



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND FOUR

AN ACT to Accelerate School Building Assistance Payments to Cities, Towns, and Regional School Districts and to Increase Efficiencies in Public Construction Projects.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for improvements and repairs of certain school buildings in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for a program of state assistance to cities, towns and regional school districts, the sums set forth in this act, for the several purposes and subject to the conditions specified in this act, are hereby made available for approved school projects awarded pursuant to chapter 70B of the General Laws or chapter 645 of the acts of 1948 from the General Capital Projects Fund, subject to the provisions of law regulating the disbursement of public funds.

SECTION 2.

ADMINISTRATION AND FINANCE.

Office of the Secretary.

1599-2113 For initial deposits to the State School Facilities Grant Escrow Fund established pursuant to clause (a) of section 3 of chapter 70C of the

NOTE. – Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

General Laws for deposit in an escrow account or accounts for the purpose paying, pursuant to clause (a) of section 3 of said chapter 70C, the commonwealth's reimbursement to a city, town or regional school district for any grant for an approved school project awarded pursuant to chapter 70B of the General Laws or chapter 645 of the acts of 1948\$4,200,000,000

SECTION 2A.

ADMINISTRATION AND FINANCE.

Office of the Secretary.

1599-2114 For deposits to the State School Facilities Grant Payment Fund established pursuant to clause (a) of section 4 of chapter 70C of the General Laws to make payments, pursuant to clause (a) of section 4 of said chapter 70C, to a city, town or regional school district for any grant for an approved school project awarded pursuant to chapter 70B of the General Laws or said chapter 645 of the acts of 1948\$4,000,000,000

SECTION 3. To meet the expenditures necessary in carrying out the provisions of section 2, and section 3 of chapter 70C of the General Laws, the state treasurer shall, upon the request of the governor, issue special obligation bonds of the commonwealth in an amount specified by the governor from time to time, not exceeding in the aggregate, the sum of \$4,200,000,000. All special obligation bonds issued pursuant to this section shall be designated on their face, Special Obligation State School Facilities Grant Escrow Fund Loan, Act of 2004 and shall be issued for a maximum term of years, not exceeding 40 years, as the governor may

recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds shall be payable not later than June 30, 2049, and provided, further however, that the maturities of such bonds shall be determined in accordance with clause (d) of section 3 of chapter 70C of General Laws. All interest and payments on account of principal of such obligations shall be payable from the State School Facilities Grant Debt Service Fund established in section 2PPP of chapter 29 of the General Laws. Except to the extent such special obligation bonds are issued secured by a state guaranty as provided below, the special obligation bonds issued pursuant to this section shall be special obligations of the commonwealth payable solely in accordance with the provisions of said section 2PPP of said chapter 29. Special obligation bonds issued pursuant to this section may be issued with a guaranty of the commonwealth that if at any time a payment of principal of or interest on such bonds are due and monies in said State School Facilities Grant Debt Service Fund and in the reserve, if any, established with respect to such bonds are insufficient to make such payment or any portion thereof, the commonwealth will use any other available funds of the commonwealth to make such payment and the full faith and credit of the commonwealth is hereby pledged for any such guaranty. The special obligation bonds issued pursuant to this section, whether issued with or without the guaranty of the commonwealth, shall not constitute direct debt of the commonwealth for the purpose of the direct debt limit contained in section 60A of chapter 29 of the General Laws and any appropriation by the commonwealth for the payment of principal of and interest on the bonds shall not be included in the appropriation limit contained in section 60B of chapter 29 of the General Laws.

SECTION 4. To meet expenditures necessary in carrying out the provisions of section 2A, and section 4 of chapter 70C of the General Laws, the state treasurer shall, upon the request

of the governor, issue bonds of the commonwealth in an amount specified by the governor from time to time, but not exceeding in the aggregate, the sum of \$4,000,000,000. All bonds issued pursuant to this section shall, except as otherwise provided below, be designated on their face, State School Facilities Grant Payment Fund Loan, Act of 2004 and shall be issued for a maximum term of years, not exceeding 40 years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds shall be payable not later than June 30, 2049. Bonds and interest thereon issued under the authority of this section shall be general obligations of the commonwealth, but any bonds issued by the state treasurer pursuant to this section may, with the consent of the governor, be issued as special obligation bonds pursuant to section 2PPP of chapter 29 of the General Laws. In deciding whether to request the issuance of particular bonds as special obligations, the treasurer shall take into account: (i) generally prevailing financial market conditions; (ii) the impact of each approach on the overall capital financing plans and needs of the commonwealth; (iii) any ratings assigned to outstanding bonds of the commonwealth and any ratings expected to be assigned by any national recognized credit rating agency to the bonds proposed to be issued; and (iv) any applicable provisions of a trust agreement or credit enhancement agreement entered into pursuant to said section 2PPP of said chapter 29. All special obligation bonds issued pursuant to this section shall be designated on their face, Special Obligation State School Facilities Grant Payment Fund Loan, Act of 2004. All interest and payments on account of principal of such special obligation bonds shall be payable from the State School Facilities Grant Debt Service Fund established in said section 2PPP of said chapter 29. Except to the extent such special obligation bonds are issued secured by a state guaranty as provided below, the special obligation bonds issued pursuant to this

