

HOUSE No. 4017

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Duffy and Mindy Domb

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to support higher education infrastructure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Patricia A. Duffy</i>	<i>5th Hampden</i>	<i>1/18/2023</i>
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>1/18/2023</i>

HOUSE No. 4017

By Representatives Duffy of Holyoke and Domb of Amherst, a petition (accompanied by bill, House, No. 4017) of Patricia A. Duffy and Mindy Domb for legislation to establish a public higher education facilities modernization and reconstruction trust fund with certain dedicated sales tax revenue. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to support higher education infrastructure.

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

1 SECTION 1. Chapter 10 of the General Laws, as appearing in the 2020 Official Edition,
2 is hereby amended by inserting after section 35SSS the following section:-

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

5 “Authority”, the Massachusetts public higher education facilities authority established in
6 section 1 of chapter 79.

7 “Dedicated sales tax revenue amount”, all moneys received by the commonwealth equal
8 to 1 per cent of the receipts from sales, as defined by chapter 64H, and 1 per cent of the sales
9 price of purchases, as defined by chapter 64I, from that portion of the taxes imposed under said
10 chapters 64H and 64I as excises upon the sale and use at retail of tangible property or of services,
11 and upon the storage, use or other consumption of tangible property or of services, including

12 interest thereon or penalties, but not including any portion of the taxes that constitute special
13 receipts within the meaning of subsection (b ½) of section 10 of chapter 152 of the acts of 1997
14 or within the meaning of said subsection (b ½) of said section 10 of said chapter 152 or any
15 portion of the taxes imposed on the sale of meals as defined in paragraph (h) of section 6 of said
16 chapter 64H.

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

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

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

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

34 (d) The authority shall certify annually to the treasurer as trustee with copies provided to
35 the clerks of the house and senate and to the house and senate committees on ways and means
36 that it has made provision in its annual budget and its capital plan under section 18 of chapter 79
37 for sufficient amounts to be available to meet debt service payments or other payments due under
38 financing obligations, including, without limitation, leases or grant obligations.

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

46 (f) In order to increase the marketability of any bonds or notes of the trust, which may be
47 secured by or payable from amounts held in the fund, the sums to be credited to the fund are
48 hereby impressed with a trust for the benefit of the trust and the holders from time to time of the
49 bonds or notes, and in consideration of the acceptance of payment for the bonds or notes, the
50 commonwealth covenants with the purchasers and all subsequent holders and transferees of the
51 bonds or notes that while the bond or note shall remain outstanding, and so long as the principal
52 of or interest on the bond or note shall remain unpaid, the sums to be credited to the fund shall
53 not be diverted from the control of the trust and, so long as the sums are necessary, as determined
54 by the authority in accordance with any applicable bond resolution, trust or security agreement or
55 credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred

56 by the trust, for the purposes for which they have been pledged, the rates of the excises imposed
57 by said chapters 64H and 64I shall not be reduced below the rates prescribed by this section.

58 SECTION 2. The General Laws are hereby amended by inserting after chapter 78 the
59 following chapter:-

60 Chapter 79.

61 PUBLIC HIGHER EDUCATION BUILDING AUTHORITY

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

69 (b) The authority shall consist of the state treasurer, who shall serve as chairperson, the
70 secretary of administration and finance, the commissioner of education, the commissioner of
71 higher education and 4 additional members appointed by the state treasurer, 2 of whom shall
72 have practical experience in higher education facilities planning, higher education building
73 construction or architecture and higher education building design, and 2 of whom shall be
74 persons in the field of higher education with demonstrated knowledge of relevant federal and
75 state standards for higher education, each of whom shall serve a term of 2 years; provided,
76 however, that a person appointed to fill a vacancy shall serve only for the length of the unexpired
77 term. An appointed member of the authority shall be eligible for reappointment. The authority

78 shall annually elect 1 of its members to serve as vice-chairperson. Each member of the authority
79 serving ex officio may appoint a designee pursuant to section 6A of chapter 30.

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

88 (d) Any action of the authority may take effect immediately and need not be published or
89 posted unless otherwise provided by law. Meetings of the authority shall be subject to section
90 11A ½ of chapter 30A; provided, however, that said section 11A ½ shall not apply to any
91 meeting of members of the authority serving ex officio in the exercise of their duties as officers
92 of the commonwealth so long as no matters relating to the official business of the authority are
93 discussed and decided at the meeting. The authority shall be subject to all other provisions of
94 said chapter 30A and records pertaining to the administration of the authority shall be subject to
95 section 42 of chapter 30 and section 10 of chapter 66. All moneys of the authority shall be
96 considered to be public funds for purposes of chapter 12A. The operations of the authority shall
97 be subject to chapter 268A and chapter 268B and all other operational or administrative
98 standards or requirements to the same extent as the office of the state treasurer.

99 Section 2. For the purposes of this chapter, the following terms shall, unless the context
100 requires otherwise, have the following meanings:-

101 “Additional Revenues”, any moneys that are not defined as the dedicated sales tax
102 revenue amount that are appropriated, gifted, granted, pledged or otherwise made available to the
103 authority by the commonwealth, any local governmental entity, the federal government, not-for-
104 profit organizations, for-profit organizations or private individuals.

