

Attachment 3 – Regulations Proposed for Rescission

603 CMR 38.00: School Construction Grants

38.01: Authority, Scope and Purpose

(1) 603 CMR 38.00 is promulgated pursuant to the authority of the Board stated in M.G.L. c. 70B to issue regulations for the implementation of that statute.

(2) The provisions of 603 CMR 38.00 apply to all school construction, expansion, renovation, regional buy-in, and emergency repair projects for which State school building assistance funds are sought.

(3) The purpose of 603 CMR 38.00 is to set forth the requirements which shall be met, the standards which shall be applied, and the procedures which shall be followed in the awarding of State school building assistance grants.

38.02: Definitions

As used in 603 CMR 38.00, the following terms shall have the meanings set forth in M.G.L. c. 70B, as most recently amended:

Approved school project;
Assisted facility;
Board of education or board;
Capital construction project;
Commissioner;
Major reconstruction project;
Regional school;
Regional school district;
Total facilities grant.

The following additional terms shall have the following meanings:

Approved Costs shall mean the project and interest costs for an approved school construction or renovation project.

Audit shall mean the determination of the final approved cost of an approved school project by the Board. The final approved costs are determined by an examination of all contracts, documents, votes, change orders, invoices and/or purchase orders, all financing information, including donations and settlements, bonding schedules and other pertinent records as required by the Department relating to a specific school project. This information must be submitted in a form and manner as prescribed in guidelines developed by the Department and issued in the "School Building Assistance Audit Procedure".

Construction documents shall mean plans which, together with specifications, form the basis for

construction bids. Final plans shall substantially reflect the approved preliminary drawings and shall bear the seal of an architect registered in Massachusetts.

Department shall mean the Department of Elementary and Secondary Education, which administers M.G.L. c. 70B.

Educational Specifications shall mean a numerical and verbal description of a specific educational program for a specified number of students over a specified period of time, together with spaces needed to support the program, complete to the degree that an architect may use it as the basic document from which to create the design of the facility.

Schematic Plans/Drawings shall mean floor plans identifying programmatic and other spaces, elevations, site plans, plot plans, topographical plans, plans showing the location of the proposed project in relationship to other schools in the district, and any other plans deemed necessary by the Department. Said plans and drawings shall bear the seal of an architect registered in Massachusetts.

School district or district shall mean the public schools department of any city or town, and any regional school district.

38.03: General Requirements: Capital Construction

To assure that the Commonwealth's interests in funding public school construction are safeguarded and ensure maximum attention to the cost effects of program and design decisions and materials and systems selections, all capital construction projects for which school building assistance grants are sought must meet the following requirements:

- (1) All capital constructions projects shall have an anticipated useful life of at least 50 years as a public school of the applicant school district, provided that this requirement may be waived by the Commissioner where the applicant can demonstrate that a shorter term solution is consistent with the projected enrollment levels and is cost effective or otherwise in the public interest.
- (2) The design specifications for all projects, including those for the expansion and renovation of an existing building, shall meet the applicable building code requirements established by the Executive Office of Public Safety.
- (3) Buildings shall be designed to minimize vandalism, and materials and furnishings shall be selected to minimize vandalism.
- (4) All facilities in an approved school project shall provide for equality of educational opportunity without discrimination on account of sex, race, color, religion, sexual orientation or national origin, and shall meet the requirements of M.G.L. c. 76, § 5 and regulations made thereunder. Projects shall comply with all applicable provisions of federal, state, and local law relative to the accessibility of programs and facilities to persons with disabilities.
- (5) All projects shall have undergone review, in accordance with applicable state law and regulations, by the Massachusetts Historical Commission, the Massachusetts Commission Against Discrimination, the Secretary of Environmental Affairs, and any other department or agency of the Commonwealth required

by law to review such projects.

(6) All projects shall demonstrate that they have identified any collaborative programs in the school district not currently housed in public school facilities, and have reviewed any such programs to determine if those students can be better served in the proposed new facility.

(7) The plans for all projects shall reflect, to the best of the applicant's ability, cost effective design, material, and finish decisions consistent with good engineering practice and the requirements of the school building assistance program.

(8) The plans for all projects shall reflect, to the best of the applicant's ability, attention to the 21st century technological needs of students, faculty, and school staff.

(9) In the interest of cost effectiveness, the applicant shall carefully weigh the effects of initial capital costs against maintenance costs over the life of the building in order to reduce such maintenance costs. Life-cycle cost estimates for all technically feasible energy systems as defined in St. 1976, c. 433, shall be considered during the preliminary design stage in order to ensure that the energy system with the lowest life-cycle cost estimate will be identified in accordance with the provisions of St. 1976, c.433.

