

STATE OF NEW YORK

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2021-2022 Regular Sessions

IN SENATE

January 15, 2021

Introduced by Sens. COONEY, BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged and said bill committed to the Committee on Cities 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- 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; and to amend the education law, in relation to the computation of building aid

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

1 Section 1. Subdivisions (g) and (j) of section 2 of chapter 416 of the
2 laws of 2007, establishing the city of Rochester and the board of educa-
3 tion of the city school district of the city of Rochester school facili-
4 ties modernization program act, as amended by chapter 533 of the laws of
5 2014, are amended to read as follows:
6 (g) "Project" shall mean work at an existing school building site that
7 involves the design, reconstruction, or rehabilitation of an existing
8 school building for its continued use as a school of the city school
9 district, which may include an addition to existing school buildings for
10 such continued use and which also may include (1) the construction or
11 reconstruction of athletic fields, playgrounds, and other recreational
12 facilities for such existing school buildings; and/or (2) the acquisi-

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

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tion and installation of all equipment necessary and attendant to and for the use of such existing school [~~building~~] buildings, including but not limited to items located at sites not within a project that will allow the RJSCB to conduct district-wide technology improvements to benefit existing school buildings; and/or (3) the acquisition of additional real property by the city to facilitate the project.

(j) "Independent compliance officer" shall mean an independent firm hired by the RJSCB with an in-depth knowledge base and breadth of experience conducting minority and women-owned business enterprise (MWBE) and disadvantaged business enterprise (DBE) utilization compliance monitoring for public contracts within New York state, including school districts and auditing contractors and subcontractors in construction and reconstruction projects like those to be undertaken and contracted for by the RJSCB pursuant to this act. Such firm shall develop and implement an MWBE/DBE outreach and utilization plan for the governance of all contracts to ensure compliance with all federal, state, and local laws, rules, and regulations.

§ 2. Sections 4, 5, 6, 9, 10, 11 and 21 of 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, as amended by chapter 533 of the laws of 2014, are amended to read as follows:

§ 4. Project authorization. No more than: (a) 13 projects, up to a total cost of three hundred twenty-five million dollars in phase one, and (b) 26 projects, up to a total cost of four hundred thirty-five million dollars in phase two, and (c) 12 projects, up to a total cost of four hundred seventy-five million dollars in phase three shall be authorized and undertaken pursuant to this act, unless otherwise authorized by law.

§ 5. Comprehensive school facilities modernization plan. The superintendent shall submit to the RJSCB a comprehensive draft plan recommending and outlining the projects for phase two and phase three it proposes to be undertaken pursuant to this act. The RJSCB shall consider the plan in developing a comprehensive school facilities modernization plan recommending and outlining the projects it proposes to be potentially undertaken pursuant to this act. Such plan shall include: (a) an estimate of total costs to be financed, proposed financing plan, proposed method of financing, terms and conditions of the financing, estimated financing costs, and, if city general obligation bonds or notes are not proposed as the method of financing, a comparison of financing costs between such bonds or notes and the proposed method of financing. Payment of debt service on bonds, notes or other obligations issued to secure financing of not more than \$325,000,000 in phase one [~~and~~], \$435,000,000 in phase two, and \$475,000,000 in phase three for projects undertaken pursuant to this act shall not be considered when determining the "city amount" required pursuant to subparagraph (ii) of paragraph a of subdivision 5-b of section 2576 of the education law; provided, however, that this provision shall not otherwise affect the determination of said "city amount" with respect to funding unrelated to projects undertaken pursuant to this act. The plan should also address what specific options would be used to ensure that sufficient resources exist to cover the local share of any such project cost on an annual basis; (b) information concerning the potential persons to be involved in the financing and such person's role and responsibilities; (c) estimates on the design, reconstruction and rehabilitation costs by project, any administrative costs for potential projects, and an outline of the

