

2024 -- H 7593

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

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A N A C T

RELATING TO EDUCATION -- SCHOOL FUNDS AND PROPERTY

Introduced By: Representatives Cortvriend, Handy, Boylan, Carson, Spears, Bennett,
Finkelman, McGaw, and McNamara

Date Introduced: February 09, 2024

Referred To: House 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 Not later than June 30, 2025, the department of education and the office of energy resources
5 are hereby authorized and directed to develop and adopt regulations requiring all school buildings
6 to meet the latest Northeast Collaborative for High Performance Schools (NE-CHPS) standard of
7 zero energy capable, as defined in § 16-7-36, by December 31, 2036.

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. § 6417.

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

19 **16-7-36. Definitions.**

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

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

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

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

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

21 (5) “Facilities condition index” means the cost to fully repair the building divided by the
22 cost to replace the building as determined by the school building authority.

23 (6) “Functional utilization” means the ratio of the student population within a school
24 facility to the capacity of the school facility to adequately serve students as defined by the school
25 building authority.

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

33 (8) “Owner’s program manager” means owner’s program manager as defined in § 37-2-7.

34 (9) “Prime contractor” means the construction contractor who is responsible for the

1 completion of a project.

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

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

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

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

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

14 (A) The renewable energy generated onsite;

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

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

18 **16-7-39. Computation of school housing-aid ratio.**

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

21 (1) The adjusted equalized weighted assessed valuation for the district is divided by the
22 resident average daily membership for the district (grades twelve (12) and below); (2) The adjusted
23 equalized weighted assessed valuation for the state is divided by the resident average daily
24 membership for the state (grades twelve (12) and below); (1) is then divided by (2) and the resultant
25 ratio is multiplied by a factor currently set at sixty-two percent (62%) which represents the
26 approximate average district share of school support; the resulting product is then subtracted from
27 one hundred percent (100%) to yield the housing aid share ratio, provided that in no case shall the
28 ratio be less than thirty percent (30%). Provided, that effective July 1, 2010, and annually at the
29 start of each fiscal year thereafter, the thirty percent (30%) floor on said housing-aid share shall be
30 increased by five percent (5%) increments each year until said floor on the housing-aid share ratio
31 reaches a minimum of not less than forty percent (40%). This provision shall apply only to school
32 housing projects completed after June 30, 2010, that received approval from the board of regents
33 prior to June 30, 2012. Provided further, for the fiscal year beginning July 1, 2012, and for
34 subsequent fiscal years, the minimum housing aid share shall be thirty-five percent (35%) for all

1 projects receiving council on elementary and secondary education approval after June 30, 2012.
2 The resident average daily membership shall be determined in accordance with § 16-7-22(1).

3 (2) No district shall receive a combined total of more than twenty (20) incentive percentage
4 points for projects that commence construction by June 30, 2024, and five (5) incentive points for
5 projects that commence construction thereafter; provided further, these caps shall be in addition to
6 amounts received under §§ 16-7-40(a)(1) ~~and~~, 16-7-40(a)(2), [16-7-40\(j\)\(1\)](#) and [16-7-40\(j\)\(2\)](#).
7 Furthermore, a district's share shall not be decreased by more than half of its regular share
8 irrespective of the number of incentive points received nor shall a district's state share increase by
9 more than half of its regular share, including amounts received under §§ 16-7-40(a)(1) and 16-7-
10 40(a)(2), irrespective of the number of incentive points received. Provided further that the
11 aforementioned limit on the state share increasing by more than half of its regular share shall not
12 apply to projects submitted for reimbursement after July 1, 2023.

13 **16-7-40. Increased school housing ratio.**

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

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

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

27 (c) For purposes of addressing health and safety deficiencies as defined by the school
28 building authority, including the remediation of hazardous materials, the school housing aid ratio
29 shall be increased by five percent (5%) so long as the construction of the project commences by
30 June 30, 2024, is completed by June 30, 2029, and a two hundred fifty million dollar (\$250,000,000)
31 general obligation bond is approved on the November 2018 ballot. In order to qualify for the
32 increased share ratio, twenty-five percent (25%) of the project costs or a minimum of five hundred
33 thousand dollars (\$500,000) must be specifically directed to this purpose.