(10) Projects calling for a new school construction shall be approved and funded only where the feasibility and cost of renovating an existing school building, or of acquiring an existing building or buildings which are structurally sound, available within the community or district and adaptable for school purposes, has been studied and the applicant demonstrates that the proposed new construction is the best available alternative to meet the projected need based upon the educational program to be housed, total cost effectiveness, and the public interest.

(11) Any city, town, or regional school district which applies for a grant pursuant to 603 CMR 38.00 and which has, prior to application, sold, leased or otherwise removed from service any schoolhouse operated by said city, town, or regional school district shall be eligible for such grant only if the Commissioner either determines that the grant is not for the purpose of replacing a schoolhouse sold, leased, or otherwise removed from service in the past ten years or that the need for the project covered by the grant could not have reasonably been anticipated at the time that such schoolhouse was sold, leased, or otherwise removed from service.

(12) The applicant shall provide a qualified construction manager to oversee all capital construction projects.

(13) Applicants shall implement containment procedures for dusts, gases, fumes, and other pollutants created during renovations/construction as part of any planned construction, addition to, or renovation of a school if the building is occupied by students, teachers or school department staff while such renovation and construction is occurring. Such containment procedures shall be consistent with the most current edition of the "IAQ Guidelines for Occupied Buildings Under Construction" published by the Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA). All bids received for school construction or renovations shall include the cost of planning and execution of containment of construction/renovation pollutants consistent with the SMACNA guidelines.

(14) All capital construction projects shall have a project identification sign on the construction site

during the period of construction. Said sign shall be at least four feet by eight feet in size, shall be visible from the primary roadway adjoining the site, and shall include the following: "This project funded in part by the Commonwealth of Massachusetts School Building Assistance Program."

38.04: Site Standards: Capital Construction

The site on which a proposed capital construction project is to be built shall conform to the following requirements:

- (1) The site selected shall be chosen on the basis that it will meet the educational need and minimize any possible adverse educational, environmental, social, or economical impact upon the community. Such adverse impact includes, but need not be limited to: the need to provide new sewers, roads, transportation facilities, water supply, water connections, and the like to the site; existence of soil conditions which will cause site development costs to be greatly increased; curtailment of the approved educational program.
- (2) The site shall be so located as to serve efficiently and safely the school population it is intended to serve, and shall be of sufficient size to accommodate the building and planned future additions thereto, the agreed upon outdoor educational program, needed parking areas, bus turnarounds, delivery areas, required setbacks and planned aesthetics.
- (3) The site shall be reasonably free from olfactory, auditory, visual, and noxious pollution, or should be capable of being made so prior to commencement of construction.
- (4) Proximity to other facilities such as libraries, museums, parks, natural resources, nature study areas, and business, which would enhance the proposed educational program shall be carefully studied and strongly encouraged.
- (5) The site shall be owned by the applicant school district, or be under control of the school district pursuant to a lease which assures the school district exclusive jurisdiction and control of the land for the anticipated useful life of the school to be constructed thereon.
- (6) Any proposed site not currently in use for educational purposes shall undergo an environmental site assessment conforming to ASTM Phase I standards. This study shall also assess environmental conditions in the immediate vicinity of the proposed site which could impact the health and safety of students and school staff. A Phase II assessment shall also be completed if needed, based on the results of the Phase I assessment. The applicant shall make the results of such assessments available for public review, and shall provide a reasonable opportunity for public comment thereon. The applicant shall submit the results of such assessments, and a summary of the public comments, to the Department prior to the Commissioner's preliminary determination pursuant to 603 CMR 38.10(4).

38.05: Program Standards: Capital Construction

In order to maximize the cost effective production of efficient, programmatically sound school projects, every capital construction project shall conform to the following program standards.

- (1) Program Design A school project shall be designed based upon an approved program for a specified number of students for a typical academic week. The program model shall be approved by the district

school committee, and shall comply with requirements of law and Board regulations relative to curriculum, program, student learning time and length of school year. In addition the project design may contain provision for community programs approved by the district school committee or other local agency or office having lawful control of community programs. Community school spaces shall be included within the gross square footage established in 603 CMR 38.00 unless the Commissioner specifically approves additional space based on a demonstrable community need that cannot be accommodated within those limitations. Swimming pools and skating rinks shall not be eligible for reimbursement. Field houses shall only be eligible for reimbursement to the same extent as gymnasiums.

(2) **Planned Enrollment** The Department and the applicant shall agree on a planned enrollment for the school project. The applicant shall provide adequate supporting documentation as requested by the Department. The planned enrollment shall be consistent with demonstrable need, and shall not include incoming school choice students.