section shall be special obligations of the commonwealth payable solely in accordance with the provisions of said section 2PPP of said chapter 29. Special obligation bonds issued pursuant to this section may be issued with a guaranty of the commonwealth that if at any time a payment of principal of or interest on such bonds are due and monies in the State School Facilities Grant Debt Service Fund established in said section 2PPP of said chapter 29 and in the reserve, if any, established with respect to such bonds are insufficient to make such payment or any portion thereof, the commonwealth will use any other available funds of the commonwealth to make such payment and the full faith and credit of the commonwealth is hereby pledged for any such guaranty. Bonds issued pursuant to this section, whether issued as general obligations or special obligations, may be issued in such manner and on such terms and conditions as the state treasurer may determine in accordance with the provisions of this paragraph and, to the extent not inconsistent with the provisions hereof, provisions of general law for the issuance of bonds of the commonwealth. Any general or special obligation bonds issued pursuant to this section, whether issued with or without the guaranty of the commonwealth, shall not constitute direct debt of the commonwealth for the purpose of the direct debt limit contained in section 60A of chapter 29 of the General Laws and any appropriation by the commonwealth for the payment of principal of and interest on the bonds shall not be included in the appropriation limit contained in section 60B of chapter 29 of the General Laws.

SECTION 5. Subsection (e) of section 38C of chapter 7 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the words “ten thousand dollars; or (ii) the estimated construction cost of the project for which the design services are required is less than one hundred thousand dollars or (iii)” and inserting in place thereof the following:– \$100,000; or (ii).

SECTION 6. Subparagraph (iv) of subsection (e) of section 38H of chapter 7, as so appearing, is hereby amended by striking the words “ten thousand dollars or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars” and inserting in place thereof the following:– \$100,000.

SECTION 7. Chapter 29 of the General Laws is hereby amended by inserting the following new section:–

Section 2PPP. There is hereby established and set up on the books of the commonwealth a separate fund to be known as the State School Facilities Grant Debt Service Fund, which will be invested by the state treasurer. Three and zero hundredths per cent of the receipts paid into the treasury of the commonwealth from the tax imposed by chapter 62, hereinafter referred to, together with investment earnings thereon, as "special receipts," shall be credited to the State School Facilities Grant Debt Service Fund and used in accordance with this section. Expenditures from the State School Facilities Grant Debt Service Fund shall, subject to appropriation, be made for the following purposes: (i) for the payment of the principal, including sinking fund payments of and premium, if any, and interest on special obligation bonds of the commonwealth, as hereinafter described, issued for one or more of the purposes described in sections 3 and 4 of chapter 70C, and (ii) for the maintenance of, or provision for, any reserves, additional security, insurance or other form of credit enhancement required or provided for in any trust agreement entered into pursuant to this section to secure such bonds.

Any such bonds shall be special obligations of the commonwealth payable solely from special receipts to the extent available. Notwithstanding the provisions of any general or special law to the contrary, including without limitation section 60A of chapter 29, such bonds shall not be general obligations of the commonwealth. Bonds may be issued in such manner and on such

terms and conditions as the state treasurer may determine in accordance with the provisions of this paragraph and, to the extent not inconsistent with the provisions hereof, provisions of general law for the issuance of bonds of the commonwealth. Bonds may be secured by a trust agreement entered into by the state treasurer, with the concurrence of the secretary of administration and finance, on behalf of the commonwealth, which trust agreement may pledge or assign all or any part of special receipts and rights to receive the same, whether existing or coming into existence and whether held or thereafter acquired, and the proceeds thereof. The state treasurer is also authorized, with the concurrence of the secretary of administration and finance, to enter into additional security, insurance or other forms of credit enhancement, which may be secured on a parity or subordinate basis with the bonds. A pledge in any such trust agreement or credit enhancement agreement shall be valid and binding from the time such pledge shall be made without any physical delivery or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice thereof. Any such pledge shall be perfected by filing of the trust agreement or credit enhancement agreement in the records of the state treasurer, and no filing need be made under chapter 106. Any such trust agreement or credit enhancement agreement may establish provisions defining defaults and establishing remedies and other matters relating to the rights and security of the holders of the bonds or other secured parties as determined by the state treasurer, including provisions relating to the establishment of reserves, the issuance of additional or refunding bonds, whether or not secured on a parity basis, the application of receipts, monies or funds pledged pursuant to such agreement, hereinafter referred to as "pledged funds", and other matters deemed necessary or desirable by the state treasurer for the security of such bonds, and may also regulate the custody, investment and

application of moneys. Any such bonds shall be deemed to be investment securities under chapter 106, shall be securities in which any public officer, fiduciary, insurance company, financial institution or investment company may properly invest funds and shall be securities which may be deposited with any public custodian for any purpose for which the deposit of bonds is authorized by law. Any such bonds, their transfer and the income therefrom, including profit on the sale thereof, shall at all times be exempt from taxation by and within the commonwealth.

