

2023 -- S 0537

LC001149

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO EDUCATION -- SCHOOL FUNDS AND PROPERTY

Introduced By: Senators Pearson, Gallo, Acosta, Cano, Murray, DiPalma, Ruggiero,
Valverde, LaMountain, and DiMario

Date Introduced: March 07, 2023

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 16-9 of the General Laws entitled "School Funds and Property" is
2 hereby amended by adding thereto the following section:

3 **16-9-11. New school construction and renovations.**

4 (a) Not later than December 31, 2023, the department of elementary and secondary
5 education is hereby authorized and directed, in consultation with the office of energy resources, to
6 develop and adopt regulations requiring all school buildings to meet the standard of zero energy
7 capable, as defined in § 16-7-36, by December 31, 2035.

8 (1) The regulations shall allow flexibility to the furthest extent possible for local education
9 agencies to pursue state and federal funding sources that assist in financing energy efficiency or
10 renewable energy systems without any penalties or reduction in state housing aid provided by the
11 department of education.

12 (2) Furthermore, for local education agencies that pursue federal funding for renewable
13 energy systems, the department's regulations shall direct and provide further guidance to local
14 education agencies to build, own, and operate solar panels utilizing federal guidance established in
15 I.R.C. § 6418(b)(1).

16 (b) For purposes of the section, terms used in this section shall have the same meaning as
17 defined in § 16-7-36.

18 SECTION 2. Sections 16-7-36, 16-7-40 and 16-7-41.1 of the General Laws in Chapter 16-
19 7 entitled "Foundation Level School Support [See Title 16 Chapter 97 — The Rhode Island Board

1 of Education Act]" are hereby amended to read as follows:

2 **16-7-36. Definitions.**

3 The following words and phrases used in §§ 16-7-35 to 16-7-47 [and in §16-9-11](#) have the
4 following meanings:

5 (1) "Adjusted equalized weighted assessed valuation" means the equalized weighted
6 assessed valuation for a community as determined by the division of property valuation within the
7 department of revenue in accordance with § 16-7-21; provided, however, that in the case of a
8 regional school district the commissioner of elementary and secondary education shall apportion
9 the adjusted equalized weighted assessed valuation of the member cities or towns among the
10 regional school district and the member cities or towns according to the proportion that the number
11 of pupils of the regional school district bears to the number of pupils of the member cities or towns.

12 (2) "Approved project" means a project which has complied with the administrative
13 regulations governing §§ 16-7-35 through 16-7-47, and which has been authorized to receive state
14 school housing reimbursement by the commissioner of elementary and secondary education.

15 (3) "Commissioning agent" means a person or entity who ensures that systems are
16 designed, installed, functionally tested, and capable of being operated and maintained to perform
17 in conformity with the design intent of a project.

18 (4) "Community" means any city, town, or regional school district established pursuant to
19 law; provided, however, that the member towns of the Chariho regional high school district, created
20 by P.L. 1958, ch. 55, as amended, shall constitute separate and individual communities for the
21 purposes of distributing the foundation level school support for school housing for all grades
22 financed in whole or in part by the towns irrespective of any regionalization.

23 (5) "Facilities condition index" means the cost to fully repair the building divided by the
24 cost to replace the building as determined by the school building authority.

25 (6) "Functional utilization" means the ratio of the student population within a school
26 facility to the capacity of the school facility to adequately serve students as defined by the school
27 building authority.

28 (7) "Maintenance expenditures" means amounts spent for repairs or replacements for the
29 purpose of keeping a school facility open and safe for use, including repairs, maintenance, and
30 replacements to a school facility's heating, lighting, ventilation, security, and other fixtures to keep
31 the facility or fixtures in effective working condition. Maintenance shall not include contracted or
32 direct custodial or janitorial services, expenditures for the cleaning of a school facility or its
33 fixtures, the care and upkeep of grounds, recreational facilities, or parking lots, or the cleaning of
34 or repairs and replacements to movable furnishings or equipment.

1 (8) "Owner's program manager" means owner's program manager as defined in § 37-2-7.

2 (9) "Prime contractor" means the construction contractor who is responsible for the
3 completion of a project.

4 (10) "Reference year" means the year next prior to the school year immediately preceding
5 that in which aid is to be paid.

6 (11) "Subject to inflation" means the base amount multiplied by the percentage of increase
7 in the Producer Price Index (PPI) Data for Nonresidential Building Construction (NAICS 236222)
8 as published by the United States Department of Labor, Bureau of Labor Statistics determined as
9 of September 30 of the prior calendar year.