(3) **Per Pupil Space Allowance** The Commonwealth shall share in construction of school facilities within the following limitations in gross square footage, determined according to the method of computation contained in 603 CMR 38.05(6):

- (a) Elementary Schools - not more than 115 gross square feet per pupil in planned enrollment.
- (b) Middle Schools/Junior High Schools - not more than 135 gross square feet per pupil in planned enrollment.
- (c) Academic High Schools - not more than 155 gross square feet per pupil in planned enrollment.
- (d) Vocational Technical Schools - not more than 225 gross square feet per pupil in planned enrollment.
- (e) Comprehensive High Schools - not more than 225 gross square feet per planned vocational technical student enrollment plus not more than 155 gross square feet per planned academic pupil enrollment.

(4) **Space Allowance by Program Activity** The standards set forth in Tables 1 through 3 shall be followed in planning school construction and expansion for elementary, junior high/middle, and secondary schools for which State school building assistance funds are sought.

Table 1- Elementary School Program Standards

Program spaces for an elementary school shall be shared in by the Commonwealth if they fall within these ranges. A variation of 5% is permitted.

All spaces exclusive of storage	Minimum - Maximum (net area)
Classrooms (Grades 1-8)	900 - 1000 square feet
Pre-Kindergarten and Kindergarten (with self-contained lavatory)	1200 - 1300 square feet
Special Education and Collaboratives	as needed
Art	1000 - 1200 square feet
Music	1000 - 1200 square feet

1. Practice Rooms	75 -130 square feet
2. Ensemble Rooms	up to 300 square feet
Media Center/Library Reading Room	1800-3000 square feet
Cafeteria	15 square feet per pupil computed to accommodate not more than ½ nor less than 1/3 the planned enrollment.
Kitchen	1300 square feet for the first 300 students; one square foot per each additional student.
Gymnasium	
1. 12+ classroom school/separate gymnasium, first 2 teaching stations	Gymnasium 3000 square feet per station minimum
2. Smaller school, all purpose room or third teaching station and subsequent teaching stations	Gymnasium 2000 - 3000 square feet each station
Administration	up to 800 square feet
Health Area	300 - 750 square feet
Guidance Area	as needed
Small Group and Seminar	up to 500 square feet each
Computer Labs/Work Stations	30 square feet per work station

Table 2 - Junior High and Middle School Program Standards

Program spaces for junior high and middle schools shall be shared in by the Commonwealth if they fall within these ranges. A variation of 5% is permitted.

Classrooms	
1. Small Group Seminar	300 - 500 square feet
2. Regular Interchangeable (20-30 pupils)	750 - 850 square feet
3. Large Group (80-125 pupils)	1500 - 2000 square feet
4. Storage	as needed
Computer Labs/Work Stations	30 square feet per work station
Art	
1. General Area (storage not incl.)	1200 - 1400 square feet
2. Specialized Areas (storage not incl.)	600 - 1200 square feet
3. Storage	min. 100 -200 square feet/art room
Music	
1. Rehearsal (band, chorus, etc.)	1400 - 1600 square feet

2. Theory & Choral	900 - 1200 square feet
3. Practice Rooms	75 -130 square feet
4. Ensemble Rooms	up to 200 square feet each
5. Storage	as needed
Office Technology	1200 -1400 square feet
Family & Consumer Science	1400 -2400 square feet
Life Management Skills (includes computer & demonstration space)	2400 -2600 square feet
Technology/Engineering	
1. Fabrication Area	Up to 100 square feet/pupil each laboratory. Minimum 2000 square feet
2. Engineering Design Area	1200 -1400 square feet
Science	1000 - 1200 square feet
Physical Education (2 stations)	6000 - 7500 square feet
Additional teaching stations	up to 3000 square feet each

Table 3 -Secondary School Program Standards

Program spaces for a secondary school shall be shared in by the Commonwealth if they fall within these ranges. A variation of 5% is permitted.

Classrooms	
1. Small Group Seminar	300 - 500 square feet
2. Regular Interchangeable (20-30 pupils)	750 - 850 square feet
3. Large Group (80-125 pupils)	1500 - 2000 square feet
Computer Labs/Work Stations	30 square feet per work station
Art	
1. General Area (storage not included)	1200 - 1400 square feet
2. Specialized Areas (storage not included)	600 - 1200 square feet
3. Storage	100 -200 sq. ft./art room
Music	
1. Rehearsal (band, chorus,	1400 - 1600 square feet