The provisions hereof relating to bonds shall also be applicable to the issuance of notes insofar as such provisions may be appropriate therefor.

In order to increase the marketability of any such bonds or notes issued by the commonwealth, and in consideration of the acceptance of payment for any such bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of any such bonds or notes that while any such bond or note shall remain outstanding, and so long as the principal of or interest on any such bond or note shall remain unpaid, (i) special receipts shall not be diverted from the purposes identified herein, (ii) no pledged funds shall be diverted from the purposes identified herein, and (iii) in any fiscal year of the commonwealth, unless and until an appropriation has been made which is sufficient to pay the principal, including sinking fund payments, of and interest on all such bonds and notes of the commonwealth and to provide for or maintain any reserves, additional security, insurance or other form of credit enhancement required or provided for in any trust agreement securing any such bonds or notes, no pledged funds shall be applied to any other use.

SECTION 8. Subsection (3) of section 39F of chapter 30 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended in clause (i) by striking the following words:– who files a sub-bid and receives a subcontract as a result of that filed sub-bid or.

SECTION 9. Section 39K of said chapter 30, as so appearing, is hereby amended by striking in lines 71 through 74 the following:– All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amounts paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed.

SECTION 10. Section 3 of chapter 70B of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting at the end thereof the following new paragraph:–

For the purposes of this section “board” shall mean the school building assistance board constituted pursuant to section 2 of chapter 70C.

SECTION 11. Clause (a) of section 5 of said chapter 70B, as so appearing, is hereby amended by striking the second sentence and inserting in place thereof the following sentence:– Such cost shall include the entire interest paid or payable by such city, town or regional school district on any bonds or notes issued to finance such project, except as otherwise provided in clause (c) of section 4 of chapter 70C, as well as any premiums, fees or charges for credit or liquidity enhancement facilities or services issued or rendered to any such city, town, or regional school district.

SECTION 12. Clause (e) of section 6 of said chapter 70B, as amended by section 74 of chapter 46 of the acts of 2003, is hereby further amended by inserting at the end thereof the following new sentence:– No debt shall be incurred by any city, town or regional school district

for the portion of the cost of an approved school project with respect to which such city, town or regional school district has received a school facilities grant pursuant to clause (b) of section 4 of chapter 70C subsequent to the receipt of such grant.

SECTION 13. Said chapter 70B, as appearing in the 2002 Official Edition, is hereby further amended by striking section 7 and inserting in place thereof the following section:-

Section 7. Before approving any school project under this chapter after July 1, 2004, the board shall determine that if such project under consideration is approved, the commonwealth has authorized and unissued indebtedness in an amount sufficient to make a grant payment to the city, town, or regional school district to which the project relates pursuant to clause (a) of section 4 of chapter 70C, after taking into account all grant payments to a city, town, or regional school district for school projects which have previously been approved after July 1, 2004 and which have not been paid.

SECTION 14. Section 11 of said chapter 70B, as so appearing, is hereby amended by inserting at the end thereof the following new clause:-

(c) Notwithstanding any provisions to the contrary contained in the preceding paragraphs of this section, any payments with respect to a total facilities construction grant shall be paid by the commonwealth in the manner provided in sections 3 and 4 of chapter 70C.

SECTION 15. Section 18 of said chapter 70B, as so appearing, is hereby amended by striking the words "except as provided in section 17" and inserting in place thereof the following:- except as provided in section 17 and chapter 70C.

SECTION 16. The General Laws are hereby further amended by inserting after chapter 70B the following chapter:-

CHAPTER 70C

STATE ASSISTANCE FOR SCHOOL BUILDING ASSISTANCE PROGRAM

Section 1. The term “board” as used in this chapter, unless otherwise defined or unless the context clearly indicates otherwise, shall mean the state school building assistance board constituted under section 2. All other terms used in this chapter, unless otherwise defined or unless the context clearly indicates otherwise, shall have the meanings contained in section 2 of chapter 70B.

Section 2. (a) An unpaid, independent board consisting of the state treasurer, ex officio, secretary of administration and finance, ex officio, the commissioner of education, ex officio, the commissioner of capital asset management and maintenance, ex officio, and the commissioner of revenue, ex officio, is hereby constituted and to be known as the school building assistance board for the purpose of carrying out the provisions of this chapter.

