

THE COUNCIL

REPORT OF THE COMMITTEE ON FINANCE RESOLUTION APPROVING, PURSUANT TO SECTION 2590-p OF THE STATE EDUCATION LAW AND PARAGRAPH (1)(a) OF THE MEMORANDUM OF UNDERSTANDING, DATED NOVEMBER 10, 2020, AMONG THE MAYOR, THE SPEAKER AND THE CHANCELLOR, THE AMENDMENT TO THE FIVE-YEAR EDUCATIONAL FACILITIES CAPITAL PLAN FOR 2020 – 2024 SUBMITTED BY THE CHANCELLOR.

The Committee on Finance, to which was referred the above-captioned resolution, respectfully submits to The Council of the City of New York the following

REPORT

Introduction. Section 2590-p of the State Education Law provides for the submission by the Chancellor of the New York City Department of Education (“Chancellor”) to the Council of the City of New York (“Council”) every five years, of a five-year educational facilities capital plan and amendments thereto. In addition, a memorandum of understanding (“MOU”) entered into by the Chancellor, the Speaker of the Council (the “Speaker”), and the Mayor of the City of New York (the “Mayor”) requires annual amendments to the Plan.

On June 19, 2019 the Council adopted the Five-Year Educational Facilities Capital Plan for the period of July 1, 2020 until June 30, 2024 (“2020 Plan”) for the New York City Public Schools as submitted by the Mayor, pursuant to Section 2590-p of the State Education Law. On February 26, 2021, the Council received a communication from the Chancellor, officially transmitting the proposed annual amendment to the 2020 Plan.

History. Generally, the State Education Law sets forth a planning process for repair, maintenance, and construction work in the City’s public school facilities. As stated above, section 2590-p requires the Chancellor to prepare five-year educational facilities capital plans (“Five-Year Plans”). These Five-Year Plans are required to break down the work proposed to be performed on the school facilities into categories called program elements and to provide cost estimates and start and completion dates for design and construction of projects.

Since the 2002, when the State School Governance Legislation brought the City’s school system under increased Mayoral control, Section 2590-p has required the Speaker and the Mayor to approve the Five-Year Plans. In addition, Section 2590-p provides for Council approval of amendments to the Plans.

On November 10, 2020, the Mayor, the Speaker, and the Chancellor entered into an MOU, which:

- Requires the annual amendment to include siting and/or location of each project (by building or school district, as appropriate), cost estimates, start dates and completion dates for each project;

- Requires an amendment to be submitted within sixty days of any State budgetary action regarding the City’s educational capital facilities that creates a shortfall of funding of 5% or greater for any Plan year;
- Requires each amendment to include an updated Plan showing the projects anticipated over the next year of the Plan, and any changes to such projects that would result from the proposed amendment;
- Requires the Department of Education (“DOE”) and the School Construction Authority (“SCA”) to meet with each City Council Borough Delegation at least once per year, with meeting to be held after the November proposed amendment and, at the discretion of the Delegation, to meet at least one time after the release of the second proposed amendment;
- Requires the SCA to post on its website the Annual Facilities Survey and any Alternate Site Analysis within 30 days of completion and also requires the SCA to update and post on its website quarterly a report detailing the schedules and budgets for all capital projects, disaggregated by school district, currently in process; and
- Prohibits actions or expenditures, excluding those facilitating scope and design or those for emergency projects, in furtherance of any projects to be undertaken in the Plan year that is the subject of the annual amendment to be taken prior to approval of the annual amendment by the Mayor and Council.

Proposed Amendment. On February 26, 2021, the Chancellor submitted to the Council the proposed annual amendment (hereinafter referred to as the “Proposed Amended Plan”) to the 2020 Plan totaling \$19.3 billion, which reflects an increase of \$2.3 billion from the 2020 Plan prior to the Proposed Amended Plan. Such increase is the result of the following actions in the following program areas:

- Capacity Program: an approximate \$162 million increase in the Capacity Program, which now totals \$8.9 billion;
- Capital Investment Program: an approximately \$1.5 billion increase in the Capital Investment Program, which now totals \$6.7 billion; and
- Mandated Programs: an approximately \$554.1 million increase in Mandated Programs, which now totals \$3.6 billion.

