

# STATE OF NEW YORK

11012

## IN ASSEMBLY

September 9, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Bronson) --  
read once and referred to the Committee on Education

AN ACT to amend chapter 416 of the laws of 2007, establishing the city of Rochester and the board of education of the city school district of the city of Rochester school facilities modernization program act, in relation to granting further authority to the RJSCB to modernize educational facilities in the city of Rochester

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions (g), (i) and (j) of section 2 of chapter 416  
2 of the laws of 2007, establishing the city of Rochester and the board of  
3 education of the city school district of the city of Rochester school  
4 facilities modernization program act, as amended by chapter 533 of the  
5 laws of 2014, are amended and four new subdivisions (p), (q), (r) and  
6 (s) are added to read as follows:

7 (g) "Project" shall mean work at an existing school building site that  
8 involves the design, reconstruction, or rehabilitation of all or a  
9 portion of an existing school building for its continued use as a school  
10 of the city school district, which may include an addition to existing  
11 school buildings for such continued use and which also may include (1)  
12 the construction or reconstruction of athletic fields, playgrounds, and  
13 other recreational facilities for such existing school buildings;  
14 [~~and/or~~] (2) the acquisition and installation of all equipment necessary  
15 and attendant to and for the use of such existing school [~~building~~]  
16 buildings, including but not limited to items located at sites not with-  
17 in a project that will allow the RJSCB to conduct district-wide technol-  
18 ogy improvements to benefit existing school buildings; [~~and/or~~] (3) the  
19 acquisition of additional real property by the city to facilitate the  
20 project; and/or (4) the acquisition of additional real property by the  
21 city to facilitate the project.

22 (i) "Program manager" shall mean an independent program management  
23 firm hired by the RJSCB to oversee the implementation of the facilities  
24 modernization plan, and to assist it in: (i) developing and implementing  
25 procedures for the projects undertaken and contracted for by the RJSCB;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 (ii) reviewing plans and specifications for projects; (iii) developing  
2 and implementing policies and procedures to utilize employment resources  
3 to provide sufficient skilled employees for such projects including  
4 developing and implementing training programs, if required; (iv) manag-  
5 ing such projects; and (v) providing such planning, design, financing,  
6 and other services as may be appropriate to implement one or more  
7 construction or reconstruction projects pursuant to this act.

8 (j) "Independent compliance officer" shall mean an independent firm  
9 hired by the RJSCB with an in-depth knowledge base and breadth of experi-  
10 ence conducting minority and women-owned business enterprise (MWBE)  
11 and disadvantaged business enterprise (DBE) utilization compliance moni-  
12 toring for public contracts within New York state, including school  
13 districts and auditing contractors and subcontractors in construction  
14 and reconstruction projects like those to be undertaken and contracted  
15 for by the RJSCB pursuant to this act. Such firm shall support facili-  
16 ties modernization phase three program and the program manager by devel-  
17 oping and implementing an MWBE/DBE outreach and utilization plan for the  
18 governance of all contracts to ensure compliance with all federal,  
19 state, and local laws, rules, and regulations applicable.

20 (p) "Capital improvement plan" shall mean the city school district's  
21 ongoing, annually updated five-year capital financing plan for the  
22 construction and reconstruction of facilities, the acquisition and  
23 replacement of vehicles and equipment and the completion of other long-  
24 term capital projects undertaken and financed by the issuance of general  
25 obligation bonds by the city on behalf of the city school district  
26 pursuant to existing state law applicable to all school districts.