(b) The commissioner of education shall serve as the chairman of the board. The board shall appoint one of its members as vice-chairman. Each member of the board may appoint a designee pursuant to section 6A of chapter 30. Three members of the board shall constitute a quorum and the affirmative vote of three members shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(c) The board shall collect all information required to complete the activities contemplated by and to carry out the provisions of this chapter.

(d) The board may hire professional and administrative staff and consultants to assist with the execution of its duties.

(e) The board shall solely be responsible for engaging accounting, management, legal, financial, consulting and other professional services necessary to complete the activities contemplated by and to carry out the provisions of this chapter.

(f) The board will have all powers and duties described in section 3 of chapter 70B.

(g) The board shall have the power to promulgate such rules, regulations and procedures as the board shall deem necessary to carry out the provisions of this chapter.

Section 3. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the State School Facilities Grant Escrow Fund. The fund shall be administered in accordance with the provisions of this chapter by the board created hereunder and shall be held exclusively for the purposes described therein. The state treasurer shall be treasurer-custodian of the fund and shall have the custody of its monies. The proceeds of bonds or notes issued by the commonwealth, and designated for deposit to said fund, shall be credited to said fund. Monies in the State School Facilities Grant Escrow Fund shall, upon receipt and not subject to further appropriation, be deposited in trust in an escrow account or accounts for the purpose of paying the commonwealth's reimbursement to a city, town or regional school district with respect to any grant for an approved school project awarded pursuant to chapter 70B or chapter 645 of the acts of 1948; provided, that such city, town or regional school district received the first annual payment with respect to such grant in fiscal year 2004 or any prior fiscal year. Upon the funding of an escrow account hereunder with respect to a particular grant, no further payments with respect to such grant, except for cost adjustments approved by the board during the audit of the school project, shall be made by the commonwealth. Monies in an escrow account shall not be considered local aid distributions for the purposes of any local aid intercept provision, so-called, under any general or special law.

(b) Monies in the escrow accounts may be invested in the following securities: (i) direct general obligations of the United States of America and obligations (including obligations of any federal agency or corporation) the full and timely payment of the principal and interest on which,

by act of the Congress of the United States or in the opinion of the Attorney General of the United States in office at the time such obligations were issued, are unconditionally guaranteed by the full faith and credit of the United States of America, or any other evidences of a direct ownership interest in obligations or in specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in this clause (i); (ii) any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (a) which are not callable at the option of the obligor or otherwise prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice, (b) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described in clause (i) hereof which fund may be applied only to the payment of interest when due, principal of and redemption premium, if any, on such bonds or other obligations on the maturity date or dates hereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described in clause (i) hereof which have been deposited in such fund along with any cash on deposit in such fund is sufficient to pay interest when due, principal of and redemption premium, if any, on the bonds or other obligations described in this clause (ii) on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in sub-clause (a) of this clause (ii), as appropriate, and (d) which bear the highest rating available from a nationally recognized rating agency; (iii) non-callable notes, bonds, debentures, mortgages and other evidences of indebtedness that, at the time acquired, are either issued or guaranteed by an instrumentality of the United States of America, including but not limited to the Federal National

Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association and the Federal Farm Credit System, and rated in the highest rating category of from a nationally recognized rating agency; (iv) bonds, debentures, participation certificates (representing a full and timely guaranty of principal and interest), notes or similar evidences of indebtedness of any of the following: Bank for Cooperatives, Federal Intermediate Credit Banks, Federal Financing Bank, Federal Land Banks, Federal Home Loan Bank System, Federal Farm Credit Bank, Federal National Mortgage Association, Export-Import Bank of the United States, Farmers Home Administration, Federal Home Loan Mortgage Corporation, Resolution Funding Corporation, Government National Mortgage Association, Student Loan Marketing Association or Tennessee Valley Authority; (v) public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary notes or project notes issued by public agencies or municipalities, in each case fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America; (vi) obligations of any state of the United States or of any political subdivision or public agency or instrumentality thereof, including the commonwealth, provided that at the time of their purchase such obligations are rated no lower than the rating assigned to the commonwealth by a national recognized rating agency; (vii) prime commercial paper of a corporation incorporated under the laws of any state of the United States of America, having the highest rating available from a nationally recognized rating agency; (viii) interest bearing time deposits, certificates of deposit, banker's acceptances or other similar banking arrangements with banks, provided that such deposits either (a) are made with banks having the highest rating available from a nationally