10 (12) "Zero energy capable" means the building:

11 (i) Meets the latest Northeast Collaborative for High Performance Schools (NE-CHPS)
12 standard of a zero energy capable school building whereby the actual annual energy delivered other
13 than as described in subsection (12)(ii) of this section, must be less than or equal to the renewable
14 energy generated onsite; or

15 (ii) The actual annual energy delivered must be less than or equal to the sum of:

16 (A) The renewable energy generated onsite;

17 (B) The renewable energy generated offsite through a power purchase agreement; and

18 (C) The value of purchased NE-GIS certificates that meet the standard for a new renewable
19 energy resources as defined in § 39-26-2.

20 **16-7-40. Increased school housing ratio.**

21 (a)(1) In the case of regional school districts, the school housing aid ratio shall be increased
22 by two percent (2%) for each grade so consolidated.

23 (2) Regional school districts undertaking renovation project(s) shall receive an increased
24 share ratio of four percent (4%) for those specific project(s) only, in addition to the combined share
25 ratio calculated in § 16-7-39 and this subsection.

26 (b) In the case of projects undertaken by districts specifically for the purposes of school
27 safety and security, the school housing aid share ratio shall be increased by five percent (5%) for
28 these specific projects only, in the calculation of school housing aid. The increased share ratio shall
29 continue to be applied for as long as the project(s) receives state housing aid. In order to qualify for
30 the increased share ratio, seventy-five percent (75%) of the project costs must be specifically
31 directed to school safety and security measures. The council on elementary and secondary
32 education shall promulgate rules and regulations for the administration and operation of this
33 section.

34 (c) For purposes of addressing health and safety deficiencies as defined by the school

1 building authority, including the remediation of hazardous materials, the school housing aid ratio
2 shall be increased by five percent (5%) so long as the construction of the project commences by
3 December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar
4 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to
5 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum
6 of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

7 (d) For purposes of educational enhancement, including projects devoted to the
8 enhancement of early childhood education and career and technical education, the school housing
9 aid ratio shall be increased by five percent (5%) so long as construction of the project commences
10 by December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar
11 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to
12 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum
13 of five hundred thousand dollars (\$500,000) must be specifically directed to these purposes.

14 (e) For replacement of a facility that has a facilities condition index of sixty-five percent
15 (65%) or higher, the school housing ratio shall be increased by five percent (5%) so long as
16 construction of the project commences by December 30, 2023, is completed by December 30, 2028,
17 does not receive a bonus pursuant to subsection (f) or subsection (g), and a two hundred fifty million
18 dollar (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order
19 to qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum
20 of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

21 (f) For any new construction or renovation that increases the functional utilization of any
22 facility from less than sixty percent (60%) to more than eighty percent (80%), including the
23 consolidation of school buildings within or across districts, the school housing aid ratio shall be
24 increased by five percent (5%) so long as construction of the project commences by December 30,
25 2023, is completed by December 30, 2028, and a two hundred fifty million dollar (\$250,000,000)
26 general obligation bond is approved on the November 2018 ballot. In order to qualify for the
27 increased share ratio, twenty-five percent (25%) of the project costs or a minimum of five hundred
28 thousand dollars (\$500,000) must be specifically directed to this purpose.

29 (g) For any new construction or renovation that decreases the functional utilization of any
30 facility from more than one hundred twenty percent (120%) to between eighty-five percent (85%)
31 to one hundred five percent (105%), the school housing ratio shall be increased by five percent
32 (5%) so long as construction of the project commences by December 30, 2023, is completed by
33 December 30, 2028, and a two hundred fifty million dollar (\$250,000,000) general obligation bond
34 is approved on the November 2018 ballot. In order to qualify for the increased share ratio, twenty-

1 five percent (25%) of the project costs or a minimum of five hundred thousand dollars (\$500,000)
2 must be specifically directed to this purpose.

3 (h) For consolidation of two (2) or more school buildings, within or across districts into
4 one school building, the school housing aid ratio shall be increased by five percent (5%) so long as
5 construction of the project commences by December 30, 2023, is completed by December 30, 2028,
6 a two hundred fifty million dollar (\$250,000,000) general obligation bond is approved on the
7 November 2018 ballot, and does not receive a bonus pursuant to subsection (f) or subsection (g).
8 In order to qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a
9 minimum of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

10 (i) Any regionalized and/or non-regionalized school district receiving an increased share
11 ratio for a project approved prior to July 1, 2018, shall continue to receive the increased share ratio
12 for as long as the project receives state housing aid.

