

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)**

**BILL NUMBER:** A \_\_\_\_\_ S \_\_\_\_\_

**SPONSOR:**

**TITLE OF BILL:** An act to amend the Education Law, in relation to the construction of new educational facilities, the financing of such facilities and the financing of the rehabilitation and reconstruction of existing educational facilities in the City of Yonkers.

**PURPOSE OR GENERAL IDEA OF BILL:** To address growing student population and consistent with legislation in effect for Buffalo, Rochester and Syracuse schools, this bill would ensure access to adequate capital for financing of new school facilities and modernization of existing school facilities in Yonkers.

**SUMMARY OF SPECIFIC PROVISIONS:**

Section 1 - This section shall be cited as "The Yonkers city school district facilities modernization program act"

Section 2 - Legislative Findings and Declaration of Need. The legislature finds that unlike its sister cities of Buffalo, Rochester and Syracuse, Yonkers schools have a growing student population. This increased enrollment has required overuse of available classroom space for regular instruction and resulted in a shortage of libraries, art rooms, music rooms, computer rooms and other common school facility elements. Construction of new facilities will allow for reallocation of classroom space to essential specialized uses. The average age of the school buildings in Yonkers is seventy-five years with the oldest building at one hundred nineteen years old; nine are over ninety-seven years old and most are past their useful life and in need of extensive refurbishment. The age of buildings in Yonkers is significantly over the sixty-five years average age of schools in New York State. Even by maximizing the debt borrowing by the city of Yonkers under existing constitutional and statutory limits the Yonkers city school district is unable to finance modernization of its facilities at a reasonable rate as needs are far greater than the availability of capital. The city school district's facilities are landlocked in highly dense urban neighborhoods lacking proper school bus loops, athletic facilities and other essential school amenities required for the safe and proper administration of an educational institution, and while the Yonkers city school district has invested significant capital, deterioration of building stock outpaces the district's ability to repair it.

Existing funding formulas did not allow Buffalo, Rochester and Syracuse to adequately maintain their school facilities. This was accommodated by special legislation. Yonkers is also unable to pursue a modernization program without special legislation as was provided to the Buffalo, Rochester and Syracuse city school districts. As a result the city of Yonkers has an immediate need for special legislation providing for new school buildings and a facilities modernization program patterned after funding received by the Buffalo, Rochester and Syracuse school districts.

Section 3 - Sets out definitions.

Section 4 – Establishment of the Yonkers Joint Schools Construction Board (YJSC) for the accomplishment of the purposes specified in this act.

Section 5 – General Powers of the YJSC Board.

Section 6 – YJSC Board Responsibilities including development and maintenance of the facilities modernization plan. Such plan shall include: (a) an estimate of total costs to be financed, proposed financing plan, proposed method of financing, terms and conditions of the financing, estimated financing costs. The plan should also address what specific options would be used to ensure that sufficient resources exist to cover the local share of any such project cost on an annual basis; (b) information concerning the potential persons to be involved in the financing and such person's role and responsibilities; (c) estimates on the design, reconstruction and rehabilitation costs by project, any administrative costs for potential projects, and an outline of the timeframe expected for completion of each potential project; (d) direction to the Program Manager in the implementation of the plan; (e) coordination with any proposed amendments to the city school district's five year capital facilities plan submitted in accordance with subdivision 6 of section 3602 of the education law, the regulations of the commissioner and the provisions of this section; and (f) a diversity plan, in compliance with section thirteen of this act, to develop diversity goals, including appropriate community input and public discussion, and develop strategies that would create and coordinate any efforts to ensure a more diverse workforce for the projects.

Section 7 – Facilities Modernization Plan; Project Costs. The Facilities Modernization Plan contemplates approximately Two Billion One Hundred Fifty Million and 00/100 dollars (\$2,150,000,000) of facility needs in four phases with future legislation to determine the aggregate amount of the additional phases. The aggregate amount of project costs authorized and undertaken pursuant to this act as phase 1 shall not exceed Five Hundred Twenty-Three Million dollars (\$523,000,000), unless otherwise authorized by law. Phase 1 shall consist of three new schools and critical infrastructure system replacements at the existing schools. Subsequent acts adding additional cost authority shall be separate phases of the plan. SED is authorized to permit the YJSC board to undertake projects that utilize a maximum cost allowance approach determined on a city school district wide basis at ninety-eight percent (98%) of approved costs. A demographic study shall be initiated prior to each phase of the facilities modernization plan and the facilities modernization plan shall be adjusted based on the space needs identified in such demographic studies

Section 8 – Project Eligibility. To be eligible for selection as a project to be undertaken pursuant to this section, such project shall be included by the city school district in its facilities modernization plan as a special section of the District's five-year capital facilities plan that is required pursuant to subdivision 6 of section 3602 of the education law and the regulations of the commissioner.

