

# STATE OF NEW YORK

6245--A

2019-2020 Regular Sessions

## IN SENATE

May 29, 2019

Introduced by Sens. ROBACH, FUNKE -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- recommitted to the Committee on Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 project; and/or (4) the acquisition of additional real property by the  
2 city to facilitate the project.

3 (i) "Program manager" shall mean an independent program management  
4 firm hired by the RJSCB to oversee the implementation of the facilities  
5 modernization plan, and to assist it in: (i) developing and implementing  
6 procedures for the projects undertaken and contracted for by the RJSCB;  
7 (ii) reviewing plans and specifications for projects; (iii) developing  
8 and implementing policies and procedures to utilize employment resources  
9 to provide sufficient skilled employees for such projects including  
10 developing and implementing training programs, if required; (iv) manag-  
11 ing such projects; and (v) providing such planning, design, financing,  
12 and other services as may be appropriate to implement one or more  
13 construction or reconstruction projects pursuant to this act.

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

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

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

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

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

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

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

28 § 3. Sections 4, 5, 9, 10, 11 and 21 of chapter 416 of the laws of  
29 2007, establishing the city of Rochester and the board of education of  
30 the city school district of the city of Rochester school facilities  
31 modernization program act, as amended by chapter 533 of the laws of  
32 2014, are amended to read as follow:

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

42 § 5. Comprehensive school facilities modernization plan. The super-  
43 intendent shall submit to the RJSCB [~~a~~] comprehensive draft [~~plan~~] plans  
44 recommending and outlining the projects for phase two and phase three it  
45 proposes to be undertaken pursuant to this act. The RJSCB shall consider  
46 the plan in developing a comprehensive school facilities modernization  
47 plan recommending and outlining the projects it proposes to be poten-  
48 tially undertaken pursuant to this act. Such plan shall include: (a) an  
49 estimate of total costs to be financed, proposed financing plan,  
50 proposed method of financing, terms and conditions of the financing,  
51 estimated financing costs, and, if city general obligation bonds or  
52 notes are not proposed as the method of financing, a comparison of  
53 financing costs between such bonds or notes and the proposed method of  
54 financing. Payment of debt service on bonds, notes or other obligations  
55 issued to secure financing of not more than \$325,000,000 in phase one  
56 [~~and~~], \$435,000,000 in phase two, and \$550,000,000 in phase three for

1 projects undertaken pursuant to this act shall not be considered when  
2 determining the "city amount" required pursuant to subparagraph (ii) of  
3 paragraph a of subdivision 5-b of section 2576 of the education law;  
4 provided, however, that this provision shall not otherwise affect the  
5 determination of said "city amount" with respect to funding unrelated to  
6 projects undertaken pursuant to this act. The plan should also address  
7 what specific options would be used to ensure that sufficient resources  
8 exist to cover the local share of any such project cost on an annual  
9 basis; (b) information concerning the potential persons to be involved  
10 in the financing and such person's role and responsibilities; (c) esti-  
11 mates on the design, reconstruction and rehabilitation costs by project,  
12 any administrative costs for potential projects, and an outline of the  
13 timeframe expected for completion of each potential project; (d) a  
14 detailed description of the request for proposals process and an outline  
15 of the criteria to be used for selection of the program manager, the  
16 independent compliance officer and all contractors; provided that the  
17 RJSCB may for phase three either extend the contracts of the providers  
18 of professional services for phase [~~one~~] two upon the adoption of find-  
19 ings that doing so would be in the public interest; [~~the contracts of~~  
20 ~~the program manager and the independent compliance officer for phase two~~  
21 ~~will be rebid, and provided further that the program manager and the~~  
22 ~~independent compliance officer and any new~~] or [~~different providers of~~  
23 re-bid such professional services [~~shall be engaged~~] contracts in  
24 compliance with the provisions of section eight of this act; (e) any  
25 proposed amendments to the city school district's five-year capital  
26 facilities plan submitted in accordance with subdivision 6 of section  
27 3602 of the education law and the regulations of the commissioner; and  
28 (f) a [~~preliminary~~] diversity plan to develop diversity goals, including  
29 appropriate community input and public discussion, and develop strate-  
30 gies that would create and coordinate any efforts to ensure a more  
31 diverse workforce for the projects. The [~~preliminary~~] diversity plan  
32 should address accountability for attainment of the diversity goals,  
33 what forms of monitoring would be used, and how such information would  
34 be publicly communicated.