13 (j)(1) For any new construction or renovation that includes energy efficiency and
14 renewable energy upgrades, the school housing aid ratio shall be increased by five percent (5%) so
15 long as a three hundred million dollar (\$300,000,000) general obligation bond is approved on the
16 November 2022 ballot and does not receive a bonus pursuant to subsection (j)(2) of this section.

17 (i) In order for new construction to qualify for the increased share ratio:

18 (A) The project shall achieve a maximum energy use intensity (EUI) of thirty (30) kBtu
19 per square foot per year; or

20 (B) Twenty-five percent (25%) of the project costs or a minimum of one million dollars
21 (\$1,000,000) shall be specifically directed to this purpose.

22 (ii) In order for a renovation to qualify for the increased share ratio:

23 (A) The project shall achieve a maximum energy use intensity (EUI) of thirty-seven (37)
24 kBtu per square foot per year; or

25 (B) Twenty-five percent (25%) of the project costs or a minimum of one million dollars
26 (\$1,000,000) shall be specifically directed to this purpose.

27 (2) For any new construction or renovation that includes energy efficiency and renewable
28 energy upgrades for the building to meet the definition of a zero energy capable school building
29 pursuant to § 16-7-36, the school housing aid ratio shall be increased by ten percent (10%) so long
30 as a three hundred million dollar (\$300,000,000) general obligation bond is approved on the
31 November 2022 ballot and does not receive a bonus pursuant to subsection (j)(1) of this section.
32 In order to qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a
33 minimum of one million dollars (\$1,000,000) shall be specifically directed to this purpose.

34 **16-7-41.1. Eligibility for reimbursement.**

1 (a) School districts, not municipalities, may apply for and obtain approval for a project
2 under the necessity of school construction process set forth in the regulations of the council on
3 elementary and secondary education, provided, however, in the case of a municipality that issues
4 bonds through the Rhode Island health and educational building corporation to finance or refinance
5 school facilities for a school district that is not part of the municipality, the municipality may apply
6 for and obtain approval for a project. Such approval will remain valid until June 30 of the third
7 fiscal year following the fiscal year in which the council on elementary and secondary education's
8 approval is granted. Only those projects undertaken at school facilities under the care and control
9 of the school committee and located on school property may qualify for reimbursement under §§
10 16-7-35 — 16-7-47. Facilities with combined school and municipal uses or facilities that are
11 operated jointly with any other profit or nonprofit agency do not qualify for reimbursement under
12 §§ 16-7-35 — 16-7-47. Projects completed by June 30 of a fiscal year are eligible for
13 reimbursement in the following fiscal year. A project for new school housing or additional housing
14 shall be deemed to be completed when the work has been officially accepted by the school
15 committee or when the housing is occupied for its intended use by the school committee, whichever
16 is earlier.

17 (b) Notwithstanding the provisions of this section, the board of regents shall not grant final
18 approval for any project between June 30, 2011, and May 1, 2015, except for projects that are
19 necessitated by immediate health and safety reasons. In the event that a project is requested during
20 the moratorium because of immediate health and safety reasons, those proposals shall be reported
21 to the chairs of the house and senate finance committees.

22 (c) Any project approval granted prior to the adoption of the school construction
23 regulations in 2007, and which are currently inactive; and any project approval granted prior to the
24 adoption of the school construction regulations in 2007 which did not receive voter approval or
25 which has not been previously financed, are no longer eligible for reimbursement under this
26 chapter. The department of elementary and secondary education shall develop recommendations
27 for further cost containment strategies in the school housing aid program.

28 (d) Beginning July 1, 2015, the council on elementary and secondary education shall
29 approve new necessity of school construction applications on an annual basis. The department of
30 elementary and secondary education shall develop an annual application timeline for local
31 education agencies seeking new necessity of school construction approvals.

32 (e) Beginning July 1, 2019, no state funding shall be provided for projects in excess of ten
33 million dollars (\$10,000,000) unless the prime contractor for the project has received
34 prequalification from the school building authority.

1 (f) Beginning July 1, 2019, the necessity of school construction process set forth in the
2 regulations of the council on elementary and secondary education shall include a single statewide
3 process, developed with the consultation of the department of environmental management, that will
4 ensure community involvement throughout the investigation and remediation of contaminated
5 building sites for possible reuse as the location of a school. That process will fulfill all provisions
6 of § 23-19.14-5 related to the investigation of reuse of such sites for schools.

