

**HOUSE . . . . . No. 3604**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act [Title].

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

1 Chapter 44C: Section 1. Title

2 Section 1. This chapter shall be known and may be cited as the Massachusetts School  
3 Preservation Act.

4 Chapter 44C: Section 2. Definitions

5 Section 2. As used in this chapter, the following words shall, unless the context clearly  
6 indicates a different meaning, have the following meanings:—

7 “Annual income”, a family’s or person’s gross annual income less such reasonable  
8 allowances for dependents, other than a spouse, and for medical expenses as the housing  
9 authority or, in the event that there is no housing authority, the department of housing and  
10 community development, determines.

11 “Legislative body”, the agency of municipal government which is empowered to enact  
12 ordinances or by-laws, adopt an annual budget and other spending authorizations, loan orders,

13 bond authorizations and other financial matters and whether styled as a city council, board of  
14 aldermen, town council, town meeting or by any other title.

15 “Real property”, land, buildings, appurtenant structures and fixtures attached to buildings  
16 or land, including, where applicable, real property interests.

17 “Real property interest”, a present or future legal or equitable interest in or to real  
18 property, including easements and restrictions, and any beneficial interest therein, including the  
19 interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but  
20 shall not include an interest which is limited to the following: an estate at will or at sufferance  
21 and any estate for years having a term of less than 30 years; the reversionary right, condition or  
22 right of entry for condition broken; the interest of a mortgagee or other secured party in a  
23 mortgage or security agreement.

24 “School committee,” the school committee of a city or town, as defined in section 31 of  
25 Chapter 43 of the General Laws, or the school committee of a regional school district, as defined  
26 in section 16A of Chapter 71 of the General Laws.

27 “School preservation”, the supplementing of the annual operating budget of a school  
28 district or of a regional school district. School preservation shall not include capital expenses,  
29 expenses for facilities repairs, expenses for facility maintenance, transportation expenses, athletic  
30 expenses, expenses for after-school programming or activities, or other expenses that occur  
31 before the school day begins or after the school day ends.

32 “School Preservation Fund”, the municipal fund established under section 7.

33 “SP”, school preservation.

34 Chapter 44C: Section 3. Acceptance of Sections 3 to 6

35 Section 3. (a) Sections 3 to 6, inclusive, shall take effect in any city or town upon the  
36 approval by the legislative body and their acceptance by the voters of a ballot question as set  
37 forth in this section.

38 (b) Notwithstanding the provisions of chapter 59 or any other general or special law to  
39 the contrary, the legislative body may vote to accept sections 3 to 6, inclusive, by approving a  
40 surcharge on real property of not more than 2 per cent of the real estate tax levy against real  
41 property, as determined annually by the board of assessors. The amount of the surcharge shall  
42 not be included in a calculation of total taxes assessed for purposes of section 21C of said  
43 chapter 59.

44 (c) All exemptions and abatements of real property authorized by said chapter 59 or any  
45 other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. A  
46 taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law  
47 shall be exempt from any surcharge on real property established under this section. The  
48 surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said  
49 chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

50 (d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per  
51 annum provided in section 57 of said chapter 59.

52 (e) The legislative body may also vote to accept one or more of the following  
53 exemptions:

54 (1) for property owned and occupied as a domicile by a person who would qualify for  
55 low income housing or low or moderate income senior housing in the city or town;

56 (2) for class three, commercial, and class four, industrial, properties as defined in section  
57 2A of said chapter 59, in cities or towns with classified tax rates; or

58 (3) for \$100,000 of the value of each taxable parcel of residential real property.

59 (4) for \$100,000 of the value of each taxable parcel of commercial property.

60 (f) Upon approval by the legislative body, the actions of the body shall be submitted for  
61 acceptance to the voters of a city or town at the next regular municipal or state election. The city  
62 or town clerk or the state secretary shall place it on the ballot in the form of the following  
63 question: "Shall this (city or town) accept sections 3 to 6, inclusive of chapter 44C of the General  
64 Laws, as approved by its legislative body, a summary of which appears below"

65 (Set forth here a fair, concise summary and purpose of the law to be acted upon, as  
66 determined by the city solicitor or town counsel, including in said summary the percentage of the  
67 surcharge to be imposed.)