27 (q) "Comprehensive school facilities modernization plan" or "facili-  
28 ties modernization plan" or "facilities modernization program" shall  
29 mean the comprehensive, strategic plan developed by the city school  
30 district and the RJSCB to be implemented in several phases for the  
31 construction, renovation, rehabilitation and equipping of new and exist-  
32 ing educational facilities, and athletic and recreational facilities  
33 located in the city, which plan shall be included in a special section  
34 of the city school district's ongoing five-year capital improvement  
35 plan, as required by subdivision 6 of section 3602 of the education law  
36 and the regulations of the commissioner, and such other matters set  
37 forth in subdivision six of this section; which plan shall identify by  
38 the number of buildings to be constructed or reconstructed to the satis-  
39 faction of SED and include a district wide technology plan and related  
40 incidental expenses as adopted by the RJSCB after a public hearing.

41 (r) "MWBE/DBE outreach and utilization plan" shall mean a plan  
42 prepared by the independent compliance officer and the program manager  
43 to the satisfaction of the RJSCB to meet the goals set forth in the  
44 RJSCB approved diversity plan.

45 (s) "SED" shall mean the New York state department of education.

46 § 2. Subdivision (b) of section 3 of chapter 416 of the laws of 2007,  
47 establishing the city of Rochester and the board of education of the  
48 city school district of the city of Rochester school facilities modern-  
49 ization program act, as amended by chapter 533 of the laws of 2014, is  
50 amended to read as follow:

51 (b) Such board shall be composed of seven voting members: three of  
52 whom shall be appointed by, and serve at the pleasure of the mayor of  
53 the city; three of whom shall be appointed by, and serve at the pleasure  
54 of the superintendent of the board of education of the city school  
55 district; and one of whom shall be independent from both the city school  
56 district and the city but who shall have been agreed upon by the mayor

1 and the superintendent; and one non-voting member who shall be the inde-  
2 pendent compliance officer, or the representative of the independent  
3 compliance officer. One of the voting members shall be chosen, by such  
4 voting members, to serve as chair of the board. Members of the board  
5 shall not receive a salary or other compensation for such board duties,  
6 but shall be entitled to reimbursement for actual and necessary expenses  
7 incurred in the performance of his or her board duties. Members of the  
8 board shall not be disqualified from holding public office or employ-  
9 ment, nor shall they forfeit any office or employment by reason of their  
10 appointment, notwithstanding the provisions of any general, special, or  
11 local law, ordinance or city charter to the contrary. ~~[The board will  
12 be reconstituted]~~ To provide for the continuing functioning of the  
13 multiphase facilities modernization program, on the effective date of  
14 the chapter of the laws of [2014] 2020 that amended this subdivision  
15 ~~[and the term of each prior board member shall automatically expire on  
16 such date provided however that nothing shall preclude the reappointment  
17 of an existing board member],~~ the board in its constituted form shall  
18 continue to exist for the accomplishment of any of the purposes speci-  
19 fied in this act and the board, its members, officers and employees and  
20 its operations and activities shall in all respects be governed by the  
21 provisions of this act.

22 § 3. Sections 4, 5, 9, 10, 11 and 21 of chapter 416 of the laws of  
23 2007, establishing the city of Rochester and the board of education of  
24 the city school district of the city of Rochester school facilities  
25 modernization program act, as amended by chapter 533 of the laws of  
26 2014, are amended to read as follow:

27 § 4. Project authorization. No more than: (a) 13 projects, up to a  
28 total cost of three hundred twenty-five million dollars in phase one,  
29 and (b) 26 projects, up to a total cost of four hundred thirty-five  
30 million dollars in phase two, and (c) 15 school building projects, plus  
31 a district-wide technology project, up to a total cost of five hundred  
32 fifty million dollars in phase three shall be authorized and undertaken  
33 pursuant to this act, unless otherwise authorized by law. Moneys within  
34 such limits may be applied for the planning costs associated with the  
35 subsequent phase of the RSMP.