105 “Advisory board”, the public higher education building advisory board.

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

110 “Approved higher education building project”, a higher education building project
111 approved by the authority.

112 “Assisted facility”, a public higher education facility that has received a total facilities
113 grant pursuant to this chapter.

114 “Authority”, the Massachusetts higher education facilities authority.

115 “Capital construction project”, any capital project, other than a major reconstruction
116 project, for the construction, enlargement or original equipping of any public higher education
117 facility, a project for the renovation or partial renovation of an existing structure for use as public
118 higher education facility or the renovation or partial renovation of an existing public higher
119 education facility.

120 “Construction manager”, a construction manager as defined by section 38A ½ of chapter
121 7.

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

131 “Eligible applicant”, a public higher education institution located within the
132 commonwealth.

133 “Energy efficient construction rating”, rating given to eligible applicants by the authority
134 based upon a determination that the construction techniques of an approved higher education
135 project meet or exceed energy efficiency standards established by the board of building
136 regulations and the National Institute of Standards and Technology and which meet the purposes
137 of subsection (c) of section 9 of chapter 23J.

138 “Innovative community use”, approved public higher education facilities projects that
139 combine community resources to streamline the costs of the facilities project and utilize other
140 funding sources for the facilities project.

141 “Maintenance rating”, rating given to the public higher education institutions by the
142 authority, based on a maintenance assessment conducted by the authority.

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

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

152 “Program”, the public higher education facilities assistance program.

153 “Project manager”, a person designated or assigned by an eligible applicant, and
154 approved by the authority, to manage and coordinate daily administration of a public higher
155 education facility or building project to completion including, but not limited to, a public higher
156 education institution staff person or a volunteer with appropriate experience and expertise.

157 “Prototypical public higher education facilities plans”, public higher education facilities
158 project architectural designs and plans collected and maintained by the authority for consultation
159 by eligible applicants.

160 “Public higher education facility”, any real property required or useful for the operation
161 of a public higher education institution.

162 “Public higher education facility project”, any capital construction or major
163 reconstruction projects; the lease of buildings or modular facilities; arrangements with nonprofit
164 or municipal entities; and other public higher education facilities projects.

165 “Public higher education institution”, any higher education institution that is a part of the
166 public institution of higher education system established in section 5 of chapter 15A.

167 “Total facilities grant”, the total grant with respect to an approved public higher
168 education facilities project and which is calculated as follows: In the case of a grant for an
169 approved project of a public higher education institution, the total facilities grant shall be the
170 product of multiplying the final approved costs of such project, including costs referred to in
171 section 4, by the reimbursement percentage determined pursuant to section 10 for the year in
172 which the project is approved.

173 “Trust”, the Public Higher Education Facilities Modernization and Reconstruction Trust,
174 established by section 35TTT of chapter 10.

175 Section 3. (a) There is hereby established a public higher education facilities assistance
176 program. The purpose of the program is generally to encourage and foster the thoughtful
177 establishment and maintenance of public higher education facilities in the commonwealth, to
178 conduct surveys and studies relative thereto and to administer the provisions of this chapter
179 relative to grants and loans to public higher education institutions for the planning and
180 construction of public higher education facility projects.

181 The purpose of the program shall be the provision of financial assistance to public higher
182 education institutions as beneficiaries of the trust to finance and refinance the costs of approved
183 higher education facilities projects as provided in, and as necessary to implement, this chapter

184 including, without limitation, providing for the payment of grants approved pursuant to this
185 chapter and the payment of all costs of the authority, including professional and financial
186 services incident to the conduct of its operations.

187 (b) The authority shall establish general policy and review standards regarding public
188 higher education facilities construction, renovation and maintenance and administer the program
189 in accordance with this chapter. In carrying out its duties, the authority shall be guided by the
190 following principles: preservation of open space and minimization of loss of such open space,
191 emphasis on thoughtful community development and project flexibility that addresses the needs
192 of individual communities and municipalities. In accordance with the terms of any bond
193 resolution, trust or security agreement or credit enhancement agreement, surety bond or
194 insurance policy related to indebtedness incurred by the authority secured by amounts provided
195 to the trust in accordance with section 35BB of chapter 10, the holders of indebtedness and the
196 providers of any credit enhancement, surety bond or insurance policy shall also be beneficiaries
197 of the trust. The authority shall apply and disburse moneys and revenues of the trust without
198 further appropriation or allotment.

199 (c) The authority shall establish general policy and review standards regarding school
200 building construction, renovation, maintenance and facility space, administer the program in
201 accordance with this chapter and coordinate the distribution of public higher education facilities
202 grants in accordance with this chapter. The board shall be responsible for the oversight and
203 management of the program as established herein. In carrying out its duties, the authority shall
204 be guided by the following principles: preservation of open space and minimization of loss of
205 such open space, emphasis on thoughtful community development and project flexibility that
206 addresses the needs of individual communities and municipalities.