Of the \$2.3 billion increase, \$819.5 million is funding provided by the City Council, Borough Presidents, and the Mayor.

Capacity Program (\$162 million increase in funding)

The Proposed Amended Plan increases funding for the Capacity Program from \$8.8 billion to \$8.9 billion. Funding for the Capacity Program, which includes all elements of the plan

that result in new or replacement capacity for the system, is provided in four categories, including:

1. New Capacity (\$84 million deduction)

Funding for New Capacity in the Proposed Amended Plan totals \$7.8 billion, which reflects an decrease of \$84 million. The Proposed Amended Plan's New Capacity program which would fund approximately 57,000 new seats. Only those districts and sub-districts where there is an identified need for capacity will receive additional seats.

2. Early Education Initiative (\$39 million increase)

In the Proposed Amended Plan, \$39 million is added to the Pre-Kindergarten Initiative, bringing the total funding level to \$589 million. It would allow for the identification of new locations and provide 684 new pre-Kindergarten seats and 2,235 new 3K seats to children across the City. These funds would create classrooms within existing buildings and new locations.

3. Class Size Reduction Program (\$10 million deduction)

Funding for the Class Size Reduction Program in the Proposed Amended Plan totals \$140 million, which reflects a decrease of \$10 million. The Proposed Amended Plan's Class Size Reduction Program would provide funding to make a investment and commitment to reduce class size citywide and improve diversity within schools by increasing the number of school options available to students.

4. Capacity to Support Removal of Transportable Classroom Units (no proposed changes)

In the Proposed Amended Plan, no additional funding will be added or deducted from the Capacity to Support Removal of Transportable Classroom Units (TCUs), maintaining the current total funding level at \$180 million.

5. Facility Replacement Program (\$217 million increase)

The Facility Replacement Program is intended for the replacement of facilities whose leases will expire during the course of the 2019 Plan and for seats that will otherwise become unavailable. The replacement site could be another lease or a newly constructed building, depending on the available real estate. Funding for the Facility Replacement Program in the Proposed Amended Plan totals \$217 million over the five-year life of the 2019 Plan. Four projects have been identified to take place as part of the Facility Replacement Program.

Capital Investment Program (\$1.1 billion increase)

The Proposed Amended Plan increases funding for the Capital Investment program by \$1.1 billion. The Capital Investment Program now totals almost \$6.7 billion, which is 34.7 percent of the entire \$19.3 billion plan. The Capital Investment Program is comprised of the Capital Improvement Program and School Enhancement Projects.

1. Capital Improvement Program (\$351.3 million increase)

The Proposed Amended Plan increases the funding level for the Capital Improvement Program (“CIP”) by \$351.3 million, bringing the total to \$3.1 billion. The program includes all interior and exterior upgrades to the DOE building stock of approximately 1,300 buildings, including work such as building repairs, system replacements, and reconfiguration of existing school buildings.

The CIP projects are selected for the plan based on the level of need for repair. The need for repair is determined by the Building Conditions Assessment Survey (“BCAS”), a survey mandated by the New York State Education Department that requires visual inspections of every school building to assess the building’s physical condition. The BCAS gives every building component a rating of 1 to 5.

2. School Enhancement Projects (\$377.2 million increase)

Under the Proposed Amended Plan, the School Enhancement Projects include Facility Enhancements (\$1.8 billion) and Technology Enhancements (\$1 billion). These projects are upgrades to instructional spaces in existing buildings. The Proposed Amended Plan reflects an increase of \$110.4 million for Facilities Enhancements, which funds facility adjustments that enable changes to instructional offerings in particular buildings.

For Technology Enhancements, the Proposed Amended Plan includes a funding level of \$1 billion which reflects an increase of \$266.8 million compared to the 2019 Plan.

