications submitted subsequent to July 1, 2007, for projects which commence construction between July 1, 2004 and June 30, 2006, shall, if approved by the Massachusetts School Building Authority, be reimbursed at the rate in effect at the time of approval. In considering whether to designate such projects as approved school projects and in calculating approved costs, the Massachusetts School Building Authority may consider allowable cost standards and other pertinent department of education regulations in effect on June 30, 2004. Applications submitted subsequent to July 1, 2007, for projects which commence construction between July 1, 2006 and June 30, 2007, shall, if approved by the Massachusetts School Building Authority, be reimbursed at the rate in effect

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at the time of approval. In calculating approved costs for such projects, the Massachusetts School Building Authority shall use regulations promulgated by the authority pursuant to section 55. The authority may refuse to designate a project as an approved school project.

SECTION 54. The Massachusetts School Building Authority, in consultation with the advisory board established pursuant to section 3A of chapter 70B of the General Laws, shall review matters including, but not be limited to, the appropriateness of existing regulations and laws governing the School Building Assistance program, the appropriate cost and size standards, to be promulgated by the Massachusetts School Building Authority under section 9 of chapter 70B of the General Laws, the appropriate formula for facilities grants under section 10 of said chapter 70B, and all other standards and procedures established in sections 8, 9 and 10 of said chapter 70B, the best means to encourage energy-efficient schools, the advisability of allowing or requiring cities, towns and regional school districts to establish funds for building maintenance, the advisability of further changes to chapter 70B of the General Laws in accordance with construction reform, the feasibility of requiring prototype designs for school building projects, the feasibility of allowing public-private partnerships in constructing schools, or the use of lease-purchase in providing educational space, the best means to assist in meeting the building needs of charter schools and educational collaboratives, the feasibility of requiring future school buildings to be constructed so as to facilitate early education and care programs, full day kindergarten, proper tutorial space, services which may go beyond direct instructional services but which may be best provided to students in a school setting, uses that extend beyond the typical school day for extended hours, weekends and during the summer months for educational, recreational and other purposes which provide community uses, the introduction of wireless technology in the classroom, and the feasibility of providing financial incentives to communities that have adopted zoning policies or other initiatives that encourage increased affordable housing production in the commonwealth, including, but not limited to, inclusionary zoning, so-called. The authority shall file a progress report not later than December 31, 2004, and a final report, along with any regulatory and legislative proposals necessary to carry its recommendations into effect, not later than April 1, 2005, with the secretary of administration and finance, the house and senate clerks, the chairpersons of the house and senate committees on ways and means and the house and senate chairs of the joint committee on education, arts and humanities. The secretary of administration and finance shall submit a report on recommended changes to section 10 of chapter 70B of the General Laws no later than May 1, 2005, with proposed legislation, to the clerks of the house and senate, the house and senate committees on ways and means, and the joint committee on education, arts, and humanities.

SECTION 55. Notwithstanding any general or special law to the contrary, the authority shall not issue maximum eligible cost standards nor size standards for school projects pursuant to section 9 of chapter 70B of the General Laws, nor shall it promulgate regulations pursuant to said chapter 70B prior to January 1, 2006. In drafting regulations, the authority shall review the needs analysis and capital plan required by section 17 of said chapter 70B to be completed by the board on June 30, 2005, and shall propose draft regulations based on the report, capital plan and needs analysis not later than January 1, 2006. The authority shall hold not less than 5 hearings on the draft regulations in locations reflective of the geographic diversity of the commonwealth, and shall submit the draft regulations to the joint committee on education, arts and humanities, which shall have 30 days to review and comment on the regulations. The authority shall promulgate final regulations no later than July 1, 2006.

SECTION 56. Notwithstanding any general or special law to the contrary, the Massachusetts School Building Authority, with the advice of the school building advisory committee, shall conduct a comprehensive analysis of the needs of municipal and regional school districts for projects eligible for reimbursement under chapter 70B of the General Laws beginning July 1, 2007.

The following section, Section 56A, was added to Ch. 208 of the Acts of 2004 by Ch. 139 of the Acts of 2006, § 83:

SECTION 56A. (a) A city, town or regional school district may request, in writing not later than August 31, 2006, that the Authority remove a project on the list pursuant to section 45 and may request that a portion of the Authority's anticipated grant for the project be applied to another project on the list pursuant

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to said section 45 that is within the same city, town, or regional school district as the project being removed. Approval of the request shall be at the sole discretion of the Authority.