68 If a majority of the voters voting on said question vote in the affirmative, then its  
69 provisions shall take effect in the city or town, but not otherwise.

70 (g) The final date for notifying or filing a petition with the city or town clerk or the state  
71 secretary to place such a question on the ballot shall be 35 days before the city or town election  
72 or 60 days before the state election.

73 (h) If the legislative body does not vote to accept sections 3 to 6, inclusive, at least 90  
74 days before a regular city or town election or 120 days before a state election, then a question

75 seeking said acceptance through approval of a particular surcharge rate with exemption or  
76 exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the  
77 registered voters of the city or town requesting such action is filed with the registrars, who shall  
78 have seven days after receipt of such petition to certify its signatures. Upon certification of the  
79 signatures, the city or town clerk or the state secretary shall cause the question to be placed on  
80 the ballot at the next regular city or town election held more than 35 days after such certification  
81 or at the next regular state election held more than 60 days after such certification.

82 (i) With respect to real property owned by a cooperative corporation, as defined in  
83 section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease  
84 as the member's domicile shall be considered real property owned by that member for the  
85 purposes of exemptions provided under this section. The member's portion of the real estate  
86 shall be represented by the member's share or shares of stock in the cooperative corporation, and  
87 the percentage of that portion to the whole shall be determined by the percentage of the  
88 member's shares to the total outstanding stock of the corporation, including shares owned by the  
89 corporation. This portion of the real property shall be eligible for any exemption provided in this  
90 section if the member meets all requirements for the exemption. Any exemption so provided  
91 shall reduce the taxable valuation of the real property owned by the cooperative corporation, and  
92 the reduction in taxes realized by this exemption shall be credited by the cooperative corporation  
93 against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in  
94 this subsection shall be construed to affect the tax status of any manufactured home or mobile  
95 home under this chapter, but this subsection shall apply to the land on which the manufactured  
96 home or mobile home is located if all other requirements of this clause are met. This subsection  
97 shall take effect in a city or town upon its acceptance by the city or town.

98 Chapter 44B: Section 4. Surcharge on real property; collection

99 Section 4. (a) Upon acceptance of sections 3 to 6, inclusive, and upon the assessors'  
100 warrant to the tax collector, the accepted surcharge shall be imposed.

101 (b) After receipt of the warrant, the tax collector shall collect the surcharge in the amount  
102 and according to the computation specified in the warrant and shall pay the amounts so collected,  
103 quarterly or semi-annually, according to the schedule for collection of property taxes for the tax  
104 on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books  
105 and accounts to be kept with respect to such surcharge, which shall be subject to public  
106 examination upon reasonable request from time to time.

107 (c) The remedies provided by chapter 60 for the collection of taxes upon real estate shall  
108 apply to the surcharge on real property pursuant to this chapter.

109 Chapter 44C: Section 5. Recommendations for school preservation

110 Section 5(a). The school committee shall study the needs, possibilities and resources of  
111 the city or town, or of the regional school district, regarding school preservation. The school  
112 committee shall consult with existing municipal officials, including the alderman, the selectmen  
113 or the city council, and the mayor or the town administrator, and any other officials that the  
114 committee considers necessary to consult in conducting such studies. As part of its study, the  
115 school committee shall hold one or more public informational hearings on the needs, possibilities  
116 and resources of the city or town regarding school preservation possibilities and resources, notice  
117 of which shall be posted publicly and published for each of two weeks preceding a hearing in a  
118 newspaper of general circulation in the city or town, or cities or towns.

119 (b) The school committee shall make recommendations to the legislative body for the  
120 school preservation purposes, or in the case of a regional school district, to the legislative bodies  
121 of the member cities or towns.

122 (c) The school committee may include in its recommendation to the legislative body or  
123 bodies a recommendation to set aside for later spending funds for specific purposes that are  
124 consistent with school preservation but for which sufficient revenues are not then available in the  
125 School Preservation Fund to accomplish that specific purpose or to set aside for later spending  
126 funds for general purposes that are consistent with community preservation.