207 The authority may:

208 (i) review, approve or deny grant applications, waivers and other requests submitted to
209 the program, review, approve and recommend changes to grant payment schedules or suspend
210 said schedules for program projects such as refinancing, audit findings and any other
211 circumstances that may warrant such action;

212 (ii) provide architectural or other technical advice and assistance, training and education,
213 to public higher education facilities and to general contractors, subcontractors, construction or
214 project managers, designers and others in the planning, maintenance and establishment of public
215 higher education facilities;

216 (iii) recommend to the general court such legislation as it may deem desirable or
217 necessary to further the purposes of this chapter;

218 (iv) develop a formal enrollment projection model or consider using projection models
219 already available;

220 (v) apply for, receive, administer and comply with the conditions and requirements
221 respecting any grant, gift or appropriation of property, services or moneys;

222 (vi) enter into contracts, arrangements and agreements with other persons and execute
223 and deliver all trust agreements, grant agreements and other instruments necessary or convenient
224 to the exercise of the powers of the trust;

225 (vii) borrow and repay money by issuing bonds or notes of the trust to apply the proceeds
226 thereof as provided in this chapter and to pledge or assign or create security interests in any
227 revenues, receipts or other assets or funds of the trust to secure bonds or notes;

- 228 (viii) develop a project priority system;
- 229 (ix) collect and maintain a clearinghouse of prototypical public higher education facilities
230 plans which may be consulted by eligible applicants;
- 231 (x) determine eligibility of cost components of projects for reimbursement, including
232 partial or full eligibility for project components;
- 233 (xi) establish appropriate rules and regulations as may be necessary to carry out the
234 purposes of this chapter including a formula for the calculation of the amount of public higher
235 education facilities grants awarded pursuant to this chapter;
- 236 (xii) prepare an annual budget for the administration of the program;
- 237 (xiv) collect and maintain data on all the public higher education facilities in the
238 commonwealth, including information on size, usage, enrollment, available facility space and
239 maintenance;
- 240 (xv) perform or commission a needs survey to ascertain the capital construction,
241 reconstruction, maintenance and other capital needs for higher education facilities in the
242 commonwealth;
- 243 (xvi) develop a long term capital plan in accordance with needs and projected funding;
- 244 (xvii) adopt and amend bylaws and rules, regulations and procedures for the conduct of
245 the business of the trust as the board shall deem necessary to carry out the provisions of this
246 chapter;
- 247 (xviii) establish and maintain reserves;

248 (xix) disburse amounts due to public higher education institutions under grants approved
249 by the authority to finance or refinance costs of approved public higher education facilities
250 projects and through the purchase of bonds or notes , at the rates and on the terms that the
251 authority may in its discretion determine, and provide for the payment of all costs of the
252 authority, including professional and financial services incident to the conduct of its operations;

253 (xx) invest the funds of the trust in such investments as may be legal investments for
254 funds of the commonwealth or any fiduciary in the commonwealth;

255 (xxi) obtain insurance and enter into agreements of indemnification necessary or
256 convenient to the exercise of the powers of the trust;

257 (xxii) sue and be sued and prosecute and defend actions relating to the affairs of the trust;
258 provided, however, that the trust shall not be authorized to become a debtor under the United
259 States Bankruptcy Code;

260 (xxiii) engage accounting, management, legal, financial, consulting and other
261 professional services necessary to the operations of the trust; and

262 (xxiv) do all things necessary or convenient to carry out the purposes of this chapter.

263 (d) The chairperson of the authority shall appoint an executive director, who shall
264 supervise the administrative affairs and general management and operations of the authority and
265 who shall also serve as secretary of the authority, ex officio. The executive director shall receive
266 a salary commensurate with the duties of the office, and may be removed by the board for cause.
267 The executive director may appoint other officers of the authority necessary to the functioning of
268 the authority. The executive director shall designate no fewer than 1 employee to be a municipal

269 liaison to assist cities and towns with concerns regarding the construction of schools. Sections
270 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not apply to the executive
271 director or any other employees of the authority. The executive director shall, with the approval
272 of the authority: (i) plan, direct, coordinate and execute administrative functions in conformity
273 with the policies and directives of the authority; (ii) employ professional and clerical staff as
274 necessary; (iii) report to the authority on all operations under his control and supervision; (iv)
275 prepare an annual budget and manage the administrative expenses of the authority; and (v)
276 undertake any other activities necessary to implement the powers and duties set forth in this
277 chapter.

278 Section 4. There shall be a public higher education facilities advisory board comprised of:
279 the state auditor or a designee; the inspector general or a designee; the superintendent of the state
280 police or a designee; the state fire marshal or a designee; the director of the Massachusetts
281 emergency management agency or a designee; the executive director of the authority, who shall
282 serve as the secretary to the advisory board and shall be a nonvoting member of the board; and
283 17 members to be appointed by and represent the following nongovernmental organizations:
284 Massachusetts Municipal Association, Inc., Massachusetts Association of School Committees,
285 Inc., the Massachusetts Mayors Association, Inc., Massachusetts Association of School
286 Superintendents, Inc., Massachusetts Association of Regional Schools, Inc., Massachusetts
287 Building Trades Council, the Massachusetts chapter of Associated Builders & Contractors, Inc.,
288 Massachusetts Alliance for Small Contractors, American Council of Engineering Companies of
289 Massachusetts, Associated Subcontractors of Massachusetts, Inc., American Institute of
290 Architects-Massachusetts, Massachusetts Smart Growth Alliance, Massachusetts Taxpayers
291 Foundation, Inc., Associated General Contractors of Massachusetts, Inc., Massachusetts Chiefs