36 § 5. Comprehensive school facilities modernization plan. The super-  
37 intendent shall submit to the RJSCB [~~a~~] comprehensive draft [~~plan~~] plans  
38 recommending and outlining the projects for phase two and phase three it  
39 proposes to be undertaken pursuant to this act. The RJSCB shall consider  
40 the plan in developing a comprehensive school facilities modernization  
41 plan recommending and outlining the projects it proposes to be poten-  
42 tially undertaken pursuant to this act. Such plan shall include: (a) an  
43 estimate of total costs to be financed, proposed financing plan,  
44 proposed method of financing, terms and conditions of the financing,  
45 estimated financing costs, and, if city general obligation bonds or  
46 notes are not proposed as the method of financing, a comparison of  
47 financing costs between such bonds or notes and the proposed method of  
48 financing. Payment of debt service on bonds, notes or other obligations  
49 issued to secure financing of not more than \$325,000,000 in phase one  
50 ~~and~~, \$435,000,000 in phase two, and \$550,000,000 in phase three for  
51 projects undertaken pursuant to this act shall not be considered when  
52 determining the "city amount" required pursuant to subparagraph (ii) of  
53 paragraph a of subdivision 5-b of section 2576 of the education law;  
54 provided, however, that this provision shall not otherwise affect the  
55 determination of said "city amount" with respect to funding unrelated to  
56 projects undertaken pursuant to this act. The plan should also address

1 what specific options would be used to ensure that sufficient resources  
2 exist to cover the local share of any such project cost on an annual  
3 basis; (b) information concerning the potential persons to be involved  
4 in the financing and such person's role and responsibilities; (c) esti-  
5 mates on the design, reconstruction and rehabilitation costs by project,  
6 any administrative costs for potential projects, and an outline of the  
7 timeframe expected for completion of each potential project; (d) a  
8 detailed description of the request for proposals process and an outline  
9 of the criteria to be used for selection of the program manager, the  
10 independent compliance officer and all contractors; provided that the  
11 RJSCB may for phase three either extend the contracts of the providers  
12 of professional services for phase [~~one~~] two upon the adoption of find-  
13 ings that doing so would be in the public interest; [~~the contracts of~~  
14 ~~the program manager and the independent compliance officer for phase two~~  
15 ~~will be rebid, and provided further that the program manager and the~~  
16 ~~independent compliance officer and any new~~] or [~~different providers of~~  
17 re-bid such professional services [~~shall be engaged~~] contracts in  
18 compliance with the provisions of section eight of this act; (e) any  
19 proposed amendments to the city school district's five-year capital  
20 facilities plan submitted in accordance with subdivision 6 of section  
21 3602 of the education law and the regulations of the commissioner; and  
22 (f) a [~~preliminary~~] diversity plan to develop diversity goals, including  
23 appropriate community input and public discussion, and develop strate-  
24 gies that would create and coordinate any efforts to ensure a more  
25 diverse workforce for the projects. The [~~preliminary~~] diversity plan  
26 should address accountability for attainment of the diversity goals,  
27 what forms of monitoring would be used, and how such information would  
28 be publicly communicated.

29 Prior to the development of the comprehensive school facilities  
30 modernization plan for each phase authorized pursuant to this act, the  
31 RJSCB and the city school district shall hold as many public hearings as  
32 may be necessary to ensure sufficient public input and allow for signif-  
33 icant public discussion on school building needs in such city, with at  
34 least one hearing to be held in each neighborhood potentially impacted  
35 by a proposed project.

36 All projects proposed in the comprehensive school facilities modern-  
37 ization [~~plan~~] plans shall be included by the city school district as a  
38 special section of the district's five-year capital facilities plan that  
39 is required pursuant to subdivision 6 of section 3602 of the education  
40 law and the regulations of the commissioner.

41 The RJSCB shall submit the components of such comprehensive [~~plan~~]  
42 plans outlined in subdivision (a) of this section to the comptroller,  
43 along with any other information requested by the comptroller, for his  
44 or her review and approval.