1 timeframe expected for completion of each potential project; (d) a
2 detailed description of the request for proposals process and an outline
3 of the criteria to be used for selection of the program manager, the
4 independent compliance officer and all contractors; provided that the
5 RJSCB may extend the contracts of the providers of professional services
6 for phase one or two upon the adoption of findings that doing so would
7 be in the public interest; the contracts of the program manager and the
8 independent compliance officer for phase two will be rebid and the
9 contracts of the program manager and the independent compliance officer
10 for phase three will be rebid, and provided further that the program
11 manager and the independent compliance officer and any new or different
12 providers of professional services shall be engaged in compliance with
13 the provisions of section eight of this act; (e) any proposed amendments
14 to the city school district's five-year capital facilities plan submit-
15 ted in accordance with subdivision 6 of section 3602 of the education
16 law and the regulations of the commissioner; and (f) a [~~preliminary~~]
17 diversity plan to develop diversity goals, including appropriate commu-
18 nity input and public discussion, and develop strategies that would
19 create and coordinate any efforts to ensure a more diverse workforce for
20 the projects. The [~~preliminary~~] diversity plan should address account-
21 ability for attainment of the diversity goals, what forms of monitoring
22 would be used, and how such information would be publicly communicated.

23 Prior to the development of the comprehensive school facilities
24 modernization plan, the RJSCB and district shall hold as many public
25 hearings as may be necessary to ensure sufficient public input and allow
26 for significant public discussion on school building needs in such city,
27 with at least one hearing to be held in each neighborhood potentially
28 impacted by a proposed project.

29 All projects proposed in the comprehensive school facilities modern-
30 ization plan shall be included by the city school district as a special
31 section of the district's five-year capital facilities plan that is
32 required pursuant to subdivision 6 of section 3602 of the education law
33 and the regulations of the commissioner.

34 The RJSCB shall submit the components of such comprehensive plan
35 outlined in subdivision (a) of this section to the comptroller, along
36 with any other information requested by the comptroller, for his or her
37 review and approval.

38 § 6. Project selection. Notwithstanding any general, special or local
39 law to the contrary and upon approval by the comptroller pursuant to
40 section five of this act, the RJSCB may select projects to be undertaken
41 pursuant to this act, as provided for in such approved comprehensive
42 plan. After the RJSCB has selected a new project and plans and specifi-
43 cations for such project have been prepared and approved by the RJSCB,
44 which are consistent with the approved comprehensive plan, the RJSCB
45 shall deliver such plans and specifications to the superintendent of the
46 city school district and the mayor of the city of Rochester for review
47 to ensure that sufficient resources exist to pay the local share of any
48 such project cost on an annual basis and that the plans meet program
49 needs, and upon the approval of the superintendent, to the commissioner
50 for his or her approval. After approval by the superintendent and
51 commissioner, the plans and specifications shall be returned to the
52 RJSCB. All such specifications shall detail the number of students the
53 completed project is intended to serve, the site description, the types
54 of subjects to be taught, the types of activities for school, recre-
55 ational, social, safety, or other purposes intended to be incorporated
56 in the school building or on its site and such other information as the

RJSCB and the commissioner shall deem necessary or advisable. The district program manager shall establish reasonable guidelines or limits on incidental costs to assure that to the greatest extent possible such costs for each project do not exceed the state's maximum incidental cost allowance, in order to maximize efficient use of state building aid.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to ~~[subdivision]~~ subdivisions (b) and (c) of section four of this act on a form provided by the commissioner after the completion of schematic plans and specifications for review by the commissioner. ~~[If]~~ For projects authorized pursuant to subdivision (b) of section four of this act, if the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of 43 million dollars or ten percent of the approved costs authorized pursuant to subdivision (b) of section four of this act, and the city school district has not otherwise demonstrated to the satisfaction of the state education department the availability of additional local shares for such excess costs, then the RJSCB shall not proceed with the preparation of final plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated project costs so as not to exceed the above cost limits. For projects authorized pursuant to subdivision (c) of section four of this act, if the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with preparation of final plans and specifications for such projects until the projects have been redesigned or value engineered to reduce estimated costs so as not to exceed this cost limit.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to subdivision (c) of section four of this act on a form provided by the commissioner after the completion of twenty-five percent of the final plans and specifications for review by the commissioner. If the total estimated building aid payable for projects authorized pursuant to subdivision (c) of section four of this act, based upon the sum of the estimated individual approved cost allowance of each building, is less than ninety-five percent of the total project costs, the RJSCB shall not proceed with the completion of the remaining seventy-five percent of the plans and specifications for such projects until the projects have been redesigned or value-engineered to reduce estimated costs so as not to exceed this cost limit.