292 of Police Association Incorporated, Fire Chiefs' Association of Massachusetts, Inc. and acting
293 jointly, the Massachusetts Teachers Association and Massachusetts Federation of Teachers. The
294 advisory board shall assist the authority in the development of general policy regarding public
295 higher education facilities construction, renovation, reconstruction, maintenance and facility
296 space, preservation of open space and minimization of loss of open space, thoughtful community
297 development, cost management, adequate provisions for safety and security and shall provide
298 technical advice and input to the authority. The advisory board shall meet at least quarterly.

299 Section 5. (a) The authority may provide by resolution for the issuance from time to time
300 of bonds for any purpose of the trust, which bonds may be issued as general obligations of the
301 authority or as special obligations payable solely from particular revenues or moneys of the
302 authority. Bonds of the authority shall not be considered to be a debt of the commonwealth or of
303 any of its political subdivisions. The bonds of each issue may be dated, may bear interest at such
304 rate or rates, including rates variable from time to time, and may mature or otherwise be payable
305 or redeemable at such times as the authority may determine. The authority shall determine the
306 denominations of bonds, the details of their execution and authentication and their places of
307 payment within or without the commonwealth. Before initial issuance of each series of bonds,
308 the authority shall advise the state finance and governance board established under section 97 of
309 chapter 6 of the terms of the bonds and the timing of their issuance. In case any member or
310 officer of the authority whose signature appears on any bonds shall cease to be such officer
311 before their delivery, the signature shall nevertheless be valid and sufficient as if the officer had
312 remained in office until delivery. Bonds may be issued in certificated or uncertificated form,
313 payable to bearer or registered owners, and, if notes, may be made payable to bearer or to order.
314 The authority may sell the bonds of the authority at public or private sale, at par or for such

315 premium or discount price as it may determine. The authority may by resolution delegate to any
316 member or officer of the authority the power to determine any of the matters set forth in this
317 section. The aggregate principal amount of all bonds issued under this chapter shall not exceed
318 \$10,000,000,000 outstanding at any time. The principal amount of bonds for the payment or
319 redemption of which, either at or before maturity, refunding bonds shall have been issued, shall
320 be excluded from the aggregate principal amount of bonds issued under this chapter for purposes
321 of computing the limit on outstanding bonds under this section.

322 (b) Bonds of the authority may be secured by a trust agreement between the authority and
323 the bond owners or a corporate trustee, which may be any trust company or bank having the
324 powers of a trust company within or without the commonwealth. A trust agreement may pledge
325 or assign, in whole or in part, any receipts, fees, revenues or other payments received or to be
326 received by the authority, including without limitation amounts provided to the trust in
327 accordance with section 35BB of chapter 10, grants, appropriations or other assistance from the
328 commonwealth or the United States or any political subdivision or instrumentality of either,
329 investment earnings on its funds and accounts and any other fees, charges or other income
330 received or receivable by the authority and any contract or other rights to receive the same,
331 whether then existing or thereafter coming into existence, and whether then held or thereafter
332 acquired by the trust, and the proceeds thereof. A trust agreement may contain, without
333 limitation, provisions for protecting and enforcing the rights, security and remedies of the
334 bondholders, provisions defining defaults and establishing remedies, which may include
335 acceleration and may also contain restrictions on remedies by individual bondholders. A trust
336 agreement may also contain covenants of the trust concerning the custody, investment and
337 application of moneys, the issuance of additional or refunding bonds, the use of any surplus bond

338 proceeds, the establishment of reserves and the regulation of other matters customarily treated in
339 trust agreements. At the request of the authority, the state treasurer shall join in any trust
340 agreement or to otherwise agree with the authority, any lender or any trustee for bondholders to
341 hold the Public Higher Education Facilities Modernization and Reconstruction Trust Fund,
342 established pursuant to said section 35TTT of said chapter 10, in compliance with any covenants
343 and provisions relating thereto in any trust agreement.

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

355 (d) The authority may by resolution provide for the issuance by the authority of interim
356 receipts or temporary bonds, exchangeable for definitive bonds when the bonds are executed and
357 are available for delivery. The authority may also provide for replacement of mutilated,
358 destroyed or lost bonds. The authority may purchase and invite offers to tender for purchase any
359 outstanding bonds; provided, however, that no purchase by the authority shall be made at a price,
360 exclusive of accrued interest, if any, exceeding the principal amount of the bond or, if greater,

361 the redemption price of the bond when next redeemable at the option of the authority. The
362 authority may resell any bonds it purchases in such manner and for such price as it may
363 determine.