45 § 9. Contracts generally. Notwithstanding the provisions of any  
46 general, special, or local law or judicial decision to the contrary:

47 (a) The RJSCB may require a contractor, as a condition to being  
48 awarded a contract, subcontract, lease, grant, bond, covenant or other  
49 agreement for a project to enter into a project labor agreement for the  
50 work involved with such project when such requirement is made part of  
51 the bid specifications for the project and when the RJSCB determines  
52 that the record supporting the decision to enter into such an agreement  
53 establishes that it is justified by the interests underlying the compet-  
54 itive bidding laws. In addition, the RJSCB may revise and extend the  
55 requirements of the project labor agreement entered into for phase one  
56 projects to the projects authorized in phase [~~two~~] three, contingent

1 upon the completion of a supplemental project labor agreement benefit  
2 analysis and other requirements of the RJSCB in regards to diversity  
3 goals, direct admission, pre-apprenticeship, and apprenticeship partic-  
4 ipation.

5 (b) Any contract, subcontract, lease, grant, bond, covenant or other  
6 agreement for projects undertaken pursuant to this act shall not be  
7 subject to section 101 of the general municipal law when the RJSCB has  
8 chosen to require a project labor agreement, pursuant to subdivision (a)  
9 of this section. This exemption shall only apply to the projects under-  
10 taken pursuant to this act and shall not apply to projects undertaken by  
11 any other school district or municipality unless otherwise specifically  
12 authorized.

13 (c) Whenever the RJSCB enters in a contract, subcontract, lease,  
14 grant, bond, covenant or other agreement for the construction, recon-  
15 struction, demolition, excavation, rehabilitation, repair, renovation,  
16 alteration, or improvement for a project undertaken pursuant to this  
17 act, it shall be deemed to be a public works project for the purposes of  
18 article 8 of the labor law, and all the provisions of article 8 of the  
19 labor law shall be applicable to all the work involved with such project  
20 including the enforcement of prevailing wage requirements by the state  
21 department of labor.

22 (d) Every contract entered into by resolution of the RJSCB for  
23 construction or reconstruction of a project pursuant to this act shall  
24 contain a provision that the design of such project shall be subject to  
25 the review and approval of the city school district and that the design  
26 and construction standards of such project shall be subject to the  
27 review and approval of the commissioner. In addition, every such  
28 contract for construction or reconstruction shall contain a provision  
29 that the contractor shall furnish a labor and material bond guaranteeing  
30 prompt payment of moneys that are due to all persons furnishing labor  
31 and materials pursuant to the requirements of any contracts for a  
32 project undertaken pursuant to this section and a performance bond for  
33 the faithful performance of the project, which shall conform to the  
34 provisions of section 103-f of the general municipal law, and that a  
35 copy of such performance and payment bonds shall be kept by the RJSCB  
36 and shall be open to public inspection.

37 (e) For the purposes of article 15-A of the executive law, any person  
38 entering into a contract for a project authorized pursuant to this act  
39 shall be deemed a state agency as that term is defined in such article  
40 and such contracts shall be deemed state contracts within the meaning of  
41 that term as set forth in such article.

42 (f) Notwithstanding the provisions of this act or of any general or  
43 special law to the contrary, for any contract, subcontract, lease,  
44 grant, bond, covenant or other agreement for construction, recon-  
45 struction, demolition, excavation, rehabilitation, repair, renovation,  
46 alteration, or improvement with respect to each project undertaken  
47 pursuant to this act, the RJSCB shall consider the financial and organ-  
48 izational capacity of contractors and subcontractors in relation to the  
49 magnitude of work they may perform, the record of performance of  
50 contractors and subcontractors on previous work, the record of contrac-  
51 tors and subcontractors in complying with existing labor standards and  
52 maintaining harmonious labor relations, and the commitment of contrac-  
53 tors to work with minority and women-owned business enterprises pursuant  
54 to article 15-A of the executive law through joint ventures or subcon-  
55 tractor relationships. The RJSCB shall further require, on any contract  
56 in excess of one million dollars for construction, reconstruction, demo-