Notwithstanding any other provision of law to the contrary, the RJSCB shall submit estimated project costs for the projects authorized pursuant to ~~[subdivision]~~ subdivisions (b) and (c) of section four of this act on a form provided by the commissioner after the completion of fifty percent of the final plans and specifications for review by the commissioner. ~~[If]~~ For projects authorized pursuant to subdivision (b) of section four of this act, if the total project costs associated with such projects exceed the sum of the estimated individual approved cost allowance of each building project by more than the lesser of 43 million dollars or ten percent of the approved costs authorized pursuant to subdivision (b) of section four of this act, and the city school district has not otherwise demonstrated to the satisfaction of the state education department the availability of additional local share for such

1 excess costs, then the RJSCB shall not proceed with the completion of
2 the remaining fifty percent of the plans and specifications for such
3 projects until the projects have been redesigned or value-engineered to
4 reduce estimated project costs so as not to exceed the above cost
5 limits. For projects authorized pursuant to subdivision (c) of section
6 four of this act, if the total estimated building aid payable for
7 projects authorized pursuant to subdivision (c) of section four of this
8 act, based upon the sum of the estimated individual approved cost allow-
9 ance of each building, is less than ninety-five percent of the total
10 project costs, the RJSCB shall not proceed with the completion of the
11 remaining fifty percent of the plans and specifications for such
12 projects until the projects have been redesigned or value-engineered to
13 reduce estimated project costs so as not to exceed this cost limit.

14 Notwithstanding any other provision of law to the contrary, the RJSCB
15 shall submit estimated project costs for the projects authorized pursu-
16 ant to subdivision (c) of section four of this act on a form provided
17 by the commissioner after the completion of seventy-five percent of the
18 final plans and specifications for review by the commissioner. If the
19 total estimated building aid payable for projects authorized pursuant to
20 subdivision (c) of section four of this act, based upon the sum of the
21 estimated individual approved cost allowance of each building, is less
22 than ninety-five percent of the total project costs, the RJSCB shall not
23 proceed with the completion of the remaining twenty-five percent of the
24 plans and specifications for such projects until the projects have been
25 redesigned or value-engineered to reduce estimated project costs so as
26 not to exceed this cost limit.

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

29 (a) The RJSCB may require a contractor, as a condition to being
30 awarded a contract, subcontract, lease, grant, bond, covenant or other
31 agreement for a project to enter into a project labor agreement for the
32 work involved with such project when such requirement is made part of
33 the bid specifications for the project and when the RJSCB determines
34 that the record supporting the decision to enter into such an agreement
35 establishes that it is justified by the interests underlying the compet-
36 itive bidding laws. In addition, the RJSCB may revise and extend the
37 requirements of the project labor agreement entered into for phase one
38 projects to the projects authorized in phase two and three, contingent
39 upon the completion of a supplemental project labor agreement benefit
40 analysis.

41 (b) Any contract, subcontract, lease, grant, bond, covenant or other
42 agreement for projects undertaken pursuant to this act shall not be
43 subject to section 101 of the general municipal law when the RJSCB has
44 chosen to require a project labor agreement, pursuant to subdivision (a)
45 of this section. This exemption shall only apply to the projects under-
46 taken pursuant to this act and shall not apply to projects undertaken by
47 any other school district or municipality unless otherwise specifically
48 authorized.

49 (c) Whenever the RJSCB enters in a contract, subcontract, lease,
50 grant, bond, covenant or other agreement for the construction, recon-
51 struction, demolition, excavation, rehabilitation, repair, renovation,
52 alteration, or improvement for a project undertaken pursuant to this
53 act, it shall be deemed to be a public works project for the purposes of
54 article 8 of the labor law, and all the provisions of article 8 of the
55 labor law shall be applicable to all the work involved with such project

1 including the enforcement of prevailing wage requirements by the state
2 department of labor.