(b) A project being so removed from the list shall:

- (1) not have started construction before application to the Authority for removal of a project from the waiting list;
- (2) not be eligible to receive reimbursement from the Authority for any costs that may have been incurred for the project prior to its removal from the list;
- (3) not be eligible to receive reimbursement for interest on short or long term notes or bonds for the project; and
- (4) submit a plan to the Authority that demonstrates the city, town or regional district will be adequately able to accommodate a displaced school program or service and a plan for accommodating district students within remaining school buildings.

(c) A project on the list, for which funds may be reallocated in the sole discretion of the Authority, shall meet the following criteria:

- (1) the project shall have begun construction after January 1, 2005;
- (2) the project shall have overall project costs that are in excess of the maximum allowable costs, as determined by the Authority, and the excess costs are not related to changes in project scope;
- (3) reallocated costs shall only be used to reimburse approved, eligible costs, as determined by the Authority.
- (4) the city, town or regional school district shall agree to work with the Authority in a value engineering exercise to determine viable options to reduce the overall cost of the project;
- (5) the city, town or regional school district shall have multiple projects on the list submitted pursuant to said section 45;
- (6) the project on the list for which funds may be reallocated, at the sole discretion of the Authority, shall be within the same city, town or regional school district as the project being removed;
- (7) the city, town or regional school district shall have submitted all audit materials for any other projects for which the audit materials have been requested by the Authority; and
- (8) the city, town or regional school district shall have executed a project funding agreement with the Authority for any project on the list that has not completed construction.

(d) The Authority shall have sole discretion in determining the portion of grant, if any, which may be reallocated to another project. Funds that may be reallocated in the sole discretion of the Authority to another project shall only be used to cover approved, eligible costs that are in excess of the maximum allowable cost that are not related to changes in project scope. Reimbursements may be made under the existing grant program, as determined by the Authority. In no instance shall reimbursement rates for any project for which reallocated funds are distributed to by the Authority, exceed the reimbursement rates pursuant to clause (iii) of said section 45. Any funds that may be allocated by the Authority, shall not be used for interest or costs related to any indebtedness, or for any expenditure that is considered to be ineligible by the Authority. A project removed from the list pursuant to said section 45 shall no longer be eligible for a portion of the grant and shall have no entitlement to funds for the project in the future. A project removed from the list may apply to the Authority for funding after July 1, 2007 and shall be subject to the laws, rules and regulations governing school building construction in place at the time of application. [Ch. 139 of the Acts of the 2006, §83]

SECTION 57. Sections 30 to 32, inclusive, shall take effect on August 1, 2005.

The following provisions are non-codified sections from Chapter 210 of the Acts of 2004:

SECTION 4. Notwithstanding section 35BB of chapter 10 of the General Laws, in fiscal year 2005, there shall be credited to the School Modernization and Reconstruction Trust Fund, hereinafter referred to as the "fund", an amount equal to \$395,700,000; in fiscal year 2006, there shall be credited to the fund moneys equal to 70 per cent of the dedicated sales tax revenue amount but not less than \$488,700,000; in fiscal year

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2007, there shall be credited to the fund moneys equal to 78 per cent of the dedicated sales tax revenue amount but not less than \$557,400,000; in fiscal year 2008, there shall be credited to the fund moneys equal to 85 per cent of the dedicated sales tax revenue amount but not less than \$634,700,000; in fiscal year 2009, there shall be credited to the fund moneys equal to 90 per cent of the dedicated sales tax revenue amount but not less than \$702,300,000; and in fiscal year 2010, there shall be credited to the fund moneys equal to 95 per cent of the dedicated sales tax revenue amount. The amounts credited to the fund under this section shall be considered to meet the full obligation of the commonwealth to the Massachusetts School Building Authority for those fiscal years, respectively.

The following provision is a non-codified section from Chapter 27 of the Acts of 2009:

SECTION 137. Notwithstanding any general or special law to the contrary, the commonwealth hereby designates the Massachusetts School Building Authority, established in [section 1A of chapter 70B](#) of the General Laws, to allocate to governmental issuers of bonds within the commonwealth, pursuant to section 54F(d)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, including to said authority, the limitation amount allocated to the commonwealth by the United States Department of the Treasury, but not including the amount allocated to large local educational agencies pursuant to section 54F(d)(2) of said act except to the extent that any such large local educational agency reallocates amounts to the commonwealth pursuant to said section 54F(d)(2), in which case such reallocated amounts shall also be allocated by said authority. Notwithstanding [section 89 of chapter 71](#) of the General Laws, or any other general or special law to the contrary, the Massachusetts School Building Authority may, in its discretion, distribute to charter schools proceeds from bonds authorized under section 54F(d)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, or make a portion of the allocation available to other issuers on behalf of charter schools.