1 lition, excavation, rehabilitation, repair, renovation, alteration, or  
2 improvement, which use apprentice-able and construction-related trade  
3 classifications, that are also subject to the apprenticeship require-  
4 ments of this paragraph that each contractor [~~and subcontractor~~] shall:  
5 (1) participate in apprentice training programs in the trades of work it  
6 employs that: have been approved for not less than three years by the  
7 state department of labor; have graduated at least one apprentice in the  
8 last 3 years; have at least one apprentice currently enrolled in such  
9 apprentice training program; and have demonstrated that the program has  
10 made significant efforts to attract and retain minority apprentices; and  
11 (2) employ one or more apprentices in connection with its contract with  
12 the RJSCB. If a prime contract is subject to the foregoing apprentice-  
13 ship requirements, any subcontractors let by the prime contractor over  
14 five hundred thousand dollars, which use apprentice-able and construc-  
15 tion-related trade classifications, are also subject to the apprentice-  
16 ship requirements of this paragraph.

17 § 10. Program managers. (a) All contracts entered into by resolution  
18 of the RJSCB for projects for phase one, phase two and phase three  
19 undertaken pursuant to this act shall be managed by [~~an~~] the independent  
20 program manager. The [~~selection of~~] RJSCB may elect to either extend the  
21 existing contract of the phase two program manager [~~shall~~] for phase  
22 three upon the adoption of findings that doing so would be in the public  
23 interest or select a phase three program manager pursuant to the compet-  
24 itive process established in section eight of this act. Prior to issu-  
25 ance of the contract, the program manager selected shall be approved by  
26 the superintendent, mayor, city council and the Rochester city school  
27 district. The program manager shall have experience in planning, design-  
28 ing, and constructing new and/or reconstructing existing school build-  
29 ings, public facilities, commercial facilities, and/or infrastructure  
30 facilities, and in the negotiation and management of labor contracts and  
31 agreements, training programs, educational programs, and physical tech-  
32 nological requirements for educational programs. The program manager  
33 shall manage all projects undertaken pursuant to this act, review  
34 project schedules, review payment schedules, prepare cost estimates and  
35 assess the safety programs of contractors and all training programs, if  
36 required. The program manager shall implement procedures for verifica-  
37 tion by it that all work for which payment has been requested has been  
38 satisfactorily completed.

39 (b) The program manager, and its affiliates or subsidiaries, if any,  
40 shall be prohibited from awarding contracts or being awarded contracts  
41 for, or performing any work on, projects undertaken pursuant to this  
42 act. Contracts awarded by the RJSCB for construction work required for  
43 the construction, reconstruction, rehabilitation or renovation of a  
44 project pursuant to this act shall be awarded pursuant to public bidding  
45 in compliance with section 103 of the general municipal law.

46 § 11. Independent compliance officers. All contracts entered into by  
47 resolution of the RJSCB for projects for phase one, phase two and phase  
48 three undertaken by this act shall be monitored by an independent  
49 compliance officer (ICO). The RJSCB may elect to either extend the  
50 existing contract of the phase two independent compliance officer for  
51 phase three upon the adoption of findings that doing so would be in the  
52 public interest or select a phase three independent compliance officer  
53 pursuant to the competitive process established in section eight of this  
54 act. The independent compliance officer shall: develop, implement,  
55 advertise, promote and monitor policies and procedures to utilize and  
56 provide sufficient MWBE, DBE and skilled minority employment resources