recognized rating agency or (b) are fully collateralized and secured by such obligations; (ix) shares of a diversified open-end management investment company as defined in the Investment Company Act of 1940, which is a money market fund, provided that such obligations have been rated by a nationally recognized rating agency at a level which will not adversely affect the ratings then assigned to the commonwealth; (x) participation units in a combined investment fund created under section 38A of chapter 29 the purchase of which will not adversely affect the ratings then assigned to the commonwealth; (xi) repurchase agreements for obligations of the type specified in clauses (i) and (ii) above, provided that either (a) the repurchase agreement is an unconditional obligation of the provider thereof and such provider is by a nationally recognized rating agency at a level which will not adversely affect the ratings then assigned to the commonwealth or (b) such repurchase agreements are fully collateralized and secured by such obligations and in such manner as will not adversely affect the credit ratings then assigned by a nationally recognized rating agency at a level which will not adversely affect the ratings then assigned to the commonwealth; and (xii) investment agreements with banks, bank holding companies, insurance companies or other financial institutions, or any other investment obligation or deposit, whether or not issued or incurred by any of the foregoing, provided that the purchase of such investment will not adversely affect the credit ratings then assigned by a nationally recognized rating agency at a level which will not adversely affect the ratings then assigned to the commonwealth. Securities purchased as an investment of monies credited to an escrow account shall be deemed at all times to be a part of such escrow account.

(c) The amount to be placed in any escrow account hereunder with respect to a particular grant shall be equal to the present value as of the date the escrow account is funded of the future payments otherwise anticipated from the commonwealth with respect to such grant. The present

value shall be calculated based upon a discount rate which will be the lesser of (a) the arbitrage yield, as defined in section 148 of the Internal Revenue Code of 1986, as amended, associated with the bond issue or issues used to finance the project or (b) the blended yield on the securities available for purchase to fund the escrow account for the particular grant at the lowest cost for the commonwealth. The city, town or regional school district will be responsible for providing the arbitrage yield associated with the bond issue or issues used to finance the project and all supporting documentation to the board within 45 days of the effective date of this chapter. If a city, town or regional school district does not provide such information, then the board will select the discount rate for said city, town or regional school district, but in no case shall the discount rate be higher than 6 per cent. With respect to any approved school project for which a city, town or regional school district has refunded any debt issued by such city, town or regional school district to finance the project, and where pursuant to the last paragraph of section 21A of chapter 44 the savings achieved in such refunding were not taken into account to recalculate the grant payments anticipated from the commonwealth, the future payments anticipated from the commonwealth for the purpose of determining the amount to be placed in an escrow account as provided above shall be the payments that would have been required if such refunding savings had been taken into account. The amount deposited in an escrow account with respect to a particular grant shall be used to pay the principal of and interest on that portion of the debt issued by the city, town or regional school district to which the grant relates. The city, town or regional school district may also use the amount deposited in the escrow account to pay any redemption premiums on such portion of such debt. Any funds remaining in the escrow account after the payment of the portion of such debt to which the project relates shall be applied to (1) the payment of principal, premium, if any, and interest on bonds issued by the commonwealth

pursuant to the Special Obligation State School Facilities Grant Escrow Fund Loan, Act of 2004, or (2) make grants pursuant to section 4 of this chapter; provided, however, that to the extent any portion of such remaining funds are attributable to the fact principal and interest payments, on bonds with a final maturity longer than two years issued by a city, town or regional school district to which the grant relates, began in a fiscal year prior to the fiscal year in which the first grant payment was received by such city, town or regional school district, such portion of the remaining funds shall be paid to the city, town or regional school district to be used to pay the principal and interest on any other debt of such city, town or regional school district, if an no such debt is outstanding, for any purpose for which such city, town or regional school district is authorized to appropriate monies.

(d) The term of any bonds issued by the commonwealth pursuant to this act with respect to a particular grant shall not be greater than the number of years obtained by doubling the original number of grant payments and then subtracting the number of grant payments received by the city, town or regional school district as of June 30, 2004.

(e) Notwithstanding the provisions of any general or special law to the contrary, the state treasurer shall disperse the annual grant to cities, town or regional school districts on the last business day on or before June 30th of each fiscal year; provided, however, upon a request of a city, town or regional school district, the board, in its sole discretion, may disperse the annual grant to a city, town or regional school district on a day prior to the last business day on or before June 30th.

Section 4. (a) There shall be established and set up on the books of the commonwealth a separate fund to be known as the State School Facilities Grant Payment Fund. The proceeds of bonds or notes issued by the commonwealth, and designated for deposit to said fund, shall be

credited to said fund. The fund shall be administered in accordance with the provisions of this chapter by the board created hereunder and shall be held exclusively for the purposes described therein. The state treasurer shall be treasurer-custodian of the fund and shall have the custody of its monies. Monies in the State School Facilities Grant Payment Fund shall be used to make payments to a city, town or regional school district for any grant for an approved school project awarded pursuant to chapter 70B or chapter 645 of the acts of 1948 and with respect to which such city, town or regional school district will not or has not in fiscal year 2004 or any prior fiscal year received an annual payment from the commonwealth with respect to such grant, including all school projects currently on the school building assistance priority list, so-called, and all school projects approved subsequent to the effective date of this chapter, whether or not currently on such priority list. Monies in the State School Facilities Grant Payment Fund may also be used to make a grant to a city, town or regional school district, which agrees to remove its school project from the school building assistance priority list, so-called.