7 (g) Beginning July 1, 2019, school housing projects exceeding one million five hundred
8 thousand dollars (\$1,500,000) subject to inflation shall include an owner's program manager and a
9 commissioning agent. The cost of the program manager and commissioning agent shall be
10 considered a project cost eligible for aid pursuant to §§ 16-7-41 and 16-105-5.

11 (h) Temporary housing, or swing space, for students shall be a reimbursable expense so
12 long as a district can demonstrate that no other viable option to temporarily house students exists
13 and provided that use of the temporary space is time limited for a period not to exceed twenty-four
14 (24) months and tied to a specific construction project.

15 (i) Environmental site remediation, as defined by the school building authority, shall be a
16 reimbursable expense up to one million dollars (\$1,000,000) per project.

17 (j) If, within thirty (30) years of construction, a newly constructed school is sold to a private
18 entity, the state shall receive a portion of the sale proceeds equal to that project's housing aid
19 reimbursement rate at the time of project completion.

20 (k) All projects must comply with § 37-13-6, ensuring that prevailing wage laws are being
21 followed, and § 37-14.1-6, ensuring that minority business enterprises reach a minimum of ten
22 percent (10%) of the dollar value of the bid, and § 37-13-3.1, ensuring apprenticeship program
23 utilization.

24 (l) Using reviewable criteria, all projects seeking school housing aid shall complete an
25 independent, objective, reasoned study on all projects over ten million dollars (\$10,000,000) to
26 determine whether adoption of a project labor agreement on the proposed project or projects will
27 help achieve the goals of the state purchases act.

28 SECTION 3. Section 16-105-3 of the General Laws in Chapter 16-105 entitled "School
29 Building Authority" is hereby amended to read as follows:

30 **16-105-3. Roles and responsibilities.**

31 The school building authority roles and responsibilities shall include:

32 (1) Management of a system with the goal of ensuring equitable and adequate school
33 housing for all public school children in the state;

34 (2) Prevention of the cost of school housing from interfering with the effective operation

1 of the schools;

2 (3) Management of school housing aid in accordance with statute;

3 (4) Reviewing and making recommendations to the council on elementary and secondary
4 education on necessity of school construction applications for state school housing aid and the
5 school building authority capital fund, based on the recommendations of the school building
6 authority advisory board;

7 (5) Promulgating, managing, and maintaining school construction regulations, standards,
8 and guidelines applicable to the school housing program, based on the recommendations of the
9 school building authority advisory board, created in § 16-105-8. Said regulations shall require
10 conformance with the minority business enterprise requirements set forth in § 37-14.1-6 and with
11 the latest Northeast Collaborative for High Performance Schools (NE-CHPS) standards or
12 equivalent, contingent on approval from the council on elementary and secondary education;

13 (6) Developing a prequalification and review process for prime contractors, architects, and
14 engineers seeking to bid on projects in excess of ten million dollars (\$10,000,000) in total costs
15 subject to inflation. Notwithstanding any general laws to the contrary, a prequalification shall be
16 valid for a maximum of two (2) years from the date of issuance. Factors to be considered by the
17 school building authority in granting a prequalification to prime contractors shall include, but not
18 be limited to, the contractor's history of completing complex projects on time and on budget, track
19 record of compliance with applicable environmental and safety regulations, evidence that
20 completed prior projects prioritized the facility's future maintainability, and compliance with
21 applicable requirements for the use of women and minority owned subcontractors;

22 (i) At least annually, a list of prequalified contractors, architects, and engineers shall be
23 publicly posted with all other program information;

24 (7) Providing technical assistance and guidance to school districts on the necessity of
25 school construction application process;

26 (8) Providing technical advice and assistance, training, and education to cities, towns,
27 and/or local education agencies and to general contractors, subcontractors, construction or project
28 managers, designers and others in planning, maintenance, and establishment of school facility
29 space;

30 (9) Developing a project priority system, based on the recommendations of the school
31 building authority advisory board, in accordance with school construction regulations for the school
32 building authority capital fund, subject to review and, if necessary, to be revised on intervals not to
33 exceed five (5) years. Project priorities shall include, but not be limited to, the following order of
34 priorities:

