

2023 -- H 6008

LC001764

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO EDUCATION -- FOUNDATION LEVEL SCHOOL SUPPORT

Introduced By: Representatives Handy, McNamara, Cortvriend, Boylan, Tanzi, Edwards,  
Hull, Speakman, Fogarty, and Henries

Date Introduced: March 01, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 16-7-36, 16-7-39, 16-7-40 and 16-7-41.1 of the General Laws in  
2 Chapter 16-7 entitled "Foundation Level School Support [See Title 16 Chapter 97 — The Rhode  
3 Island Board of Education Act]" are hereby amended to read as follows:

4 **16-7-36. Definitions.**

5 The following words and phrases used in §§ 16-7-35 to 16-7-47 have the following  
6 meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (A) The renewable energy generated onsite;

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

1 [\(C\) The value of purchased NE-GIS certificates that meet the standard for a new renewable](#)  
2 [energy resource as defined in § 39-26-2.](#)

3 **16-7-39. Computation of school housing-aid ratio.**

4 For each community, the percent of state aid for school housing costs shall be computed in  
5 the following manner:

6 (1) The adjusted equalized weighted assessed valuation for the district is divided by the  
7 resident average daily membership for the district (grades twelve (12) and below); (2) The adjusted  
8 equalized weighted assessed valuation for the state is divided by the resident average daily  
9 membership for the state (grades twelve (12) and below); (1) is then divided by (2) and the resultant  
10 ratio is multiplied by a factor currently set at sixty-two percent (62%) which represents the  
11 approximate average district share of school support; the resulting product is then subtracted from  
12 one hundred percent (100%) to yield the housing aid share ratio, provided that in no case shall the  
13 ratio be less than thirty percent (30%). Provided, that effective July 1, 2010, and annually at the  
14 start of each fiscal year thereafter, the thirty percent (30%) floor on said housing-aid share shall be  
15 increased by five percent (5%) increments each year until said floor on the housing-aid share ratio  
16 reaches a minimum of not less than forty percent (40%). This provision shall apply only to school  
17 housing projects completed after June 30, 2010, that received approval from the board of regents  
18 prior to June 30, 2012. Provided further, for the fiscal year beginning July 1, 2012, and for  
19 subsequent fiscal years, the minimum housing aid share shall be thirty-five percent (35%) for all  
20 projects receiving council on elementary and secondary education approval after June 30, 2012.  
21 The resident average daily membership shall be determined in accordance with § 16-7-22(1).

22 (2) No district shall receive a combined total of more than twenty (20) incentive percentage  
23 points for projects that commence construction by December 30, 2023, and five (5) incentive points  
24 for projects that commence construction thereafter; provided further, these caps shall be in addition  
25 to amounts received under §§ 16-7-40(a)(1) ~~and~~, 16-7-40(a)(2), [16-7-40\(j\)\(1\) and 16-7-40\(j\)\(2\)](#).  
26 Furthermore, a district's share shall not be decreased by more than half of its regular share  
27 irrespective of the number of incentive points received nor shall a district's state share increase by  
28 more than half of its regular share, including amounts received under §§ 16-7-40(a)(1) and 16-7-  
29 40(a)(2), irrespective of the number of incentive points received.

30 **16-7-40. Increased school housing ratio.**

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

33 (2) Regional school districts undertaking renovation project(s) shall receive an increased  
34 share ratio of four percent (4%) for those specific project(s) only, in addition to the combined share

1 ratio calculated in § 16-7-39 and this subsection.

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

10 (c) For purposes of addressing health and safety deficiencies as defined by the school  
11 building authority, including the remediation of hazardous materials, the school housing aid ratio  
12 shall be increased by five percent (5%) so long as the construction of the project commences by  
13 December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar  
14 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to  
15 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum  
16 of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

17 (d) For purposes of educational enhancement, including projects devoted to the  
18 enhancement of early childhood education and career and technical education, the school housing  
19 aid ratio shall be increased by five percent (5%) so long as construction of the project commences  
20 by December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar  
21 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to  
22 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum  
23 of five hundred thousand dollars (\$500,000) must be specifically directed to these purposes.