etc.)	
2. Theory & Choral	900 - 1200 square feet
3. Practice Rooms	75 -130 square feet
4. Ensemble Rooms	up to 200 square feet each
Office Technology	1200 -1400 square feet
Family & Consumer Science	1200 -1400 square feet
Technology/Engineering	
1. Fabrication Area	Up to 100 sq.ft./pupil each lab. Minimum 2000 square feet.
2. Engineering Design Area	1200 -1400 square feet
Science	
1. Lecture-Laboratory	1000 - 1200 square feet
2. Demonstration/General Science	900 - 1000 square feet
Cafeteria	15 square feet per pupil computed to accommodate not more than ½ nor less than 1/3 the planned enrollment
Physical Education	
1. Gymnasium (2 stations)	6200 - 7500 square feet
2. Additional Teaching Stations	1200 - 3500 square feet
Library (Instructional Materials Center)	Reading room - up to 15% of enrollment x 40 square feet - maximum. (Other areas may be added, if planned, i.e., office, conference, etc.)
Auditorium	Seating for not more than the planned enrollment nor more than 1000 persons. If the planned enrollment exceeds 1000, allow 7 square feet per person maximum.
Administration	up to 1500 square feet
Guidance	800 to 1000 square feet
Health	500 - 1000 square feet

(5) Space Allowance Exceptions:

(a) The Commissioner may approve reasonable departures from the gross square footage requirements to accommodate proposed additions to existing school buildings when such departures will be consistent with the intent of 603 CMR 38.00 to provide adequate, safe, cost effective and programmatically sound school projects.

(b) The applicant shall provide assurance that the capital construction project provides adequate and appropriate space to accommodate early childhood and educational collaborative programs

and programs to serve students with special needs or linguistic minority students who are not currently served in regular public school facilities. The Commissioner may grant an exception to the space allowance limitations if needed to accomplish these purposes.

(c) In the case of open plan buildings, the Commissioner may approve reasonable variations from the size of the listed program spaces with adjustment in gross project allowances where it can be demonstrated that the planning for such facility reflects good educational practice.

(d) Spaces for special education classes/programs will receive special consideration, in the discretion of the Commissioner, notwithstanding the gross square footage allowances contained in 603 CMR 38.00.

(e) Other exceptions to the minimum and maximum program space allowances may be granted at the discretion of the Commissioner or the Board.

(6) Space Computations. Gross and net square footage and perimeter measurements shall be reported with all preliminary, revised, and final drawings submitted for approval, and shall be computed according to the following methods:

(a) Gross Square Footage. The gross area of a building is the sum of all areas of the several floors, including mezzanines, stairwells, and basements having a floor slab and 7'6" or more headroom. Additionally covered walkways, roofed-over areaways or courts, and similar areas shall be included in the gross area at one half their actual area. All horizontal measurements shall be taken from the exterior face of enclosing walls, at the plane of the floor. The following shall not be included in gross area computation: basements having no floor slab or less than 7'6" headroom; pipe trenches; retaining walls; roof overhangs; exterior terraces; and courts open to the sky.

(b) Net Square Footage. The net area of individual spaces shown on approved educational specifications and included in the plans shall be measured from the inside face of enclosing walls and partitions. Wall thickness shall be excluded.

1. Basic Instructional Spaces (classrooms) shall include the net area of all non-specialized and special subject teaching areas, including directly-related preparation and equipment storage rooms. Do not include the area of such spaces as ancillary toilets, wardrobes, and teachers' supply closets.
2. Miscellaneous Educational Space shall include the net area of miscellaneous specified or required educational space, such as gymnasium locker rooms, cafeteria dining areas, kitchens, administration offices, health service unit, guidance quarters, teacher workrooms, storage, community rooms and serving rooms.
3. Other square footage is determined by subtracting "Basic Instructional" and "Miscellaneous Educational" spaces, determined as above, from the calculated gross area. Thus, "Other" will include wall thickness; corridors, stairways, and other circulation space; general storage areas; custodians' closets and receiving areas; toilets; and heating and mechanical spaces.

(c) Perimeter. The perimeter of a building shall be the sum of the lineal length of the enclosing walls (including piers, wall extensions and courts) taken at the plane of the floor level, including finished basements.

38.06: Cost Standards: Capital Construction

(1) Grants for capital construction shall be based on the following amounts per square foot for the cost of the general contract, design fees, allowable site preparation, site development, insurance, construction supervision, costs related to the issuance of notes and bonds, contingency amounts, and miscellaneous costs.

Elementary School	\$171.00 per square foot
Middle School/Junior High School	\$182.00 per square foot
High School	\$195.00 per square foot
Vocational School	\$209.00 per square foot

(2) Grants for capital construction projects may also include not more than \$16.00 per square foot for furnishings and equipment.