127 (d) The school committee shall not meet or conduct business without the presence of a  
128 quorum. A majority of the members of the school committee shall constitute a quorum. The  
129 school committee shall approve its actions by majority vote. Recommendations to the legislative  
130 body shall include their anticipated costs.

131 Chapter 44C: Section 6. School preservation fund

132 Section 6. Notwithstanding the provisions of section 53 of chapter 44 or any other  
133 general or special law to the contrary, a city or town that accepts sections 3 to 6, inclusive, shall  
134 establish a separate account to be known as the School Preservation Fund of which the municipal  
135 treasurer shall be the custodian. The authority to approve expenditures from the fund shall be  
136 limited to the legislative body, or a major of the legislative bodies of member cities or towns of a  
137 regional school district, and the municipal treasurer shall pay such expenses in accordance with  
138 chapter 41.

139 The following monies shall be deposited in the fund: (a) all funds collected from the real  
140 property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 10;

141 and (b) all funds received from the commonwealth or any other source for such purposes. The  
142 treasurer may deposit or invest the proceeds of the fund in savings banks, trust companies  
143 incorporated under the laws of the commonwealth, banking companies incorporated under the  
144 laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or  
145 national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative  
146 banks or in shares of savings and loan associations or in shares of federal savings and loan  
147 associations doing business in the commonwealth or in the manner authorized by section 54 of  
148 chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues  
149 from the fund shall be limited to implementing the recommendations of the school committee.

150 Chapter 44C: Section 7. Surcharges; fees of registers of deeds; fees of assistant recorder

151 Section 7. (a) Except as otherwise provided, the fees of the registers of deeds to be paid  
152 when a document or instrument is recorded shall be subject to a surcharge of \$20; provided,  
153 however, that if the document or instrument to be filed includes multiple references to a  
154 document or instrument intending or attempting to assign, discharge, release, partially release,  
155 subordinate or notice any other document or instrument, each reference shall be separately  
156 indexed and separately assessed an additional \$20 surcharge. The fee for recording a municipal  
157 lien certificate shall be subject to a surcharge of \$10; provided, however, that if the certificate  
158 includes multiple references to a document or instrument intending or attempting to assign,  
159 discharge, release, partially release, subordinate or notice any other document or instrument,  
160 each reference shall be separately indexed and separately assessed an additional \$10 surcharge.  
161 The surcharges imposed shall be used for school preservation purposes. No surcharge shall apply  
162 to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for



163 additional pages, photostatic copies, abstract cards or additional square feet for the recording of  
164 plans.

165 (b) The fees of the assistant recorder, except as otherwise provided, to be paid when the  
166 instrument is left for registering, filing or entering with respect to registered land shall be subject  
167 to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate  
168 shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of  
169 school preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No  
170 surcharge shall apply to the fees charged for additional lots shown on plans, for indexing  
171 instruments recorded while a petition for registering is pending, for additional certificates of  
172 sewer assessments, for old age assistance liens, for duplicates and for photocopies.

173 (c) All surcharges on fees collected pursuant to this section shall be forwarded to the  
174 Massachusetts School Preservation Fund, established in section 8.

175 Chapter 44C: Section 8. Massachusetts school preservation trust fund

176 Section 8. (a) On or before January 1, 2014, there shall be established and set up on the  
177 books of the commonwealth a separate fund, to be known as the Massachusetts School  
178 Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 6,  
179 inclusive, and pursuant to said sections 3 to 6, inclusive, have imposed a surcharge on their real  
180 property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of  
181 all revenues received by the commonwealth: (1) under the provisions of section 7; (2) from  
182 public and private sources as gifts, grants and donations to further school preservation programs;  
183 (3) from damages, penalties, costs or interest received on account of litigation or settlement

184 thereof for a violation of section 14; or (4) all other monies credited to or transferred to from any  
185 other fund or source pursuant to law.

186 (b) The state treasurer shall deposit the fund in accordance with the provisions of section  
187 8 in such manner as will secure the highest interest rate available consistent with the safety of  
188 the fund and with the requirement that all amounts on deposit be available for withdrawal  
189 without penalty for such withdrawal at any time. All interest accrued and earnings shall be  
190 deposited into the fund. The fund shall be expended solely for the administration and  
191 implementation of this chapter. Any unexpended balances shall be redeposited for future use  
192 consistent with the provisions of this chapter.