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

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

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

383 (h) It shall be lawful for any bank or trust company to act as a depository or trustee under
384 a trust agreement, provided it furnishes such indemnification and reasonable security as the
385 authority may require. Any assignment or pledge of revenues, funds or other assets or property
386 made by the authority shall be valid and binding and shall be deemed continuously perfected for
387 the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and
388 property, rights therein and thereto and proceeds so pledged and then held or thereafter acquired
389 or received by the authority shall immediately be subject to the lien of the pledge without any
390 physical delivery or segregation or further act, and the lien of the pledge shall be valid and
391 binding against all parties having claims of any kind in tort, contract or otherwise against the
392 authority, whether or not the parties have notice thereof. The trust agreement by which a pledge
393 is created need not be filed or recorded to perfect the pledge except in the records of the trustees
394 and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the
395 authority is an exercise of its political and governmental powers, and revenues, funds, assets,
396 property and contract or other rights to receive the same and the proceeds thereof which are
397 subject to the lien of a pledge or assignment created under this chapter shall not be applied to any
398 purposes not permitted by the pledge or assignment. Any holder of a bond and any trustee under
399 a trust agreement, except to the extent its rights may be restricted by the trust agreement, may
400 bring suit upon the bonds and may pursue any other legal action to protect and enforce its rights
401 and compel performance of all duties required to be performed by the trust and the authority.

402 Section 6. The authority and its existence shall continue until terminated by law, but no
403 such law shall take effect so long as the authority shall have bonds outstanding unless adequate
404 provision has been made for the payment or satisfaction thereof. Upon termination of the
405 authority, the title to all properties of the authority that remain after provision for the payment or

406 satisfaction of all bonds of the authority shall vest in the commonwealth. The obligations, debts
407 and liabilities of the authority shall be assumed by and imposed upon the commonwealth and
408 shall be transferred to the state treasurer or to such other successor as may be provided by law.

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

419 Any commitments, improvements, repairs, renovations, capital construction projects,
420 major reconstruction projects, capital improvements required under the Americans With
421 Disabilities Act, new construction, other improvements, major repairs or renovations, any other
422 projects to conform to federal statutory mandates, or projects specifically authorized or mandated
423 for which the necessary additional revenues to complete these commitments, improvements,
424 repairs, renovations, capital construction projects, major reconstruction projects, capital
425 improvements required under the Americans With Disabilities Act, new construction, other
426 improvements, major repairs or renovations, or any other projects to conform to federal statutory
427 mandates, so authorized or mandated and for which additional revenues have been made
428 available shall be subject to the rules, laws and regulations of the authority.

429 Section 7. The authority, in cooperation with the state treasurer, shall at all times keep
430 accounts of all receipts, expenditures and disbursements and all assets and liabilities of the
431 authority, which shall be open to inspection by any officer or duly appointed agent of the
432 commonwealth. The authority shall submit an annual report, in writing, to the governor and the
433 clerks of the house of representatives and the senate, who shall forward the same to the president
434 of the senate, the speaker of the house of representatives, the chairpersons of the house and
435 senate committees on ways and means and the house and senate chairpersons of the joint
436 committee on education. The report shall include financial statements relating to the operations,
437 assets and expenditures of the authority maintained in accordance with generally accepted
438 accounting principles so far as applicable and audited by an independent certified public
439 accountant firm.

440 Section 8. In addition to other remedies of the authority under any bond, note or other
441 evidence of indebtedness, if at any time any amount is distributable or payable by the
442 commonwealth to any public higher education institution and a sum is due to the authority from
443 public higher education institution, for any cause whatsoever, the sum due to the authority, as
444 certified by the authority to the state treasurer, shall be deducted by the state treasurer from the
445 amount distributable or payable to the public higher education institution and shall be paid
446 promptly to the authority. Payment by the state treasurer under this section shall continue to be
447 made until the deficiency on the part of the city, town or regional school district has been offset
448 by the payments from the state treasurer. The authority may also recover from that public higher
449 education institution, in an action in superior court, any amount due the authority, together with
450 any other actual damages the authority shall have sustained from the failure or refusal of that
451 public higher education institution to make payments owing to the authority.

452 Section 9. Any eligible applicant may apply to the board for reimbursement, in whole or
453 in part, of any expenses incurred for educational, engineering and architectural services
454 incidental to the planning of public higher education facilities project or any expenses incurred
455 for surveys made of public higher education facilities needs and conditions, the contract for
456 which has been approved by the authority. Such application shall be accompanied by information
457 and documentation that the authority may require.

458 Section 10. An eligible applicant may submit to the authority a statement of interest as set
459 forth and in a form prescribed by the authority, and which shall state what the eligible applicant
460 believes are the deficiencies in said eligible applicant's respective public higher education
461 facilities that meet 1 or more of the statutory priorities set forth in sections 11, 13 and 14 of this
462 chapter or in such additional regulations as the authority may promulgate. Said statement of
463 interest shall be accompanied by such additional forms, documents, and information as the
464 authority shall deem necessary to review the statement. The submission for a statement of
465 interest shall not commit the authority to accept any further application materials, approve an
466 application, or provide a grant or any other type of funding, or place any other obligation or
467 requirement upon the authority. The authority shall notify an eligible applicant if the authority
468 determines that the statement of interest has not met the criteria established in said sections 11,
469 13, and 14.