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

31 (f) For any new construction or renovation that increases the functional utilization of any  
32 facility from less than sixty percent (60%) to more than eighty percent (80%), including the  
33 consolidation of school buildings within or across districts, the school housing aid ratio shall be  
34 increased by five percent (5%) so long as construction of the project commences by December 30,

1 2023, is completed by December 30, 2028, and a two hundred fifty million dollar (\$250,000,000)  
2 general obligation bond is approved on the November 2018 ballot. In order to qualify for the  
3 increased share ratio, twenty-five percent (25%) of the project costs or a minimum of five hundred  
4 thousand dollars (\$500,000) must be specifically directed to this purpose.

5 (g) For any new construction or renovation that decreases the functional utilization of any  
6 facility from more than one hundred twenty percent (120%) to between eighty-five percent (85%)  
7 to one hundred five percent (105%), the school housing ratio shall be increased by five percent  
8 (5%) so long as construction of the project commences by December 30, 2023, is completed by  
9 December 30, 2028, and a two hundred fifty million dollar (\$250,000,000) general obligation bond  
10 is approved on the November 2018 ballot. In order to qualify for the increased share ratio, twenty-  
11 five percent (25%) of the project costs or a minimum of five hundred thousand dollars (\$500,000)  
12 must be specifically directed to this purpose.

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

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

23 (j)(1) In the case of projects undertaken by districts specifically for the purposes of high-  
24 performance school design, the school housing aid share ratio shall be increased by five percent  
25 (5%) for these specific projects only, in the calculation of school housing aid. The increased share  
26 ratio shall continue to be applied for as long as the project(s) receives state housing aid. In order to  
27 qualify for the increased share ratio, seventy-five percent (75%) of the project costs must be  
28 specifically directed to this purpose. The council on elementary and secondary education shall  
29 promulgate rules and regulations for the administration and operation of this section.

30 (2) For any new construction or renovation that includes energy efficiency and renewable  
31 energy upgrades for the building to meet the standard of a zero energy capable school building as  
32 defined in § 16-7-36, the school housing aid ratio shall be increased by ten percent (10%).

33 **16-7-41.1. Eligibility for reimbursement.**

34 (a) School districts, not municipalities, may apply for and obtain approval for a project

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

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

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

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

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

34 (f) Beginning July 1, 2019, the necessity of school construction process set forth in the

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

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

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

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

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

19 (k) All projects must comply with § 37-13-6, ensuring that prevailing wage laws are being  
20 followed, and § 37-14.1-6, ensuring that minority business enterprises reach a minimum of ten  
21 percent (10%) of the dollar value of the bid, and § 37-13-3.3, ensuring apprenticeship program  
22 utilization.

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

27 SECTION 2. Section 16-105-3 of the General Laws in Chapter 16-105 entitled "School  
28 Building Authority" is hereby amended to read as follows:

29 **16-105-3. Roles and responsibilities.**

30 The school building authority roles and responsibilities shall include:

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

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

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

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

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

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

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

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

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

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

34 (i) Projects to replace or renovate a building that is structurally unsound or otherwise in a



1 condition seriously jeopardizing the health and safety of school children where no alternative exists;

2 (ii) Projects needed to prevent loss of accreditation;

3 (iii) Projects needed for the replacement, renovation, or modernization of the HVAC  
4 system in any schoolhouse to increase energy conservation and decrease energy-related costs in  
5 said schoolhouse;

6 (iv) Projects needed to replace or add to obsolete buildings in order to provide for a full  
7 range of programs consistent with state and approved local requirements; and

8 (v) Projects needed to comply with mandatory, instructional programs;

9 (10) Maintaining a current list of requested school projects and the priority given them;

10 (11) Collecting and maintaining readily available data on all the public school facilities in  
11 the state;

12 (12) Collecting, maintaining, and making publicly available quarterly progress reports of  
13 all ongoing school construction projects that shall include, at a minimum, the costs of the project  
14 and the time schedule of the project;