34 (d) For purposes of educational enhancement, including projects devoted to the

1 enhancement of early childhood education and career and technical education, the school housing
2 aid ratio shall be increased by five percent (5%) so long as construction of the project commences
3 by June 30, 2024, is completed by June 30, 2029, 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 these purposes.

7 (e) For replacement of a facility that has a facilities condition index of sixty-five percent
8 (65%) or higher, the school housing ratio shall be increased by five percent (5%) so long as
9 construction of the project commences by June 30, 2024, is completed by June 30, 2029, does not
10 receive a bonus pursuant to subsection (f) or subsection (g), 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 this purpose.

14 (f) For any new construction or renovation that increases the functional utilization of any
15 facility from less than sixty percent (60%) to more than eighty percent (80%), including the
16 consolidation of school buildings within or across districts, the school housing aid ratio shall be
17 increased by five percent (5%) so long as construction of the project commences by June 30, 2024,
18 is completed by June 30, 2029, and a two hundred fifty million dollar (\$250,000,000) general
19 obligation bond is approved on the November 2018 ballot. In order to qualify for the increased
20 share ratio, twenty-five percent (25%) of the project costs or a minimum of five hundred thousand
21 dollars (\$500,000) must be specifically directed to this purpose.

22 (g) For any new construction or renovation that decreases the functional utilization of any
23 facility from more than one hundred twenty percent (120%) to between eighty-five percent (85%)
24 to one hundred five percent (105%), the school housing ratio shall be increased by five percent
25 (5%) so long as construction of the project commences by June 30, 2024, is completed by June 30,
26 2029, and a two hundred fifty million dollar (\$250,000,000) general obligation bond is approved
27 on the November 2018 ballot. In order to qualify for the increased share ratio, twenty-five percent
28 (25%) of the project costs or a minimum of five hundred thousand dollars (\$500,000) must be
29 specifically directed to this purpose.

30 (h) For consolidation of two (2) or more school buildings, within or across districts into
31 one school building, the school housing aid ratio shall be increased by five percent (5%) so long as
32 construction of the project commences by June 30, 2024, is completed by June 30, 2029, a two
33 hundred fifty million dollar (\$250,000,000) general obligation bond is approved on the November
34 2018 ballot, and does not receive a bonus pursuant to subsection (f) or subsection (g). In order to

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

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

6 (j)(1) In the case of projects undertaken by districts specifically for the purposes of high-
7 performance school design, the school housing aid share ratio shall be increased by five percent
8 (5%) for these specific projects only, in the calculation of school housing aid. The increased share
9 ratio shall continue to be applied for as long as the project(s) receives state housing aid. In order to
10 qualify for the increased share ratio, seventy-five percent (75%) of the project costs must be
11 specifically directed to this purpose. The council on elementary and secondary education shall
12 promulgate rules and regulations for the administration and operation of this section.

13 (2) For any new construction or renovation that includes energy efficiency and renewable
14 energy upgrades for the building to meet the standard of Zero Energy Capable school building
15 pursuant to § 16-7-36(12), the school housing aid ratio shall be increased by ten percent (10%).

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

17 (a) School districts, not municipalities, may apply for and obtain approval for a project
18 under the necessity of school construction process set forth in the regulations of the council on
19 elementary and secondary education, provided, however, in the case of a municipality that issues
20 bonds through the Rhode Island health and educational building corporation to finance or refinance
21 school facilities for a school district that is not part of the municipality, the municipality may apply
22 for and obtain approval for a project. Such approval will remain valid until June 30 of the third
23 fiscal year following the fiscal year in which the council on elementary and secondary education's
24 approval is granted. Only those projects undertaken at school facilities under the care and control
25 of the school committee and located on school property may qualify for reimbursement under §§
26 16-7-35 — 16-7-47. Facilities with combined school and municipal uses or facilities that are
27 operated jointly with any other profit or nonprofit agency do not qualify for reimbursement under
28 §§ 16-7-35 — 16-7-47. Projects completed by June 30 of a fiscal year are eligible for
29 reimbursement in the following fiscal year. A project for new school housing or additional housing
30 shall be deemed to be completed when the work has been officially accepted by the school
31 committee or when the housing is occupied for its intended use by the school committee, whichever
32 is earlier.

33 (b) Notwithstanding the provisions of this section, the board of regents shall not grant final
34 approval for any project between June 30, 2011, and May 1, 2015, except for projects that are

1 necessitated by immediate health and safety reasons. In the event that a project is requested during
2 the moratorium because of immediate health and safety reasons, those proposals shall be reported
3 to the chairs of the house and senate finance committees.