193 (c) The state treasurer shall make all disbursements and expenditures from the fund  
194 without further appropriation, as directed by the commissioner of revenue in accordance with  
195 said section 8. The department of revenue shall report by source all amounts credited to said fund  
196 and all expenditures from said fund. The commissioner of revenue shall assign personnel of the  
197 department as it may need to administer and manage the fund disbursements and any expense  
198 incurred by the department shall be deemed an operating and administrative expense of the  
199 program. The operating and administrative expenses shall not exceed 5 per cent of the annual  
200 total revenue received under the provisions of said section 8.

201 Chapter 44B: Section 9. Annual distributions of monies in trust fund

202 Section 10. (a) After the fund is established as provided in section 8, the commissioner of  
203 revenue shall annually on October 15 disburse monies from the fund to cities and towns that  
204 have accepted sections 3 to 6, inclusive, and notified the commissioner of their acceptance. The  
205 community shall notify the commissioner of the date and terms on which the voters accepted

206 said sections 3 to 6, inclusive. The municipal tax collecting authority shall certify to the  
207 commissioner the amount the municipality has raised through June 30 by imposing a surcharge  
208 on its real property levy and shall certify the percentage of the surcharge applied.

209 (b) The commissioner shall multiply the amount in the fund by 80 per cent. This amount  
210 distributed in the first round distribution shall be known as the match distribution. The first round  
211 total shall be distributed to each city or town accepting said sections 3 to 6, inclusive, in an  
212 amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the  
213 additional surcharge on real property by each city or town. The percentage shall be the same for  
214 each city and town and shall be determined by the commissioner annually in a manner that  
215 distributes the maximum amount available to each participating city or town.

216 (c) The commissioner shall further divide the remaining 20 per cent of the fund in a  
217 second round distribution, known as the equity distribution. The commissioner shall determine  
218 the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent  
219 of the fund by the number of cities and towns that have accepted said sections 3 to 6, inclusive.  
220 This dividend shall be known as the base figure for equity distribution. This base figure shall be  
221 determined solely for purposes of performing the calculation for equity distribution and shall not  
222 be added to the amount received by a participant.

223 (d) Each city and town in the commonwealth shall be assigned a school preservation rank  
224 for purposes of the equity distribution. The commissioner shall determine each community's  
225 rank by first determining the municipality's equalized property valuation per capita ranking,  
226 ranking municipalities from highest to lowest valuation. The commissioner shall also determine  
227 the population of each municipality and rank each from largest to smallest in population. The

228 commissioner shall add each equalized property valuation rank and population rank, and divide  
229 the sum by two. The dividend is the school preservation raw score for that municipality.

230 (e) The commissioner shall then order each municipality by SP raw score, from the  
231 lowest raw score to the highest raw score. This order shall be the SP rank for each municipality.  
232 If more than one municipality has the same SP raw score, the municipality with the higher  
233 equalized valuation rank shall receive the higher SP rank.

234 (f) After determining the SP rank for each municipality in the commonwealth, the  
235 commissioner shall divide all municipalities into deciles according to their SP ranking, with  
236 approximately the same number of municipalities in each decile, and with the municipalities with  
237 the highest SP rank shall be placed in the lowest decile category, starting with decile 10.  
238 Percentages shall be assigned to each decile as follows:—

239 After assigning each municipality to a decile according to their SP rank, the  
240 commissioner shall multiply the percentage assigned to that decile by the base figure to  
241 determine the second round equity distribution for each participant.

242 (g) Notwithstanding any other provision of this section, the total state contribution for  
243 each city or town shall not exceed the amount raised by the municipality's surcharge on its real  
244 property levy.

245 (h) When there are monies remaining in the trust fund after the first and second round  
246 distributions, and any necessary administrative expenses have been paid in accordance with  
247 section 5, the commissioner may conduct a third round surplus distribution. Any remaining  
248 surplus in the fund may be distributed by dividing the amount of the surplus by the number of  
249 cities and towns that have accepted this chapter. The resulting dividend shall be the surplus base

250 figure. The commissioner shall then use the decile categories and percentages as defined in this  
251 section to determine a surplus equity distribution for each participant.