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

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

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

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

53 (a) The RJSCB may require a contractor, as a condition to being  
54 awarded a contract, subcontract, lease, grant, bond, covenant or other  
55 agreement for a project to enter into a project labor agreement for the  
56 work involved with such project when such requirement is made part of

1 the bid specifications for the project and when the RJSCB determines  
2 that the record supporting the decision to enter into such an agreement  
3 establishes that it is justified by the interests underlying the compet-  
4 itive bidding laws. In addition, the RJSCB may revise and extend the  
5 requirements of the project labor agreement entered into for phase one  
6 projects to the projects authorized in phase [~~two~~] three, contingent  
7 upon the completion of a supplemental project labor agreement benefit  
8 analysis and other requirements of the RJSCB in regards to diversity  
9 goals, direct admission, pre-apprenticeship, and apprenticeship partic-  
10 ipation.

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

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

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

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

48 (f) Notwithstanding the provisions of this act or of any general or  
49 special law to the contrary, for any contract, subcontract, lease,  
50 grant, bond, covenant or other agreement for construction, recon-  
51 struction, demolition, excavation, rehabilitation, repair, renovation,  
52 alteration, or improvement with respect to each project undertaken  
53 pursuant to this act, the RJSCB shall consider the financial and organ-  
54 izational capacity of contractors and subcontractors in relation to the  
55 magnitude of work they may perform, the record of performance of  
56 contractors and subcontractors on previous work, the record of contrac-

tors and subcontractors in complying with existing labor standards and maintaining harmonious labor relations, and the commitment of contractors to work with minority and women-owned business enterprises pursuant to article 15-A of the executive law through joint ventures or subcontractor relationships. The RJSCB shall further require, on any contract in excess of one million dollars for construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration, or improvement, which use apprentice-able and construction-related trade classifications, that are also subject to the apprenticeship requirements of this paragraph that each contractor [~~and subcontractor~~] shall: (1) participate in apprentice training programs in the trades of work it employs that: have been approved for not less than three years by the state department of labor; have graduated at least one apprentice in the last 3 years; have at least one apprentice currently enrolled in such apprentice training program; and have demonstrated that the program has made significant efforts to attract and retain minority apprentices; and (2) employ one or more apprentices in connection with its contract with the RJSCB. If a prime contract is subject to the foregoing apprenticeship requirements, any subcontractors let by the prime contractor over five hundred thousand dollars, which use apprentice-able and construction-related trade classifications, are also subject to the apprenticeship requirements of this paragraph.

§ 10. Program managers. (a) All contracts entered into by resolution of the RJSCB for projects for phase one, phase two and phase three undertaken pursuant to this act shall be managed by [~~an~~] the independent program manager. The [~~selection of~~] RJSCB may elect to either extend the existing contract of the phase two program manager [shall] for phase three upon the adoption of findings that doing so would be in the public interest or select a phase three program manager pursuant to the competitive process established in section eight of this act. Prior to issuance of the contract, the program manager selected shall be approved by the superintendent, mayor, city council and the Rochester city school district. The program manager shall have experience in planning, designing, and constructing new and/or reconstructing existing school buildings, public facilities, commercial facilities, and/or infrastructure facilities, and in the negotiation and management of labor contracts and agreements, training programs, educational programs, and physical technological requirements for educational programs. The program manager shall manage all projects undertaken pursuant to this act, review project schedules, review payment schedules, prepare cost estimates and assess the safety programs of contractors and all training programs, if required. The program manager shall implement procedures for verification by it that all work for which payment has been requested has been satisfactorily completed.

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

§ 11. Independent compliance officers. All contracts entered into by resolution of the RJSCB for projects for phase one, phase two and phase three undertaken by this act shall be monitored by an independent compliance officer (ICO). The RJSCB may elect to either extend the existing contract of the phase two independent compliance officer for

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

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

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

54 (c) On or before June 30, 2030, or upon completion of the 16 school  
55 building projects, including district-wide technology, authorized in  
56 phase three pursuant to this act, whichever shall first occur, the RJSCB

1 shall issue a report to the city, the city school district, the gover-  
2 nor, the commissioner, the comptroller, the temporary president of the  
3 senate, the speaker of the assembly, the minority leader of the senate,  
4 the minority leader of the assembly, the state board of regents, and the  
5 chairs and ranking minority members of the New York state senate and  
6 assembly committees on education, the finance committee of the New York  
7 state senate, and the ways and means committee of the New York state  
8 assembly. Such report shall identify the fiscal and pedagogical results  
9 of the projects undertaken pursuant to this act, along with recommenda-  
10 tions for its continuance, amendments, or discontinuance.

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

15 § 21-a. Any person who knowingly files a false written report or other  
16 false written instrument with the RJSCB, the independent compliance  
17 officer or program manager may be subject to criminal penalties pursuant  
18 to the applicable provisions of the penal law in addition to any other  
19 penalties authorized by law.

20 § 5. This act shall take effect immediately.