(b) Payments to a city, town or regional school district from the State School Facilities Grant Payment Fund with respect to a particular approved school project for which a grant has been awarded shall be paid, except as otherwise provided in the following sentence, to such city, town or regional school district through periodic payments during the construction and audit phases of the school project based on regulations promulgated by the board. With respect to a particular approved school project for which a city, town or regional school district issued bonds with a final maturity longer than two years to pay all or a portion of the costs of such project prior to January 28, 2004, the amount of the grant with respect to the bonds related to such cost shall be determined in the manner provided in clause (c) of section 3 and shall be placed in an escrow account similar to the escrow accounts provided for in clause (a) of section 3 and shall be

used to pay the principal of and interest on or redemption premium on that portion of the debt to which the grant relates. Any funds remaining in the escrow account after the payment of the portion of such debt to which the grant relates shall be applied to (1) the payment of principal, premium, if any, and interest on bonds issued by the commonwealth pursuant to the State School Facilities Grant Payment Fund Loan, Act of 2004, or (2) make grants pursuant to this section; provided, however, that to the extent any portion of such remaining funds are attributable to the fact principal and interest payments, on bonds with a final maturity longer than two years issued by a city, town or regional school district to which the grant relates, began in a fiscal year prior to the fiscal year in which the first grant payment was received by such city, town or regional school district, such portion of the remaining funds shall be paid to the city, town or regional school district to be used to pay the principal and interest on any other debt of such city, town or regional school district, and if no such debt is outstanding, for any purpose for which such city, town or regional school district is authorized to appropriate monies.

(c) For any approved school project on the school building assistance priority list, so-called, as of January 28, 2004 and with respect to which a city, town or regional school district had on or prior to January 28, 2004 either issued bonds with a final maturity longer than two years to finance all or a portion of the cost of such project, the final approved cost of such project shall include the entire interest paid or payable, including interest on temporary loans, by such city, town or regional school district on such bonds or notes issued to finance such project. For any other approved school project, the final approved cost of such project shall include all interest costs incurred with respect to any temporary loans issued by a city, town or regional school district to finance the project, which loans were issued prior to the receipt by such city, town or regional school district of the state grant related to such project.

SECTION 17. Subsection (1) of section 44A of chapter 149 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking the definition of “Responsible” and inserting in place thereof the following definition:–

“Responsible” means demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based on a determination of experience in similar projects, quality of workmanship and other criteria as determined by the public agency and based on published guidelines issued by the division of capital asset management and maintenance for determining contractor qualification to deliver best value in the delivery of the construction building project.

SECTION 18. Subsection (2) of section 44B of chapter 149 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended in the first sentence by striking the following words:– and every sub-bid submitted in connection with such a contract for a subtrade pursuant to section forty-four F.

SECTION 19. Section 44E of said chapter 149, as so appearing, is hereby amended by striking subsection (1) and inserting in place thereof the following subsection:–

(1) Whenever general bids are invited for a contract subject to section 44A, the awarding authority shall prescribe one place for filing such general bids; and notwithstanding any provisions of general or special law, ordinance or by-law to the contrary, a bidder shall not be required to file a duplicate of his bid in any other place.

In inviting bids, the awarding authority shall reserve the right to reject any or all such general bids, if it be in the public interest to do so.

SECTION 20. Subsection (2) of said section 44E of said chapter 149, as so appearing, is hereby amended by striking lines 45 through 64, inclusive.

SECTION 21. Subsection (3) of said section 44E of said chapter 149, as so appearing, is hereby amended in the first sentence by striking the following words:– and shall include the names of sub-bidders and the amounts of their sub-bids;.

SECTION 22. Subsection (3) of said section 44E of said chapter 149, as so appearing, is hereby further amended by striking the third paragraph and inserting in place thereof the following paragraph:-

The bid price shall be the price set forth in a clearly designated place on the bid form for that purpose. No general bid shall be rejected because the plans and specifications do not accompany the bid or are not submitted with the bid.

SECTION 23. Section 44F of said chapter 149, as so appearing, is hereby repealed.

SECTION 24. Chapter 149 of the General Laws is hereby amended by adding the following new section:–

Section 44F½ . (1)(a) As used in this section, the following words shall have the following meanings:

“Awarding authority”, as used herein shall mean a public agency as defined in section 44A of chapter 149.

“Construction services”, design/build or construction manager at risk services.

“Construction manager at risk”, a construction method wherein there is a construction manager responsible for the construction of the project at a guaranteed maximum price, which shall represent the maximum amount to be paid by the awarding authority for the delivery of pre-construction and construction services to the project, including the fee payable to the construction manager at risk.

“Design/build”, a construction method that utilizes a single company for the design and construction of a building, rather than separately contracting with a designer and then a general contractor. The designer on a design/build team must meet the requirements of a designer as defined under section 38A½ of chapter 7.