(3) For the purpose of calculating the state construction grant, the estimated approved project cost and the final approved project cost for a school project shall not exceed the cost that would result by multiplying the approved gross square footage per pupil by the planned enrollment and by multiplying the result by the established cost per square foot as set forth 603 CMR 38.06(1) and (2). Said costs per square foot shall apply to projects for which the general contract work begins on or after June 1, 2004. The Commissioner may recommend to the Board that this requirement be waived in exceptional circumstances. If the project cost estimate exceeds the approved cost limit and the applicant believes a waiver is warranted, the applicant must submit a waiver request before soliciting construction bids. Waiver requests submitted after the general contract has been awarded should be limited to extraordinary situations which arise during construction and which could not have been reasonably anticipated during the design process. All waiver requests must include documentation demonstrating that the bid process was or will be fair, open, and cost-effective.

(4) The provisions of 603 CMR 38.05 and 38.06 shall not be deemed to preclude a city, town or regional school district from including in an approved school project such facilities or design as it determines, in addition to those required to conform to minimum program standards and costs. The cost of such additional facilities and design shall not, however, be included in the estimated approved cost and final approved cost on the basis of which the state construction grant is calculated.

(5) In determining the allowable costs for an addition, the Board shall consider the nature of the approved spaces to be added, the nature of the required equipment and other furnishings, the relationship of the addition to other elements of the school and any factor which would cause the cost of the addition to exceed substantially the cost standard established for new construction, and may in its discretion allow the increased costs or a lesser amount. The intent of 603 CMR 38.06(5) is to make allowance for the varied nature of additions to school buildings.

(6) Capital construction projects may include the renovation and rehabilitation of existing buildings to accommodate changes in educational use, compliance with building code and other legal requirements, and such other work as may be approved by the Commissioner. In making such determination, the Commissioner shall take into account the age of the building, its current condition, past school construction funding for the building, the adequacy of the applicant's maintenance program, and any other relevant factors. The Commissioner shall establish appropriate cost limits for the renovation and rehabilitation portions of a capital construction project, subject to the overall limitations of 603 CMR 38.06(3).

(7) The value of a facility to be acquired shall be determined by the Board on the basis of the reports of at least two fee appraisers registered with the Attorney General and retained by the applicant. The final approved cost of combined acquisition, renovation and conversion work shall not exceed the equivalent costs in new construction.

38.07: Major Reconstruction Projects

(1) The school facility in which a major reconstruction project is proposed must be generally capable of supporting a modern educational program. The facility must have teaching stations and support areas in sufficient size, number, and condition to be recognized as a reasonably modern school building and must be structurally sound.

(2) The school facility in which a major reconstruction project is proposed must be necessary to meet the school district's overall facility needs, and must have an anticipated term of use as a public school building of the district of at least seven years after completion of the reconstruction project.

(3) All construction documents, including plans and specifications, related to a proposed major reconstruction project shall bear the stamp of approval and signature of the building inspector in whose jurisdiction the replacement, renovation, or modernization will take place.

(4) Projects that may qualify for major reconstruction projects grants include: a project to eliminate a structural or environmental safety hazard; a project to make a building accessible to persons with physical disabilities; a roof replacement or reconstruction project; the replacement or improvement of a heating system; a project to make a building more energy efficient. Specific approval requirements applicable to the listed projects may be established by the Department.

(5) Information concerning the specific approval requirements for a particular type of major reconstruction project, and the documentation which must be submitted in support of the application for a grant for such a project shall be available from the Department.

38.08: Regional Buy-In Grants

(1) Any city or town newly admitted to an existing regional school district may be reimbursed for part of the buy-in amount that the city or town is required to pay for admission to the regional school district.

(2) The Board will determine the amount of the grant based on information and documentation concerning the costs of constructing, equipping and financing the building(s) which is the subject of the buy-in, including any additions and renovations to the original building(s), State funding of those costs,

student enrollment in the building(s), and the reimbursement percentage applicable to the new member town under M.G.L. c. 70B.

(3) The grant shall be paid in equal annual installments made over the term specified in the agreement between the regional school district's member municipalities, as approved by the Commissioner.

38.09: Emergency Reconstruction Grants

(1) Subject to appropriation, the Board may provide emergency school building assistance grants to assist in repairing or reconstructing school buildings which are damaged as a result of a fire, flood, earthquake, hurricane, blizzard, or other unavoidable destructive occurrence.

(2) In the event of such an emergency, officials of the city, town, or regional school district shall contact the Commissioner forthwith, and the Department shall assign a representative to evaluate the damage, obtain a building inspection, and meet with local officials to determine the nature and extent of the emergency repair or reconstruction required.