Mandated Programs (\$554.1 million increase)

Funding for Mandated Programs increased from \$3.1 billion to \$3.6 billion in the Proposed Amended Plan, which is 18.6 percent of the entire 19.3 billion plan. Mandated Programs includes funding for projects required by law or City agency mandate, such as completing the BCAS, emergency lighting, code compliance, prior plan completion costs, and insurance.

Sub-programs funded within Mandated Programs include, but is not limited to,:

- Wrap-Up Insurance includes funding for the insurance coverage for the SCA, its contractors, and subcontractors.

- Boiler Conversions and Associated Climate Control covers the conversion of boilers from using the dirtiest and polluting grades of heating fuel, known as residual oil Number 4 or Number 6, to using one of the cleanest, Number 2 oil.
- The Building Conditions Surveys Program includes funding for the completion of the annual facility inspection surveys and an extensive BCAS every year.
- The Emergency, Unspecified, and Miscellaneous category is a category that allows the SCA to respond to any unforeseen needs and emergencies that arise during the course of executing its capital plan.

Description of Above-captioned Resolution. In the above-captioned resolution, the Council would approve the annual amendment to the 2020 Plan pursuant to §2590-p of the State Education Law, and Paragraph (1)(a) of the November 10, 2020 MOU providing for annual amendments.

Preconsidered Res. No.

RESOLUTION APPROVING, PURSUANT TO SECTION 2590-p OF THE STATE EDUCATION LAW AND PARAGRAPH(1)(a) OF THE MEMORANDUM OF UNDERSTANDING, DATED NOVEMBER 10, 2020, AMONG THE MAYOR, THE SPEAKER, AND THE CHANCELLOR, THE AMENDMENT TO THE FIVE-YEAR EDUCATIONAL FACILITIES CAPITAL PLAN FOR 2020-2024 SUBMITTED BY THE CHANCELLOR.

By Council Member Dromm

WHEREAS, State Education Law Section 2590-p provides for the development and approval, every five years, of a five-year educational facilities capital plan and amendments thereto; and

WHEREAS, On June 19, 2019, after extensive discussions and negotiations with the Department of Education over the content and specifics of the proposed 2020-2024 Five-Year Educational Facilities Capital Plan, the Council of the City of New York approved the Five-Year Educational Facilities Capital Plan for the period of July 1, 2019 until June 30, 2024 (“2020 Plan”) pursuant to Section 2590-p of the Education Law for a total budget of \$17 billion; and

WHEREAS, On November 10, 2020, the Mayor of the City of New York (“Mayor”), the Speaker of the Council of the City of New York (“Speaker”), and the Chancellor entered into a Memorandum of Understanding (“MOU”), which required, *inter alia*, the Chancellor of the New York City Department of Education (“Chancellor”) to submit annual amendments to the 2020 Plan to the Mayor and the City Council for their respective consideration and approval; and

WHEREAS, The MOU also continued reporting requirements on the New York City Department of Education (“DOE”); and

WHEREAS, On February 26, 2021, the Chancellor submitted to the Council the Proposed February 2021 Amendment (hereinafter referred to as the “Amendment”) to the 2020 Plan, which would increase funding for the 2020 Plan by \$2.3 billion to \$19.3 billion; and

WHEREAS, This Amendment provides \$8.9 billion for the Capacity Program, which includes all elements of the 2020 Plan that result in new or replacement capacity for the educational system; and

WHEREAS, This Amendment also provides \$6.7 billion for the Capital Investment Program, which is for the enhancement and repair of existing facilities to improve the quality of infrastructure of buildings and properties; and

WHEREAS, This Amendment also provides \$3.6 billion for the Mandated Programs, which are projects required by law or City agency mandate; and

WHEREAS, This Amendment also includes funding in the amount of approximately \$819.5 million, which has been provided by the City Council, Borough President, and Mayor/Council sources; now, therefore, be it

RESOLVED, That the Council of the city of New York hereby approves, pursuant to Section 2590-p of the State Education Law and Paragraph (1)(a) of the Memorandum of Understanding, dated November 10, 2020, among the Mayor, the Speaker, and the Chancellor, the Amendment to the Five-Year Educational Facilities Capital Plan for 2020-2024 submitted by the Chancellor.

SR

6/28/2021