3 (d) Every contract entered into by resolution of the RJSCB for
4 construction or reconstruction of a project pursuant to this act shall
5 contain a provision that the design of such project shall be subject to
6 the review and approval of the city school district and that the design
7 and construction standards of such project shall be subject to the
8 review and approval of the commissioner. In addition, every such
9 contract for construction or reconstruction shall contain a provision
10 that the contractor shall furnish a labor and material bond guaranteeing
11 prompt payment of moneys that are due to all persons furnishing labor
12 and materials pursuant to the requirements of any contracts for a
13 project undertaken pursuant to this section and a performance bond for
14 the faithful performance of the project, which shall conform to the
15 provisions of section 103-f of the general municipal law, and that a
16 copy of such performance and payment bonds shall be kept by the RJSCB
17 and shall be open to public inspection.

18 (d-1) Every contract entered into by resolution of the RJSCB pursuant
19 to this act shall contain a provision providing that: (i) payment due on
20 such contract shall be withheld where the contractor has not provided
21 necessary information for the RJSCB to comply with the reporting
22 requirements of this act, as determined by the state education depart-
23 ment; and shall continue to be withheld until such information is
24 provided satisfactory to the state education department; and (ii) such
25 withholding shall not constitute a breach of contract entitling the
26 contractor to terminate such contract or to be awarded damages.

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

32 (f) Notwithstanding the provisions of this act or of any general or
33 special law to the contrary, for any contract, subcontract, lease,
34 grant, bond, covenant or other agreement for construction, recon-
35 struction, demolition, excavation, rehabilitation, repair, renovation,
36 alteration, or improvement with respect to each project undertaken
37 pursuant to this act, the RJSCB shall consider the financial and organ-
38 izational capacity of contractors and subcontractors in relation to the
39 magnitude of work they may perform, the record of performance of
40 contractors and subcontractors on previous work, the record of contrac-
41 tors and subcontractors in complying with existing labor standards and
42 maintaining harmonious labor relations, and the commitment of contrac-
43 tors to work with minority and women-owned business enterprises pursuant
44 to article 15-A of the executive law through joint ventures or subcon-
45 tractor relationships. The RJSCB shall further require, on any contract
46 in excess of one million dollars for construction, reconstruction, demo-
47 lition, excavation, rehabilitation, repair, renovation, alteration, or
48 improvement that each contractor and subcontractor shall participate in
49 apprentice training programs in the trades of work it employs that: have
50 been approved for not less than three years by the state department of
51 labor; have graduated at least one apprentice in the last 3 years; have
52 at least one apprentice currently enrolled in such apprentice training
53 program; and have demonstrated that the program has made significant
54 efforts to attract and retain minority apprentices.

55 § 10. Program managers. (a) All contracts entered into by resolution
56 of the RJSCB for projects for phase two and phase three undertaken

1 pursuant to this act shall be managed by an independent program manager.
2 The selection of the program manager shall be pursuant to the compet-
3 itive process established in section eight of this act. Prior to issu-
4 ance of the contract, the program manager selected shall be approved by
5 the superintendent, mayor, city council and the Rochester city school
6 district. The program manager shall have experience in planning, design-
7 ing, and constructing new and/or reconstructing existing school build-
8 ings, public facilities, commercial facilities, and/or infrastructure
9 facilities, and in the negotiation and management of labor contracts and
10 agreements, training programs, educational programs, and physical tech-
11 nological requirements for educational programs. The program manager
12 shall manage all projects undertaken pursuant to this act, review
13 project schedules, review payment schedules, prepare cost estimates and
14 assess the safety programs of contractors and all training programs, if
15 required. The program manager shall implement procedures for verifica-
16 tion by it that all work for which payment has been requested has been
17 satisfactorily completed.

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

25 (c) Every contract entered into by resolution of the RJSCB to hire a
26 program manager pursuant to this act shall contain a provision providing
27 that: (i) payment due on such contract shall be withheld where the
28 program manager has not provided necessary information for the RJSCB to
29 comply with the reporting requirements of this act, as determined by the
30 state education department, and shall continue to be withheld until such
31 information is provided satisfactory to the state education department;
32 and (ii) such withholding shall not constitute a breach of contract
33 entitling the program manager to terminate such contract or to be
34 awarded damages.

35 (d) All records of the program manager related to the RJSCB shall be
36 subject to the city school district's annual external audit as set forth
37 in subdivision 3 of section 2116-a of the education law and shall be
38 subject to audits of the state conducted by the comptroller as set forth
39 in section 33 of the general municipal law.