470 If the authority determines that the statement of interest and associated material merits
471 further consideration, the authority may, in its discretion, invite the eligible applicant to apply to
472 the authority for a public higher education facilities grant to meet in part the cost of a higher
473 education project. Application shall mean a series of documents, forms, letters, statements,
474 certifications, plans, studies, drawings and other data and information required by the authority

475 to be submitted within the deadlines and in the format prescribed by the authority and shall be
476 accompanied or supplemented by drawings, plans, estimates of cost and proposals for defraying
477 the costs or any additional information the authority may require before construction is
478 undertaken. The authority shall promulgate regulations establishing the procedural steps by
479 which applications must be made and reviewed, and may at any time during the application
480 process determine that the application does not warrant further consideration, pursuant to the
481 priority criteria established in said sections 11, 13, and 14, and by the authority's regulations.

482 In the event that an eligible applicant undertakes construction before approval is
483 obtained, the eligible applicant shall remain subject to the authority's approval process as if the
484 construction were not undertaken. If the authority invites an eligible applicant to apply, but is
485 unable to approve the application due solely to the limit on total facilities grants established by
486 section 12, at the request of the eligible applicant, the application shall be retained by the
487 authority for 1 year and reviewed in the year immediately following the year of the application;
488 provided, that in said review, the project shall be ranked and evaluated using the priorities
489 established by section 13 and if the application is not approved by the authority during the
490 review, the applicant shall be required to submit a new application; provided, further, that the
491 authority shall require a new application from an applicant seeking to make a substantial change
492 in scope of the project which is the subject of the application subsequent to disapproval by the
493 authority.

494 Section 11. (a) Upon receipt of an application pursuant to section 10, from time to time,
495 the authority may designate approved higher education projects. The authority shall examine
496 forthwith the applications and any facts, estimates, or other information relative thereto, and shall

497 make the following findings in order to designate a higher education project as an approved
498 higher education project:

499 (1) the public higher education facilities project is in the best interests of the
500 commonwealth and the eligible applicant, with respect to its site, type of construction,
501 sufficiency of accommodations, open space preservation, urban development, urban sprawl,
502 energy efficiency and otherwise;

503 (2) the public higher education facilities project is necessary to meet educational
504 standards required of public institutions of higher education by the department of higher
505 education;

506 (3) the public higher education facilities project has a value over its useful life
507 commensurate with the lifecycle cost of building, operating and maintaining the project;

508 (4) the public higher education facilities project is within the capacity of the authority to
509 finance within revenues projected to be available to the trust; and

510 (5) adequate provisions have been made in the public higher education facilities project
511 for students with disabilities.

512 The authority shall also consider the availability of funds projected in the trust and other
513 financial obligations of the authority, the authority's long term capital plan, the results of needs
514 surveys, the order of priorities under section 13 and construction procedures and standards under
515 section 14 and otherwise as prescribed by law and regulation.

516 (b) Within a reasonable time after receipt of the application the authority shall notify the
517 applicant of its approval or rejection thereof, and, in the event of its rejection, of the reasons

518 therefor. Notice of approval hereunder shall be accompanied by a statement of the estimated
519 approved cost as determined by the authority, and an estimate of the amount of total facilities
520 grant to which the eligible applicant may be entitled.

521 (c) If the authority designates a public higher education facilities project to be an
522 approved public higher education facilities project, the authority shall compute the estimated
523 approved cost of the project, which cost may be equal to the estimated cost furnished by the
524 eligible applicant or a lesser amount, and compute the amount estimated of facilities grant to
525 which the applicant would be entitled, such computation being based on said approved cost. The
526 final approved cost shall be determined by the authority within a reasonable time after the
527 acceptance of the completed project by the local school committee. Final audits shall be
528 conducted promptly by the authority. Final payments shall be determined based on the final
529 approved cost.

530 (d) Any public higher education institution which has received, in accordance with
531 subsections (b) and (c), notice of approval and an estimate of the amount of a public higher
532 education facilities grant, may borrow from time to time to finance that portion of the cost of the
533 approved public higher education facilities project not being paid by such grant may issue bonds
534 or notes therefor which shall bear on their face the words –Public Higher Education Facilities
535 Project Loan. Each authorized issue shall constitute a separate loan, and the loans shall be paid in
536 not more than 25 years from their dates or up to 30 years if consistent with the guidelines
537 established by the director of accounts pursuant to section 38 of chapter 44. Any public higher
538 education institution which has received, in accordance with subsections (b) and (c), notice of
539 approval and an estimate of the amount of a school facilities grant may issue and renew
540 temporary notes. The authority shall issue regulations relative to issuance of temporary notes for

541 public higher education facilities construction. Indebtedness incurred under this chapter shall be
542 outside the statutory debt limit but shall, except as herein provided, be subject to chapter 44.

543 (e) A public higher education institution may borrow for a term of not more than 5 years
544 for the cost of such feasibility studies as may be required to apply for a public higher education
545 facilities grant under this chapter.