Section 9 - Determination of Projects. Upon approval by the commissioner of the YJSC board's comprehensive facilities modernization plan, the YJSC board may select projects to be undertaken pursuant to this section, as provided for in such approved facilities modernization plan. After the YJSC board has selected a new project and plans and specifications for such project have been prepared and approved by the YJSC board, which are consistent with the approved comprehensive plan, the YJSC board shall deliver such plans and specifications to the commissioner for his or her approval.

Section 10 – Contracts. The YJSC board is hereby authorized and empowered to enter into contracts, leases, rental agreements or other arrangements relating to the design (pursuant to the approved plans and specifications), construction, reconstruction, rehabilitation, equipping, financing or managing of one or more projects upon such terms and conditions and for such consideration and for such terms and duration, not to exceed thirty years, as may be agreed upon by the YJSC board. A contract entered into between the YJSC board and any person pursuant to this act may be awarded either pursuant to public bidding in compliance with section 103 of the general municipal law or, in order to foster major investment in existing school buildings or new school buildings and to deliver quality products and services that are beneficial to the city school district and the public it serves, on the basis of factors other than cost alone, including, but not limited to, adherence to facility design, quality and durability or materials, energy efficiency, incorporating systems and approaches which provide maximum facility value using the best current development, construction, leasing, and financing techniques available, and maximization of state building aid. Any contract awarded or entered into by the YJSC board for the construction, lease, or lease-purchase of an educational facility or for any projects undertaken pursuant to this section shall not be subject to section 101 of the general municipal law when the YJSC board has chosen to require a project labor agreement. Whenever the YJSC board enters into a contract for a project undertaken pursuant to this act, it shall be deemed to be a public works project for the purposes of article 8 of the labor law, and all the provisions of article 8 of the labor law shall be applicable to all the work involved with such project including the enforcement of prevailing wage requirements by the New York State department of labor.

Section 11 – Independent Program Manager. The YJSC board shall direct the program manager selected by the city and the city school district through the request for proposal process to oversee the implementation of the facilities modernization plan.

Section 12 – Requests for Proposals for the Award of Projects. The YJSC board shall consult with the commissioner in creating guidelines to be used in the preparation of individual requests for proposals in connection with projects prior to the development of any requests for proposals by the program manager. A contract award may be made to any responsible person selected taking into consideration (i) maximization of state building aid, (ii) net cost, (iii) the financial and organizational capacity of contractors and subcontractors in relation to the magnitude of work they may perform, the record of performance of contractors and subcontractors on previous work, the record of contractors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women owned business enterprises pursuant to article 15-A of the executive law through joint ventures or subcontractor relationships, and (iv) such additional factors set forth in the request for proposals.

Section 13 – Compliance Officer. All contracts entered into by the YJSC Board for projects undertaken by this section shall be monitored by an independent compliance officer. The compliance officer shall have the authority to (i) develop, implement, advertise, promote and monitor policies and procedures to utilize and provide sufficient MWBE, DBE and skilled minority employment resources participation.

Section 14 – Building Aid; Operation of Projects; Exemption from Taxes. Notwithstanding any other general, special, or local law or provision or regulation, all costs under the facilities modernization plan approved by SED shall receive building aid from the State at a rate of ninety-eight percent (98%). Projects exceeding the Maximum Cost Allowance (“MCA”) as identified by SED shall receive the calculated MCA equal to the policy of two five-year cycles.

Section 15 – Maintenance of Effort Projects. Payment of debt service on bonds, notes or other obligations issued to secure financing for projects undertaken pursuant to this act shall not be considered in Maintenance of Effort amounts determined in accordance with the education law.

Section 16 State Education Department Oversight of Projects. Nothing in this section shall be construed to exempt a project undertaken pursuant to this section from the review and approval procedures applied to such projects by the state department of education when undertaken by the city school district pursuant to the education law.

Section 17 – Joint Ventures. Notwithstanding any general, special, or local law to the contrary, the YJSC board, in order to create new and different learning environments or to provide for public safety, health, or other social services needs for those attending, working in, or affiliated with any educational facility, may enter into joint venture agreements with any person to jointly build, share, or utilize, but not operate or maintain, educational facilities built, designed, constructed, or leased pursuant to the terms of this act.

Section 18 – Financing Powers of the YJSC Board; Financing of Projects. To finance project costs pursuant to this act the YJSC board shall have the power and is hereby authorized from time to time to have debt issued on its behalf in an aggregate principal amount not to exceed \$523,000,000, plus such additional amount of debt necessary to provide for a debt service reserve fund and to pay reasonable costs of issuance, as determined by the YJSC board. A project undertaken pursuant to this section shall be a 'project' within the definition and for the purposes of subdivision 4 of section 854 of the general municipal law, which may be financed, owned, or leased by the city of Yonkers industrial development agency or any successor agency thereto. Projects undertaken pursuant to this act may be financed through a special program agreement with the state of New York municipal bond bank agency pursuant to the provisions of section 2435-a of the public authorities law. Notwithstanding any other provision of any general, special, or local law or provision of this act to the contrary, any project undertaken pursuant to this act shall be operated and maintained by the board of education of the city school district in the same manner as existing school buildings owned by the city are operated and maintained by such board.