(3) Depending on the nature and extent of the damage and the type of repair or reconstruction necessitated thereby, the Department shall determine whether the capital construction project or major reconstruction project application shall be filed in support of the emergency reconstruction grant request.

(4) The amount of any emergency reconstruction grant shall be determined in accordance with the reimbursement percentages and total construction grant computation formula set forth in M.G.L. c. 70B.

38.10: Application Procedures

(1) Applications for State approval of and funding assistance for school projects may be submitted to the Department at any time of the year.

(2) For the purpose of 603 CMR 38.00 there shall be four types of applications:

(a) An application for approval and funding of a capital construction project, which shall consist of an updated building inventory and long-range facilities plan for the district; a feasibility study evaluating the various options for meeting the buildings needs; schematic plans/drawings and educational specifications for the proposed project; required municipal and state approvals; construction documents; and other documentation required to demonstrate that the planning for a proposed project is complete through the construction document phase and meets the approval requirements set forth in 603 CMR 38.03, 38.04, 38.05, and 38.06. An application form and check list of required submissions will be provided by the Department. Applications materials may be submitted to the Department in stages as the planning for the project progresses. To qualify for State funding, the application for a capital construction project must be complete, and the Commissioner must have determined that the project meets all program requirements, prior to any construction start.

(b) An application for approval and funding of a major reconstruction project, which shall consist of a single submission providing detailed design, material and cost information concerning the specific repair proposed. An application form and check list of required submissions will be

provided by the Department. The application shall identify each distinct repair proposed for a given school building, i.e. roof, heating system, handicapped access, etc. To qualify for State funding, the application for a major reconstruction project grant must be filed with the Department, and the Commissioner must have determined that the project meets all program requirements, prior to any construction start.

(c) An application for a regional buy-in grant, which shall consist of a completed application form provided by the Department, a copy of the amended regional agreement expanding the district to include the applicant city or town, and any other information requested by the Department pursuant to the provisions of 603 CMR 38.08.

(d) The initial application for an emergency reconstruction grant, which shall consist of a written request from the applicant city, town, or regional school district in need of emergency school building assistance. Upon initial review of the emergency circumstances giving rise to the grant request, the Department shall determine what additional application materials must be submitted in support of a particular emergency grant request.

(3) As a first step in the application consideration process for all capital construction projects the Department shall conduct a building needs conference to evaluate the need for a proposed project and ensure that all alternatives for satisfying the need are fully studied. Said study shall include a review of any appropriate non-construction alternatives, whether or not such alternatives are eligible for state reimbursement. The building needs conference shall be attended by representatives of the applicant including, but not limited to: one or more representatives of the school committee; one or more members of the building committee, where applicable, or in the case of cities, a representative of the office or body authorized by law to construct school buildings in that city; and the superintendent of schools or his designee.

(4) Following the submission of the district's building inventory and long-range plan, enrollment projections, feasibility study, educational specifications, schematic drawings, and such other information as may be required by the Department, the Commissioner will make a preliminary determination on the adequacy of the proposed project's size, scope and location. Prior to such determination, the Commissioner may require the study of additional building construction alternatives or project locations.

(5) Completed school project applications shall be reviewed by the Department for educational adequacy and for compliance with the requirements and standards set forth in the provisions of 603 CMR 38.00 applicable to the type of project for which the applicant seeks funding, and for compliance with the priorities set forth in M.G.L. c. 70B as most recently amended.

(6) As part of an application for a capital construction project or major reconstruction project grant, the applicant shall submit certification of city, town, or regional school district approval of the funding required to cover the estimated cost of the proposed project. The applicant must also provide financing and bonding information, including both short term and long term borrowing rates, number of years of borrowing and all other pertinent information on project funding.

(7) The Commissioner shall notify each applicant in writing of his determination for each proposed project. The Department will maintain a list of projects, which have been determined by the Commissioner as meeting all program requirements and which are awaiting funding. Projects will be

placed on the waiting list in accordance with the priorities established by statute, and within each priority category based upon the order in which they were approved.

(8) The Commissioner's determination and placement on the waiting list do not constitute a guarantee of project funding. Any applicant with a project on the waiting list may commence construction prior to the grant award but does so at its own risk. Only a grant award provides a funding commitment by the Commonwealth. The Board will award grants to projects on the waiting list as funding authorization is available.

38.11: Grant Awards

(1) The Board shall annually award school construction grants within the amounts authorized in the general appropriations act or any supplemental appropriation acts. Grants shall be awarded to projects in the order in which they were placed on the waiting list, provided that a project may be bypassed if it does not appear that the applicant will be able to start construction by June 1 of the current fiscal year.