“Project”, the design, construction, repair, renovation, remodeling, equipping, furnishing or partial or complete demolition of commonwealth or municipal facilities.

“Project manager”, the official or firm designated by the awarding authority which shall have appropriate fiscal, procurement and construction experience and which shall have been certified by the division of capital asset maintenance and management as having met standards for such position as established by the division. The project manager shall serve as the focal point of responsibility and accountability on the project from the study and design phases through the completion of the building project. Such responsibilities shall include, but not be limited to, advising the awarding authority on all aspects of the project, coordinating communication among the project participants, monitoring the project budget and schedule, and maintaining a central file for project records and evaluating the performance of designers and contractors providing services on the project. The project manager shall be independent of any architect, engineer, contractor, subcontractor or other firm or person hired by the awarding authority to provide services in connection with the project.

(b) Notwithstanding the provisions of section 38K of chapter 7, section 39M of chapter 30, and sections 44A to 44J inclusive of chapter 149, or any other general or special law regulating the design, construction, advertising, or bidding of design and of construction contracts, or any other general or special law to the contrary, for any project in which estimated construction costs exceed \$5,000,000, an awarding authority may select and contract with a

single contractor to provide design/build or construction management at risk services for the design and construction of the project; provided however, that the design/build contractor or construction manager at risk shall be certified by the division of capital asset management and maintenance to perform the work required, shall be deemed responsible by the awarding authority, and shall be selected through a competitive process conducted in conformance with subsection (c).

(c) Awarding authorities shall follow procedures for procurement of contractor services utilizing design/build services or construction management at risk consistent with subsection (b), following model procedures to be developed by the division of capital asset management and maintenance. For the selection of design/build services and for the selection of construction manager at risk services, as appropriate, the procedures shall include but not be limited to the following:

(1) The awarding authority shall obtain design/build or construction manager at risk services utilizing sealed competitive proposals. Each authority shall solicit proposals through a publicly advertised request for proposals, consistent with section 44j of this chapter, which shall include, but not be limited to, the time and date for receipt of proposals; the address of the office to which a proposal shall be delivered; proposed contractual terms and conditions, some of which may be deemed mandatory or non-negotiable; standards by which acceptability will be determined as to quality, experience on similar projects, and quality of workmanship; all evaluation criteria that will be utilized by the authority; and such other matters as may be determined by the awarding authority.

(2) Evaluation criteria for design/build or construction management at risk services shall include, but not be limited to, expertise on similar projects, relevant technical management

experience of the offeror's proposed team, the financial stability and resources of the offeror, quality of construction materials, and the costs and life cycle of installed equipment.

(3) Public notice of each request for proposals shall be published at least three weeks prior to the time specified in such notice for the receipt of proposals in the central register published by the state secretary and in a newspaper of general circulation in the municipality where each project is proposed.

(4) Each request for proposals may incorporate documents by reference; provided however, that the request for proposals shall specify where offerors may obtain such documents. The request for proposals for construction services may provide for the separate submission of price, and so provided, shall indicate where and how offerors shall submit the price, and shall specify that bid security in a form specified by the awarding authority shall accompany such proposal. The authority shall make copies of each request for proposals available to all offerors on an equal basis. The authority may conduct pre-proposal conferences and interviews with interested parties prior to receiving proposals. An offeror's proposal shall be unconditional except as provided in this paragraph. An offeror may correct, modify, or withdraw a proposal by written notice received in the designated office in the request for proposals prior to the time and the date set for the opening of proposals.

(5) At the opening of the proposals, the awarding authority shall prepare a register of proposals which shall include the name of each offeror and the number of modifications, if any, received. The register of proposals shall be open for public inspection. After the opening of the proposals, an offeror may not correct, modify, or withdraw the price or any other provisions of its proposal in a manner prejudicial to the interests of the awarding authority or fair competition. The awarding authority may waive minor informalities or allow the offeror to correct them.

(6) The awarding authority shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of any general or special law to the contrary, until the completion of the selection process, the contents of the proposals and the selection process shall not be disclosed to competing offerors and shall not be deemed public documents.

(7) The awarding authority shall appoint a design/build or construction manager at risk selection committee. The committee shall be composed of experts in design and construction, including the project manager and other representatives of the awarding authority. The committee shall evaluate the proposals received by the authority. Every selection committee shall conduct its evaluations of the proposals based solely on the criteria set forth in the request for proposals. In the event that price proposals are to be submitted separately from proposals for design/build services, the design/build selection committee shall not evaluate these and the authority shall not disclose such price proposals to the committee until the committee has completed its evaluation of the proposals for construction services.

(8) For each proposal, the committee shall specify in writing on each evaluation criterion a rating of highly advantageous, advantageous, not advantageous, or unacceptable as the committee finds reasonable, and shall specify in writing a composite rating for each proposal and the reasons for such composite rating.