1 participation opportunities to be followed by prime contractors and  
2 subcontractors for such projects; review, modify if necessary, and  
3 approve the preliminary diversity plan established pursuant to section  
4 five of this act; provide outreach and technical assistance to potential  
5 MWBE and DBE contractors and subcontractors interested in bidding on any  
6 such projects; obtain and maintain records and documentation to confirm  
7 compliance with any requirements contained in the approved diversity  
8 plan, for any such project; identify contractors in non-compliance with  
9 any such requirements contained in the approved diversity plan or in  
10 violation of any federal, state and local laws, rules or regulations;  
11 monitor and report the upward/downward price adjustment and payment  
12 amounts to MWBEs and DBEs listed on contractors utilization plan for any  
13 such project; develop and work with the RJSCB to enforce agreed finan-  
14 cial or monetary sanctions for any contractor's non-compliance with the  
15 MWBE/DBE utilization master plan. In addition, the independent compli-  
16 ance officer shall: develop, implement, advertise, promote and monitor  
17 MWBE/DBE policies and procedures for each project to be followed by  
18 prime contractors and subcontractors for such projects; obtain and main-  
19 tain records and documentation to confirm compliance with any applicable  
20 requirements for each project; identify contractors in non-compliance  
21 with any such applicable requirements for each project including site  
22 visits as necessary, at least twice monthly; pursuant to this section or  
23 in violation of any federal, state and local laws, rules or regulations.  
24 The independent compliance officer shall report to the [~~RJCSB~~] RJSCB on  
25 a monthly basis.

26 § 21. Reporting requirements. (a) On June 30, 2008 and annually there-  
27 after, until completion of [~~the 39~~] projects authorized pursuant to this  
28 act, the RJSCB shall issue a report to the governor, the comptroller,  
29 the commissioner, the temporary president of the senate, the speaker of  
30 the assembly, the city, the city council and the city school district on  
31 the progress and status of the projects undertaken by the RJSCB.  
32 Provided further, that if any such entities request information on the  
33 progress and status of the projects prior to such report, it shall be  
34 provided to such entities by the RJSCB.

35 [~~In addition, on~~] (b) On or before June 30, 2021, or upon completion  
36 of the [~~26~~] 14 projects, including district-wide technology, authorized  
37 in phase two pursuant to this act, whichever shall first occur, the  
38 RJSCB shall issue a report to the city, the city school district, the  
39 governor, the commissioner, the comptroller, the temporary president of  
40 the senate, the speaker of the assembly, the minority leader of the  
41 senate, the minority leader of the assembly, the state board of regents,  
42 and the chairs and ranking minority members of the New York state senate  
43 and assembly committees on education, the finance committee of the New  
44 York state senate, and the ways and means committee of the New York  
45 state assembly. Such report shall identify the fiscal and pedagogical  
46 results of the projects undertaken pursuant to this act, along with  
47 recommendations for its continuance, amendments, or discontinuance.

48 (c) On or before June 30, 2030, or upon completion of the 16 school  
49 building projects, including district-wide technology, authorized in  
50 phase three pursuant to this act, whichever shall first occur, the RJSCB  
51 shall issue a report to the city, the city school district, the gover-  
52 nor, the commissioner, the comptroller, the temporary president of the  
53 senate, the speaker of the assembly, the minority leader of the senate,  
54 the minority leader of the assembly, the state board of regents, and the  
55 chairs and ranking minority members of the New York state senate and  
56 assembly committees on education, the finance committee of the New York

1 state senate, and the ways and means committee of the New York state  
2 assembly. Such report shall identify the fiscal and pedagogical results  
3 of the projects undertaken pursuant to this act, along with recommenda-  
4 tions for its continuance, amendments, or discontinuance.

5 § 4. Chapter 416 of the laws of 2007, establishing the city of Roches-  
6 ter and the board of education of the city school district of the city  
7 of Rochester school facilities modernization program act, is amended by  
8 adding a new section 21-a to read as follows:

9 § 21-a. Any person who knowingly files a false written report or other  
10 false written instrument with the RJSCB, the independent compliance  
11 officer or program manager may be subject to criminal penalties pursuant  
12 to the applicable provisions of the penal law in addition to any other  
13 penalties authorized by law.

14 § 5. This act shall take effect immediately.