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

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

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

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

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

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

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

33 (j) If, within thirty (30) years of construction, a newly constructed school is sold to a private
34 entity, the state shall receive a portion of the sale proceeds equal to that project's housing aid

1 reimbursement rate at the time of project completion.

2 (k) All projects must comply with § 37-13-6, ensuring that prevailing wage laws are being
3 followed, and § 37-14.1-6, ensuring that minority business enterprises reach the required minimum
4 participation, [and § 37-13-3.1, ensuring apprenticeship program utilization.](#)

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

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

11 **16-105-3. Roles and responsibilities.**

12 The school building authority roles and responsibilities shall include:

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

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

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

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

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

28 (6) Developing a prequalification and review process for prime contractors, architects, and
29 engineers seeking to bid on projects in excess of ten million dollars (\$10,000,000) in total costs
30 subject to inflation. Notwithstanding any general laws to the contrary, a prequalification shall be
31 valid for a maximum of two (2) years from the date of issuance. Factors to be considered by the
32 school building authority in granting a prequalification to prime contractors shall include, but not
33 be limited to, the contractor's history of completing complex projects on time and on budget, track
34 record of compliance with applicable environmental and safety regulations, evidence that

1 completed prior projects prioritized the facility's future maintainability, and compliance with
2 applicable requirements for the use of women and minority owned subcontractors;

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

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

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

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

16 (i) Projects to replace or renovate a building that is structurally unsound or otherwise in a
17 condition seriously jeopardizing the health and safety of school children where no alternative exists;

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

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

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

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

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

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

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

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

33 (14) At least every five (5) years, conducting a needs survey to ascertain the capital
34 construction, reconstruction, maintenance, and other capital needs for schools in each district of the

1 state, including public charter schools. Beginning in 2024, this needs survey shall include progress
2 towards and recommendations for energy efficiency and renewable energy upgrades to bring all
3 state school buildings to the definition of a zero energy capable school building pursuant to § 16-
4 7-36;

5 (15) Developing a formal enrollment projection model or using projection models already
6 available;

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

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

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

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

19 ~~(19)~~(20) No district shall receive a combined total of more than twenty (20) incentive
20 percentage points for projects that commence construction by December 30, 2023, and five (5)
21 incentive points for projects that commence construction thereafter; provided further, these caps
22 shall be in addition to amounts received under §§ 16-7-40(a)(1), ~~and~~ 16-7-40(a)(2), 16-7-40(j)(1),
23 and 16-7-40(j)(2). Furthermore, a district's share shall not be decreased by more than half of its
24 regular share irrespective of the number of incentive points received, nor shall a district's state
25 share increase by more than half of its regular share, including amounts received under §§ 16-7-
26 40(a)(1) and 16-7-40(a)(2), irrespective of the number of incentive points received.
27 Notwithstanding any provision of the general laws to the contrary, the reimbursement or aid
28 received under this chapter or chapter 38.2 of title 45 shall not exceed one hundred percent (100%)
29 of the sum of the total project costs plus interest costs. If a two hundred and fifty million dollar
30 (\$250,000,000) general obligation bond is approved on the November 2018 ballot, projects
31 approved between May 1, 2015, and January 1, 2018, are eligible to receive incentive points (above
32 and beyond what the project was awarded at the time of approval) pursuant to § 16-7-39 and § 16-
33 7-40. Provided, however, any project approved during this time period with a project cost in excess
34 of one million five hundred thousand dollars (\$1,500,000), which does not include an owner's

1 program manager and a commissioning agent, shall only be eligible to receive five (5) incentive
2 points. Incentive points awarded pursuant to the provisions of this subsection shall only be applied
3 to reimbursements occurring on or after July 1, 2018. Any project approved between May 1, 2015,
4 and January 1, 2018, that is withdrawn and/or resubmitted for approval shall not be eligible for any
5 incentive points.

6 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 -- SCHOOL FUNDS AND PROPERTY

1 This act would provide that not later than June 30, 2024, the department of education would
2 develop and adopt, in consultation with the office of energy resources, regulations requiring all
3 school buildings to meet the standard of zero energy capable, as defined in § 16-7-36, by December
4 31, 2036.

5 This act would take effect upon passage.

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