- 1 (i) Projects to replace or renovate a building that is structurally unsound or otherwise in a
2 condition seriously jeopardizing the health and safety of school children where no alternative exists;
- 3 (ii) Projects needed to prevent loss of accreditation;
- 4 (iii) Projects needed for the replacement, renovation, or modernization of the HVAC
5 system in any schoolhouse to increase energy conservation and decrease energy-related costs in
6 said schoolhouse;
- 7 (iv) Projects needed to replace or add to obsolete buildings in order to provide for a full
8 range of programs consistent with state and approved local requirements; and
- 9 (v) Projects needed to comply with mandatory, instructional programs;
- 10 (10) Maintaining a current list of requested school projects and the priority given them;
- 11 (11) Collecting and maintaining readily available data on all the public school facilities in
12 the state;
- 13 (12) Collecting, maintaining, and making publicly available quarterly progress reports of
14 all ongoing school construction projects that shall include, at a minimum, the costs of the project
15 and the time schedule of the project;
- 16 (13) Recommending policies and procedures designed to reduce borrowing for school
17 construction programs at both state and local levels;
- 18 (14) At least every five (5) years, conducting a needs survey to ascertain the capital
19 construction, reconstruction, maintenance, and other capital needs for schools in each district of the
20 state, including public charter schools. Beginning in 2023, this needs survey shall include progress
21 towards and recommendations for energy efficiency and renewable energy upgrades to bring all
22 state school buildings to the definition of a zero energy capable school building pursuant to § 16-
23 7-36;
- 24 (15) Developing a formal enrollment projection model or using projection models already
25 available;
- 26 (16) Encouraging local education agencies to investigate opportunities for the maximum
27 utilization of space in and around the district;
- 28 (17) Collecting and maintaining a clearinghouse of prototypical school plans that may be
29 consulted by eligible applicants;
- 30 (18) Retaining the services of consultants, as necessary, to effectuate the roles and
31 responsibilities listed within this section;
- 32 (19) Hiring an appropriate staff member who shall create and implement a plan to bring all
33 state school buildings in compliance with the definition of a zero energy capable school building
34 pursuant to § 16-7-36 and who shall provide technical advice and assistance, training, and education

1 to cities, towns, and/or local education agencies, and to general contractors, subcontractors,
2 construction or project managers, designers and others on the latest NE-CHPS standards;

3 ~~(19)~~(20) No district shall receive a combined total of more than twenty (20) incentive
4 percentage points for projects that commence construction by December 30, 2023, and five (5)
5 incentive points for projects that commence construction thereafter; provided further, these caps
6 shall be in addition to amounts received under §§ 16-7-40(a)(1), ~~and~~ 16-7-40(a)(2), 16-7-40(j)(1),
7 and 16-7-40(j)(2). Furthermore, a district's share shall not be decreased by more than half of its
8 regular share irrespective of the number of incentive points received, nor shall a district's state
9 share increase by more than half of its regular share, including amounts received under §§ 16-7-
10 40(a)(1) and 16-7-40(a)(2), irrespective of the number of incentive points received.
11 Notwithstanding any provision of the general laws to the contrary, the reimbursement or aid
12 received under this chapter or chapter 38.2 of title 45 shall not exceed one hundred percent (100%)
13 of the sum of the total project costs plus interest costs. If a two hundred and fifty million dollar
14 (\$250,000,000) general obligation bond is approved on the November 2018 ballot, projects
15 approved between May 1, 2015, and January 1, 2018, are eligible to receive incentive points (above
16 and beyond what the project was awarded at the time of approval) pursuant to § 16-7-39 and § 16-
17 7-40. Provided, however, any project approved during this time period with a project cost in excess
18 of one million five hundred thousand dollars (\$1,500,000), which does not include an owner's
19 program manager and a commissioning agent, shall only be eligible to receive five (5) incentive
20 points. Incentive points awarded pursuant to the provisions of this subsection shall only be applied
21 to reimbursements occurring on or after July 1, 2018. Any project approved between May 1, 2015,
22 and January 1, 2018, that is withdrawn and/or resubmitted for approval shall not be eligible for any
23 incentive points.

24 SECTION 4. This act shall take effect upon passage.

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LC001149
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO EDUCATION -- SCHOOL FUNDS AND PROPERTY

1 This act would provide that not later than December 31, 2023, the department of education
2 would develop and adopt, in consultation with the office of energy resources, regulations requiring
3 all school buildings to meet the standard of zero energy capable, as defined in § 16-7-36, by
4 December 31, 2035.

5 This act would take effect upon passage.

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