15 (13) Recommending policies and procedures designed to reduce borrowing for school  
16 construction programs at both state and local levels;

17 (14) At least every five (5) years, conducting a needs survey to ascertain the capital  
18 construction, reconstruction, maintenance, and other capital needs for schools in each district of the  
19 state, including public charter schools;

20 (15) Developing a formal enrollment projection model or using projection models already  
21 available;

22 (16) Encouraging local education agencies to investigate opportunities for the maximum  
23 utilization of space in and around the district;

24 (17) Collecting and maintaining a clearinghouse of prototypical school plans that may be  
25 consulted by eligible applicants;

26 (18) Retaining the services of consultants, as necessary, to effectuate the roles and  
27 responsibilities listed within this section;

28 (19) No district shall receive a combined total of more than twenty (20) incentive  
29 percentage points for projects that commence construction by December 30, 2023, and five (5)  
30 incentive points for projects that commence construction thereafter; provided further, these caps  
31 shall be in addition to amounts received under §§ 16-7-40(a)(1) ~~and~~, 16-7-40(a)(2), [16-7-40\(j\)\(1\)](#)  
32 [and 16-7-40\(j\)\(2\)](#). Furthermore, a district's share shall not be decreased by more than half of its  
33 regular share irrespective of the number of incentive points received, nor shall a district's state  
34 share increase by more than half of its regular share, including amounts received under §§ 16-7-

1 40(a)(1) and 16-7-40(a)(2), irrespective of the number of incentive points received.  
2 Notwithstanding any provision of the general laws to the contrary, the reimbursement or aid  
3 received under this chapter or chapter 38.2 of title 45 shall not exceed one hundred percent (100%)  
4 of the sum of the total project costs plus interest costs. If a two hundred and fifty million dollar  
5 (\$250,000,000) general obligation bond is approved on the November 2018 ballot, projects  
6 approved between May 1, 2015, and January 1, 2018, are eligible to receive incentive points (above  
7 and beyond what the project was awarded at the time of approval) pursuant to § 16-7-39 and § 16-  
8 7-40. Provided, however, any project approved during this time period with a project cost in excess  
9 of one million five hundred thousand dollars (\$1,500,000), which does not include an owner's  
10 program manager and a commissioning agent, shall only be eligible to receive five (5) incentive  
11 points. Incentive points awarded pursuant to the provisions of this subsection shall only be applied  
12 to reimbursements occurring on or after July 1, 2018. Any project approved between May 1, 2015,  
13 and January 1, 2018, that is withdrawn and/or resubmitted for approval shall not be eligible for any  
14 incentive points.

15 (20) Hiring an appropriated staff member who shall create and implement a plan to bring  
16 all Rhode Island school buildings to the standard of a zero energy capable school building as  
17 defined in § 16-7-36 and who shall provide technical advice and assistance, training, and education  
18 to cities, towns, and/or local education agencies and to general contractors, subcontractors,  
19 construction or project managers, designers and others on the latest NE-CHPS standards.

20 SECTION 3. Chapter 16-9 of the General Laws entitled "School Funds and Property" is  
21 hereby amended by adding thereto the following section:

22 **16-9-11. New school construction and renovations.**

23 (a) Not later than June 30, 2024, the department of education and the office of energy  
24 resources are hereby authorized and directed, to develop and adopt regulations requiring all school  
25 buildings to meet the latest Northeast Collaborative for High Performance Schools (NE-CHPS)  
26 standard of zero energy capable, as defined in § 16-7-36, by December 31, 2035.

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

31 (2) Furthermore, for local education agencies that pursue federal funding for renewable  
32 energy systems, the department's regulations shall direct and provide further guidance to local  
33 education agencies to build, own, and operate solar panels utilizing federal guidance established in  
34 IRC § 6417.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO EDUCATION -- FOUNDATION LEVEL SCHOOL SUPPORT

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- 1           This act would provide that the department of education and the office of energy resources
- 2   develop regulations for school buildings to meet the latest Northeast Collaborative for High
- 3   Performance Schools standards of zero energy capable schools.
- 4           This act would take effect upon passage.

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