546 Chapter 12. There shall be a limit on the estimated amount of grants approved by the
547 authority during a fiscal year. For fiscal year 2024, the limit shall be \$800,000,000. For each
548 fiscal year thereafter, the limit shall be the limit for the previous fiscal year plus the lower of: (i)
549 the rate of growth in the dedicated sales tax revenue amount as defined in subsection (a) of
550 section 35TTT of chapter 10; or (ii) 4.5 per cent.

551 Chapter 13. The authority shall approve public higher education facilities projects and
552 reimbursements pursuant to this chapter in accordance with the following order of priorities:

553 (1) priority shall be given to public higher education facilities projects needed in the
554 judgment of said board to replace or renovate a building which is structurally unsound or
555 otherwise in a condition seriously jeopardizing the health and safety of students, where no
556 alternative exists;

557 (2) priority shall be given to public higher education facilities projects to eliminate
558 existing severe overcrowding;

559 (3) priority shall be given to public higher education facilities projects needed in the
560 judgment of said authority to prevent loss of accreditation;

561 (4) priority shall be given to public higher education facilities projects needed in the
562 judgment of said authority to prevent severe overcrowding expected to result from increased
563 enrollments which must be substantiated;

564 (5) priority shall be given to projects needed in the judgment of said authority for the
565 replacement, renovation or modernization of the heating system in any public higher education
566 facility to increase energy conservation and decrease energy related costs in the facility;

567 (6) priority shall be given to any public higher education facility project needed in the
568 judgment of said authority for short term enrollment growth;

569 (7) priority shall be given to public higher education facilities projects needed in the
570 judgment of said authority to replace or add to obsolete buildings in order to provide for a full
571 range of programs; and

572 Notwithstanding the provisions of section 11, the authority may defer its approval or
573 disapproval of any project application if such deferral is necessary for the effective
574 implementation of the provisions of this section. The authority may issue regulations to define
575 the procedures pursuant to which the priorities established by this section will be implemented.

576 Section 14. (a) In order to maximize the cost effective production of efficient and creative
577 public higher education facilities projects, the authority shall require that every public higher
578 education facilities project conform to standards and procedures as the authority considers
579 appropriate including, not but limited to, the following: (1) that the applicant fully consider all
580 available options for satisfying the described need, including tuition agreements rental or
581 acquisition and any necessary rehabilitation or usage modification of any existing building which
582 could be made available for school use; (2) that the applicant's site selection is based on the cost

583 and environmental factors, including an awareness of soil conditions and their probable effect on
584 foundation and site development costs, transportation effects, dislocation of site occupants and
585 relationship to other community facilities; (3) that the applicant enter into contracts, using forms
586 satisfactory to the authority for such competent architectural, engineering and other services as
587 may be required; and (4) that procedures satisfactory to the authority are followed by the
588 applicant throughout the planning and construction of the project such as assuring maximum
589 attention to the operating and capital cost effects of program and design decisions, materials and
590 systems selections.

591 (b) The authority shall issue annually, as hereinafter provided, maximum eligible cost
592 standards and size standards for public higher education facilities projects. These standards may
593 take into account the type and location of a proposed public higher education facilities project
594 and may also take into account the difficulty of siting public higher education facilities in dense
595 urban areas in which there exists a shortage of available sites and an increased cost of
596 construction and major renovations. The program standards shall define prototype public higher
597 education facilities design and space recommendations for each specified program activity
598 eligible for state financial assistance. The program standards shall, in the judgment of the
599 authority, be in conformity with the minimum requirements of state law and shall also reflect
600 consideration of cost effects, prevailing educational standards in the commonwealth and the
601 needs of efficient and creative higher education projects. The cost standards shall be based on the
602 price experience of recently completed and recently bid public higher education facilities
603 projects, taking into account the cost effectiveness of design, construction and programming
604 techniques utilized in such higher education projects. For the purpose of calculating the total
605 construction grant, the estimated approved cost and the final approved cost for a higher

606 education project shall not exceed the cost that would result if the project conformed to prototype
607 school standards. The provisions of this section shall not be deemed to preclude an eligible
608 applicant from exceeding prototype public higher education facilities standard; provided,
609 however, the cost of such additional facilities and design shall not be included in the estimated
610 cost and final approved cost on the basis of which the state construction grant is calculated.

611 (c) On or before March 1 in each year, the authority shall adopt interim regulations,
612 including minimum program standards and maximum cost standards, for the implementation of
613 this section. Upon the adoption of such regulations, the authority shall forthwith file copies
614 thereof with the clerk of the house of representatives who shall refer such regulations to an
615 appropriate committee of the General Court. Within 30 days after such filing, the committee may
616 hold a public hearing on the regulations, shall issue a report, and shall file a copy of the report
617 with the authority. The authority shall adopt final regulations making such revisions in the
618 interim regulations as it deems appropriate in view of the committee's report and shall forthwith
619 file a copy of the regulations with the chairperson of the committee to which the interim
620 regulations were referred. Not earlier than 30 days after the date of such filing, the board shall
621 file the final regulations with the state secretary and the regulations shall thereupon take effect.

622 (d) A public higher education institution shall not be entitled to funds granted pursuant to
623 this chapter except at the discretion of the authority in accordance with this chapter.

624 Section 15. Grants for approved public higher education facilities projects shall be paid in
625 accordance with a disbursement schedule approved by the authority.