(2) As communities award construction contracts, they must send the Department an amended financial form along with bid documentation and financing information and bond rates and terms. In cases where the original estimate exceeds the bids, the portion of the authorization no longer required for a given project may be released and accrued so that the Board can award additional construction grants.

(3) Minor changes in the final school construction documents may be made with the approval of the Commissioner in cases where an appreciable amount of time has elapsed between document preparation and the Board award of a construction grant where such changes are necessitated by evolving educational needs and changes in municipal building code. In cases of major changes in the scope or design of the project, the Commissioner may recommend that the grant be rescinded and a new application filed.

(4) Upon determination of the final approved cost of the project, the Board may recompute the maximum cost limitations using the cost standards in effect on the date that work began under the general contract, and the grant may be adjusted accordingly.

38.12: Payment Requirements and Procedures

(1) All capital construction projects for which the Board has authorized funding shall commence construction on or before June 1 of the fiscal year in which the school building assistance grant was authorized.

(2) The first payment of the grant for an approved school project shall be made in the fiscal year following the Board approval or start of construction, whichever is the later date.

(3) The following procedures shall be used after receipt of a school building assistance grant award notice to ensure that the payment schedule will begin in a timely manner and will not be disrupted during the life of the grant.

(a) The Department shall notify all grant recipients of Board approval. The grant announcement will include a form labeled the "Request for Project Number". This form must be completed and returned to the Department along with the most recent financial and bonding information (Form

F), reflecting actual construction bids, to institute payment schedule. Failure to submit this request on or before December 15 of the fiscal year following the fiscal year of Board approval will result in a delay of the entire payment schedule by one fiscal year.

(b) The Board shall determine the final approved cost within two years of the occupancy of new space, or in the year of the third payment, whichever occurs later. Audit materials shall be submitted by the applicant and reviewed by Department staff in accordance with guidelines developed by the Department and issued in the "School Building Assistance Audit Procedure". Subsequent payments will be adjusted to reflect the actual approved project cost on an equal annual payment schedule to begin in the fiscal year following the fiscal year in which the audit is performed. Audit materials are due in the Department by December 1 of the fiscal year in which the audit is scheduled.

(c) Failure of the grant recipient to provide the Department with satisfactory audit materials will result in the suspension of the payment schedule effective July 1 of the fiscal year following the year in which the audit is due.

(d) Suspended payment schedules shall not be reinstated until the fiscal year following the fiscal year in which the audit is performed.

(e) The city, town, or regional school district shall maintain all records related to any school construction project for seven years after the final costs are determined, and shall retain the final project drawings for as long as the completed facility is in service as a public school.

(f) Failure to submit satisfactory audit materials to the Department of Elementary and Secondary Education will result in permanent revocation of grant payments on the applicable project. The Department may take steps to recover previous payments at the Commissioner of Education's discretion.

(4) During construction, staff of the Department may visit the construction site to determine that the project is being built as approved. A review of the completed facility, in operation, shall also be made by the Department prior to acceptance of the final, audited project cost.

(5) All construction contracts and sub-contracts shall be in conformity with all applicable provisions of federal, state and local law, and where in the judgment of the Board, violations of such laws are deemed to exist, the Board may withhold funds due on account of the project until such violations are remedied.

(6) All construction contracts shall be in conformity with applicable law and regulations related to minority hiring. Every state-assisted contract for a school project including sub-contracts shall include the Commonwealth's Supplemental Equal Employment Opportunity/Anti-Discrimination and Affirmative Action Program as part of the contract. Compliance with and enforcement of all safety and building code provisions, shall be the responsibility of the applicant.

(7) Every contractor and subcontractor working under the terms of any contract for construction on an approved school project shall file weekly payroll records with the awarding authority in the form described in M.G.L. c. 149, § 27B. The awarding authority shall withhold payment for any construction work performed on an approved school project for so long as the payroll records for the work performed

are not filed with the awarding authority.

(8) Each grant recipient shall submit appropriate contractor and designer evaluations to the Division of Capital Asset Management in a form, manner and timeline prescribed in M.G.L. c. 149, Section 44D and Chapter 7, Section 38E. A copy of the evaluation form shall be included in the audit materials submitted pursuant to 603 CMR 38.12(3)(b).

(9) Each grant recipient shall notify the Department within 90 days if bonds or notes issued for an approved school project are refunded pursuant to M.G.L. c. 44, § 21A.

38.13: Waivers

The Board may, upon written application and with the recommendation of the Commissioner, grant a waiver of part or all of the requirements of 603 CMR 38.00 for good cause.

38.14: Minimum Spending Requirements for Building Maintenance

(1) Every operating school district shall, in fiscal year 1999 and each succeeding year thereafter, expend funds for the purposes of utilities and ordinary maintenance and for extraordinary maintenance in an amount not less than 50% of the district's combined foundation budget allotment for those categories for said fiscal year.