252 (i) The commissioner shall determine each participant's total state grant by adding the  
253 amount received in the first round distribution with the amounts received in any later round or  
254 rounds of distributions, with the exception of a city or town that has already received a grant  
255 equal to 100 per cent of the amount the community raised by its surcharge on its real property  
256 levy.

257 (1) Only those cities and towns that adopt the maximum surcharge allowed by this  
258 chapter shall be eligible to receive additional state monies through the equity and surplus  
259 distributions.

260 (2) If less than 10 per cent of the cities and towns in the commonwealth have accepted  
261 sections 3 to 6, inclusive, and imposed and collected a surcharge on their real property levy, the  
262 commissioner may calculate the state grant with only one round of distributions, or in any other  
263 equitable manner.

264 (j) After distributing the trust fund in accordance with this section, the commissioner  
265 may keep any remaining funds in the trust for distribution in the following year.

266 Chapter 44B: Section 10. General obligation bonds or notes

267 Section 10. A city or town that accepts sections 3 to 6, inclusive, may issue, from time to  
268 time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to  
269 section 3, the proceeds of which shall be deposited in the School Preservation Fund. Bonds or  
270 notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon

271 after such revenues are collected as is expedient. Cities or towns that choose to issue bonds  
272 pursuant to this section shall make every effort to limit the administrative costs of issuing such  
273 bonds by cooperating among each other using methods including, but not limited to, common  
274 issuance of bonds or common retention of bond counsel. Except as otherwise provided in this  
275 chapter, bonds or notes issued pursuant to this section shall be subject to the applicable  
276 provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter  
277 may be arranged so that for each issue the amounts payable in the several years for principal and  
278 interest combined shall be as nearly equal as practicable in the opinion of the officers authorized  
279 to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more  
280 rapid amortization of principal.

281 Chapter 44C: Section 11. Accurate account of recommendations and actions; records of  
282 appropriations and expenditures and of real property interests

283 Section 11. The school committee shall keep a full and accurate account of all of its  
284 actions, including its recommendations and the action taken on them and records of all  
285 appropriations or expenditures made from the School Preservation Fund. The records and  
286 accounts shall be public records.

287 Chapter 44B: Section 12. State grants

288 Section 12. Notwithstanding the provisions of any general or special law to the contrary,  
289 every city and town may accept sections 3 to 6, inclusive, and may thereupon receive state grants  
290 under section 9. A city or town that accepts said sections 3 to 6, inclusive, shall not be precluded  
291 from participating in state grant programs.

292 State grant programs may include local adoption of this chapter among the criteria for  
293 selection of grant recipients. Funds in the School Preservation Fund may be made available and  
294 used by the city or town as the local share for state or federal grants upon recommendation of the  
295 school committee and the legislative body, as provided for in section 5, if such grants and such  
296 local share are used in a manner consistent with the recommendations of the school committee.

297 Chapter 44B: Section 13. Amendments to amount and computation of surcharge;  
298 revocation of Sections 3 to 6

299 Section 13. (a) At any time after imposition of the surcharge, the legislative body may  
300 approve and the voters may accept an amendment to the amount and computation of the  
301 surcharge, or to the amount of exemption or exemptions, in the same manner and within the  
302 limitations set forth in this chapter.

303 (b) At any time after the expiration of five years after the date on which sections 3 to 6,  
304 inclusive, have been accepted in a city or town, said sections may be revoked in the same manner  
305 as they were accepted by such city or town, but the surcharge imposed under section 3 shall  
306 remain in effect in any such city or town, with respect to unpaid taxes on past transactions and  
307 with respect to taxes due on future transactions, until all contractual obligations incurred by the  
308 city or town prior to such termination shall have been fully discharged.

309 Chapter 44B: Section 14. Rules and regulations

310 Section 14. The commissioner of revenue shall have the authority to promulgate rules and  
311 regulations to effect the purposes of this chapter.