Section 19 – Exemption from Bond Issuance Charge. The city of Yonkers industrial development agency or any alternative funding conduit entity. Any notes, bonds, or other obligations issued to finance projects authorized pursuant to this act shall be exempt from the collection of any bond issuance charge under subdivision 2 of section 2976 of the public authorities law.

Section 20 – Security for Bonds, Notes and Other Obligations; Remedies. In the event that the city or city school district shall fail to make a payment in such amount and by such date as is provided to be made by such city or city school district under agreements entered into with the city of Yonkers industrial development agency, such entity shall so certify to the state comptroller. The state comptroller, upon receipt of such certificate from such entity, shall withhold such amount payable to such city or city school district to the extent of the amount so stated in such certificate as not having been made, and shall immediately pay over to the trustee on behalf of the bondholders the amount so withheld by the state comptroller.

Section 21 – Actions against the YJSC Board. Limitations on lawsuits.

Section 22 – Progress Reports. The YJSC board shall issue periodic reports to the governor, the comptroller, the commissioner, the temporary president of the senate, the speaker of the assembly, the city Mayor, the city council and the city school district on the progress and status of the projects undertaken by the YJSC board.

Section 23 – Net Interest Cost analysis. Provides for comparison of net interest costs, as defined by the commissioner, between the Yonkers IDA and the New York municipal bond bank agency.

Section 24 – Apportionment of Capital Outlays. Amends education law provisions on apportionment of state aid for capital outlays and debt service for school building purposes to include annual payments relating to the financing, refinancing, design, reconstruction, rehabilitation, improvement, furnishing and equipping of, or otherwise providing for projects authorized pursuant to the this act.

Section 25 – Amends section 2432 of the MBBA enabling statute to add Yonkers to definition of “special program municipality” solely for the purpose of this act.

Section 26 – Conforming amendments to 2435-a of the MBBA enabling statute.

Section 27 – Conforming amendments to 2436 of the MBBA enabling statute.

Section 28 – Conforming amendments to 2438 of the MBBA enabling statute.

Section 29 - Effect of Inconsistent Provisions.

Section 30 – Severability; construction.

Section 31 - Effective Date.

### **JUSTIFICATION:**

As described in the Legislative Findings and Declaration of Need, unlike its sister cities of Buffalo, Rochester and Syracuse, Yonkers schools have a growing population and the average age of the school buildings in Yonkers is 75 years with the oldest building at 119 years old; nine are over 97 years old and most are past their useful life and many are in fact in need of extensive refurbishment. Even by maximizing the debt borrowing under existing statutory limits the Yonkers city school district is unable to modernize and upgrade their facilities at a reasonable rate as needs are far greater than the availability of capital. Already managing a seat-deficit of 4,104 seats, increased enrollment has required overuse of available classroom space for regular instruction and resulted in a shortage of libraries, art rooms, music rooms, computer rooms and other common school facility elements. Construction of new facilities will allow for reallocation of classroom space to essential specialized uses. The city school district’s facilities are landlocked in highly dense urban neighborhoods lacking proper school bus loops, athletic facilities and other essential school amenities required for the safe and proper administration of an educational institution, and while the Yonkers city school district has invested more capital than other comparable districts – deterioration of building stock outpaces ability to repair it.

Such deterioration of the Yonkers schools and inability to expand school sites to provide even a modicum of customary facilities and amenities to students is a serious impediment to learning and teaching. If the quality of education in the city is to be improved, existing schools must be rehabilitated and reconstructed and new city schools must be built.

The rising student population includes many students with special needs and students with English as a second language. The lack of libraries, art rooms, music rooms, computer rooms and other common school facility elements, together with the city's fiscal limitations, magnify the inability to maintain existing aging facilities to accommodate the increasing student populations. Existing funding formulas did not allow Buffalo, Rochester and Syracuse to adequately maintain their school facilities. This was accommodated by special legislation. Yonkers is also unable to pursue a modernization program without special legislation as was provided to the Buffalo, Rochester and Syracuse city school districts. As a result the city of Yonkers has an immediate need for special legislation providing for new school buildings and a facilities modernization program patterned after funding received by the Buffalo, Rochester and Syracuse school districts.

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

**PRIOR LEGISLATIVE HISTORY:**

New Legislation.

**FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT:**

Undetermined

**EFFECTIVE DATE:**

This act shall take effect immediately.