626 Section 16. For approved projects that are an alternative to construction or renovation, the
627 authority shall establish eligible cost criteria and, on a case by case basis, shall determine the

628 allowable cost of such projects. Eligible costs may include but shall not be limited to furnishings
629 and equipment, including upgrades and technological devices necessary for enhanced safety and
630 security, lease costs, rental fees and transportation costs. In no event shall an alternative project
631 be reimbursed if it is determined by the authority to be more costly than construction necessary
632 to achieve the same end.

633 Section 17. (a) In the event that an eligible applicant sells or leases an assisted facility, or
634 a portion of that facility, on account of which it is receiving grant payments for an approved
635 public higher education facilities project, the sale or lease of the assisted facility, or portion of
636 that structure or facility, shall be for no less than fair market value as determined by independent
637 appraisal, unless the eligible applicant receives prior written approval from the authority to do
638 otherwise, and the proceeds from the sale or lease shall be divided between the authority and the
639 general funds of the applicable eligible applicant in proportion to the commonwealth's and
640 authority's prior investments in the assisted facility under this chapter. An eligible applicant
641 which sells, leases or otherwise removes from use by the eligible applicant as a public higher
642 education facility an approved public higher education facilities project on account of which it is
643 receiving grant payments under this chapter shall report the sale, lease or removal to the
644 authority in the form and manner and within the time prescribed by the authority. The authority
645 may issue regulations to recapture commonwealth and authority assistance for an approved
646 public higher education facilities projects for public higher education facilities that are removed
647 from service.

648 (b) Before the sale or lease of an assisted facility or a portion of that facility, the public
649 higher education institution in control of the facility shall submit to the authority a use plan that
650 shall include, but not be limited to, a listing of all facilities under the control of the public higher

651 education institution, a detailed description of both the current use and proposed use of each
652 public higher education facility, a detailed floor plan of each public higher education facility that
653 shows and labels each space in the facility including the use of each room in the facility and any
654 other information that may be required by the authority to understand the public higher education
655 institution's facility use plan.

656 (c) Any eligible applicant which applies for a grant pursuant to this chapter and which
657 has, prior to such application, sold, leased or otherwise removed from service any public higher
658 education facility operated by said eligible applicant shall be eligible for such grant only if the
659 board determines either that the grant is not for the purpose of replacing a public higher
660 education facility sold, leased or otherwise removed from service in the past 10 years or that the
661 need for the project covered by the grant could not have reasonably been anticipated at the time
662 that such higher education facility was sold, leased or otherwise removed from service.

663 (d) The provisions of this section, at the discretion of the authority, shall not apply to
664 sales or leases of such assisted facilities for nonprofit public purposes.

665 Section 18. The authority shall create a maintenance assessment program for public
666 higher education facilities. Such assessment program shall include a review of all major building
667 components, maintenance records, existing staff and vendor contracts. The authority shall use
668 such assessment program to issue ratings of the building conditions for each public higher
669 education institution, survey current conditions, develop a model plan for the proper maintenance
670 of public higher education facilities and provide technical assistance and information to public
671 higher education institutions.

672 Section 19. (a) Annually, on or before June 30, the authority shall submit a report to the
673 governor, the house and senate committees on ways and means, the joint committee on
674 education, the joint committee on natural resources. The report shall include a listing of each
675 public higher education facility within the commonwealth, together with a description of its size,
676 capacity, age and state of maintenance and whether it is likely to require construction,
677 enlargement, reconstruction, rehabilitation or improvement due to such factors as deterioration,
678 lack of adequate facilities to meet educational standards and anticipated increases in enrollment.

679 (b) The authority shall conduct periodic surveys of public higher education institutions to
680 determine the need for new public higher education facility construction to meet demand.

681 (c) The authority shall develop a long-term capital plan in accordance with needs and
682 funding projected to be available in the trust pursuant to this chapter for purposes of planning
683 and guiding the policies of the authority.

684 (d) The capital plans, needs surveys and reports of the authority shall not give rise to any
685 claim, legal or moral, or enforceable right in any party to benefits or funds from the trust or from
686 other sources.

687 Section 20. The authority shall, in cooperation with a public higher education institution,
688 submit plans or blueprints approved by the authority, associated with approved construction,
689 renovation or reconstruction of a public higher education facility, to the local police department,
690 fire department, Massachusetts emergency management agency and any regional law
691 enforcement entity. The plans shall identify points of entry into a public higher education
692 facility, emergency access routes for ingress or egress and other public safety features including,
693 but not limited to, fire hydrants, utility access points and stairwells. Any department in receipt of

694 such plans may submit comments to the authority and public higher education institution. Upon
695 completion of the approved construction, the authority shall, subject to appropriation and in
696 cooperation with a public higher education institution, submit updated, as-built plans to the local
697 police department, fire department, Massachusetts emergency management agency and any
698 regional law enforcement entity, a copy of which shall be maintained on file by each department
699 or agency in receipt of the plans. Plans submitted pursuant to this section shall be deemed
700 confidential and shall not be considered public records under clause Twenty-sixth of section 7 of
701 chapter 4.