(9) The awarding authority shall make a determination of the most advantageous proposal for the design/build or construction manager of risk services from a responsible and responsive offeror based upon the ratings given to the proposals by the committee. If the price proposals have been submitted separately, the authority shall also base such determination upon an evaluation of such price proposals. The authority may negotiate all contract terms not deemed

mandatory or non-negotiable with such offerors. If, after negotiation with such offerors, the authority is unable to finalize a contract for acquisition of services that is in the authority's best interest, the authority may negotiate with the offeror of the next most advantageous proposal submitted by a responsible and responsive offeror based upon the ratings of the committee and upon an evaluation of the relevant price proposal if separately submitted.

(10) The contract for design/build or construction manager at risk services shall be awarded by the awarding authority to the offeror submitting the most advantageous proposal based upon the evaluation criteria set forth in the request for proposals and the terms of the negotiated contract. The authority shall complete the selection process by written notice to the selected offeror or by notice of rejection to all proposers, as specified below. The authority may reserve the right to reject any or all proposal if it deems it in the public interest to do so.

(11) If the awarding authority awards the contract for design/build or construction manager at risk services to an offeror which did not submit the lowest price proposal, the authority shall explain the reasons for such award in writing, which explanation shall be available for public inspection.

(12) Prior to the execution of a design/build contract, the selected offeror shall furnish to the awarding authority a performance bond and payment bond, each in the sum of the contract price and issued by a surety company qualified to issue bonds in the commonwealth and satisfactory to the authority. If the selected offeror fails to execute a contract or to furnish the necessary bonds within the time period specified in the request for proposals, the authority may award the design/build contract to the offeror of the next most advantageous proposal.

(13) The awarding authority shall return the bid security to all design/build or construction manager at risk offerors that are not selected. The selection committee shall have

conferences describing relative strengths and weaknesses of each proposal with other qualified offerors which were not selected if the offerors request to have such conferences.

(14) The awarding authority shall prepare a written report of the reasons for its selection determinations and any subsequent determinations to negotiate with additional proposers, including the recorded votes, if any, that were taken which shall be available to the public.

(d) An awarding authority using design/build or construction manager at risk services shall submit final procedures for the procurement of those services to the division of capital asset management and maintenance at least 30 days prior to the publication of notice of request for proposals.

(2) The awarding authority's contract for construction manager at risk services for the project shall require a guaranteed maximum price, which shall represent the maximum amount to be paid by the authority for construction of the project, including the fee payable to the construction manager. Following the award of the contract to the construction manager, at such time as the authority and the construction manager shall agree, the construction manager shall submit a proposed guaranteed maximum price. The authority shall analyze the proposed guaranteed maximum price and enter into negotiations with the construction manager to agree upon a guaranteed maximum price for the project. In the event, a guaranteed maximum price cannot be agreed upon by the authority and the construction manager, the authority shall proceed to engage another construction manager in accordance with the provisions of this section.

(3) For any project hereunder, with an estimated cost of \$5,000,000 or more, the awarding authority shall employ or contract with a project manager as defined in this section.

SECTION 25. There is hereby created a special school building assistance commission to study the commonwealth's school building assistance program, including design, construction,

reconstruction, rehabilitation, financing and reimbursement of school projects. The special commission shall consist of the following members or their designees: the state treasurer; the secretary of the executive office for administration and finance; the commissioner of education; the commissioner of capital asset management and maintenance; the chair of the commonwealth coordinating council; an appointee of the speaker of the house of representatives; an appointee of the president of the senate; the chairpersons of the joint committee on education; and four appointments by the governor, two of whom shall have professional experience in education, design, construction or finance and two of whom shall have executive experience in the administration or finance of local governments or schools. The special commission shall be dissolved on March 31, 2005.

The special commission shall file a report by November 30, 2004 with the school building assistance board constituted pursuant to section 2 of chapter 70C of the General Laws presenting legislative and regulatory recommendations to improve the efficiency and financial sustainability of the school building assistance program. The school building assistance board shall not make payments to cities, towns or regional school districts pursuant to section 4 of chapter 70C of the General Laws until the board has voted on the recommendations made by the commission and shall have recommended legislation to the secretary of executive office for administration and finance and the chairpersons of the house and senate committees on ways and means.

SECTION 26. The school building assistance board shall establish a grant program for cities, towns and regional districts that have not awarded a construction contract prior to January 28, 2004, and agree in writing by October 31, 2004 to remove a school project or projects from the school building assistance priority list, so-called. The grant program will be limited to school

projects for which the expected reimbursable costs, excluding any of expected financing costs, is \$5,000,000 or greater. The grant paid to a city, town or regional school district per school project will be the lesser of (a) 5 per cent of the commonwealth's portion of expected reimbursable costs, excluding any expected financing costs, or (b) \$1,000,000, and shall be paid from the State School Facilities Grant Payment Fund.

SECTION 27. The provisions of this act shall take effect upon passage.