(2) Effective July 1, 1999, no school project will be authorized for funding unless the district is in compliance with the requirements of 603 CMR 38.14(1).

(3) If a district fails to maintain compliance with the requirements of 603 CMR 38.14(1), payments for all projects authorized on or after July 1, 1999, will be suspended for a period of one year, beginning on the July 1 next following the Commissioner's determination of non-compliance. Following such suspension, payments may be resumed with the joint approval of the Commissioner and the deputy commissioner of the division of local services of the Department of Revenue, upon their finding that the district has adequately redressed its noncompliance.

(4) The provisions of 603 CMR 38.14 may be waived by joint approval of the Board and the deputy commissioner of the division of local services of the Department of Revenue, in instances of unanticipated or extraordinary changes in maintenance spending. Such circumstances may include, but are not limited to: opening of a new school building; closing of an existing building; completion of a major renovation project; significant reduction in utility costs; significant maintenance work performed by municipal or district employees; significant maintenance work performed under energy management contracts; or significant numbers of students tuitioned to other districts.

38.15: Reimbursement Rates

The Commissioner shall annually, on September 1 of each year, update and publish the community income factor, community property wealth factor, and district poverty factor for each municipality and school district within the Commonwealth. Said factors shall be based on the most recently available data for per capita income, equalized property valuations, and enrollment of low income students. The reimbursement rate for each approved project shall be based on the community income factor, community

property wealth factor, and district poverty factor in effect as of the initial date of the Commissioner's approval under 6003 CMR 38.10(8).

38.16: Closing Schools

In addition to the requirement set forth in M.G.L. c. 40, § 3, a community that sells, leases or removes all or the majority of the educational space in an assisted facility from service must conform to the following requirements:

(1) The community must notify the Department of Elementary and Secondary Education prior to the finalization of the sale, lease or removal from service of an assisted facility by reporting such information in a manner and form prescribed by the Department of Elementary and Secondary Education.

(a) Information will include at a minimum: the name and location of the school; the lease or sale price, the proposed purpose or use of the building, the term of the lease, the reasons for such sale, lease, or removal from service, the amount and square footage of the educational space involved and the number of years the building has been in service as a public school.

(b) The school committee must submit a plan for accommodating any displaced school programs and or services as a result of the sale, lease or removal from service of an assisted facility, the long-range plan for accommodating district students within remaining school buildings, enrollment projections and any future school construction plans for the district.

(2) A final audit of the assisted facility must be submitted by the community and approved by the Department of Elementary and Secondary Education in order to determine the actual cost of the construction or renovation and the final approved state grant.

(3) The state grant on an assisted facility that is being sold, leased or removed from service and that has not been in service as a public school building for 50 years after such state assisted construction or renovation will be recomputed as follows:

(a) The number of years the assisted facility has been in service as a public school after the most recent state assisted construction or renovation project will be divided by 50 years.

(b) The resulting fraction will be applied to the grant to determine the final applicable grant pertinent to the number of years the assisted facility has been in service as a public school building after the most recent state assisted construction or renovation project.

(c) Outstanding payments to a city, town or regional school district will be recalculated so as not to exceed the final applicable grant.

(d) Payments made to a city, town or regional school district that exceed the final applicable grant shall be deducted from each city, town or regional school district's local aid payments in relation to the original schedule of annual payments, unless otherwise agreed to by the Commissioner of Education.

(e) The Commonwealth's share shall be in proportion to the educational space that has been sold,

leased or removed from service.

(4) The provisions of 603 CMR 38.16 shall apply to:

(a) An assisted facility that has received full payment from the Commonwealth but has not met the 50-year service requirement.

(b) An assisted facility that is currently receiving reimbursement payments from the Commonwealth.

(c) An assisted facility that removed from service the majority of the educational space in the school building for at least half of the preceding fiscal year.

(5) Waivers may be granted for all or part of the repayment method outlined in 603 CMR 38.16(4), at the discretion of the Commissioner of Education if

(a) The sale or lease of such assisted facility is for approved non-profit and/or public purposes; or

(b) The community provides a plan, approved by the school committee, that calls for the reuse of the assisted facility within two years of the closure or prior to the expiration of the term of any outstanding bond or note issued to finance the project; or

(c) An assisted facility is being removed from service pursuant to a school construction plan approved by the Commissioner of Education for the replacement of the school building; or

(d) An assisted facility is being demolished due to health or safety reasons.

Regulatory Authority:

603 CMR 38.00: M.G.L. c. 69, § 1B and Chapter 70B