40 (e) All contracts entered into by resolution of the RJSCB for projects
41 for phase three shall be subject to the public bidding requirements of
42 section 103 of the general municipal law.

43 § 11. Independent compliance officers. All contracts entered into by
44 resolution of the RJSCB for projects for phase two and phase three
45 undertaken by this act shall be monitored by an independent compliance
46 officer. The independent compliance officer shall: develop, implement,
47 advertise, promote and monitor policies and procedures to utilize and
48 provide sufficient MWBE, DBE and skilled minority employment resources
49 participation opportunities to be followed by prime contractors and
50 subcontractors for such projects; review, modify if necessary, and
51 approve the preliminary diversity plan established pursuant to section
52 five of this act; provide technical assistance to potential MWBE and DBE
53 contractors and subcontractors interested in bidding on any such
54 projects; obtain and maintain records and documentation to confirm
55 compliance with any requirements contained in the approved diversity
56 plan, for any such project; identify contractors in non-compliance with

1 any such requirements contained in the approved diversity plan or in
2 violation of any federal, state and local laws, rules or regulations;
3 monitor and report the upward/downward price adjustment and payment
4 amounts to MWBEs and DBEs listed on contractors utilization plan for any
5 such project; develop and work with the RJSCB to enforce agreed finan-
6 cial or monetary sanctions for any contractor's non-compliance with the
7 MWBE/DBE utilization master plan. In addition, the independent compli-
8 ance officer shall: develop, implement, advertise, promote and monitor
9 MWBE/DBE policies and procedures for each project to be followed by
10 prime contractors and subcontractors for such projects; obtain and main-
11 tain records and documentation to confirm compliance with any applicable
12 requirements for each project; identify contractors in non-compliance
13 with any such requirements pursuant to this section or in violation of
14 any federal, state and local laws, rules or regulations. The independent
15 compliance officer shall report to the [~~RJCSB~~] RJSCB on a monthly basis.

16 § 21. Reporting requirements. (a) On June 30, 2008 and annually there-
17 after, until completion of the [~~39~~] 51 projects authorized pursuant to
18 this act, the RJSCB shall issue a report to the governor, the comp-
19 troller, the commissioner, the temporary president of the senate, the
20 speaker of the assembly, the city, the city council and the city school
21 district on the progress and status of the projects undertaken by the
22 RJSCB. Provided further, that if any such entities request information
23 on the progress and status of the projects prior to such report, it
24 shall be provided to such entities by the RJSCB.

25 [~~In addition, on~~] (b) On or before June 30, 2021, or upon completion
26 of the 26 projects authorized in phase two pursuant to this act, which-
27 ever shall first occur, the RJSCB shall issue a report to the city, the
28 city school district, the governor, the commissioner, the comptroller,
29 the temporary president of the senate, the speaker of the assembly, the
30 minority leader of the senate, the minority leader of the assembly, the
31 state board of regents, and the chairs and ranking minority members of
32 the New York state senate and assembly committees on education, the
33 finance committee of the New York state senate, and the ways and means
34 committee of the New York state assembly. Such report shall identify the
35 fiscal and pedagogical results of the projects undertaken pursuant to
36 this act, along with recommendations for its continuance, amendments, or
37 discontinuance.

38 (c) On or before June 30, 2031, or upon completion of the 12 projects
39 authorized in phase three pursuant to this act, whichever shall first
40 occur, the RJSCB shall issue a report to the city, the city school
41 district, the governor, the commissioner, the comptroller, the temporary
42 president of the senate, the speaker of the assembly, the minority lead-
43 er of the senate, the minority leader of the assembly, the state board
44 of regents, and the chairs and ranking minority members of the New York
45 state senate and assembly committees on education, the finance committee
46 of the New York state senate, and the ways and means committee of the
47 New York state assembly. Such report shall identify the fiscal and peda-
48 gogical results of the projects undertaken pursuant to this act, along
49 with recommendations for its continuance, amendments, or discontinuance.

50 (d) Reporting requirements and state aid. Where the commissioner has
51 determined that the RJSCB has not complied with any reporting require-
52 ment prescribed in section 21 of this act, the commissioner may tempo-
53 rarily withhold the allotment, apportionment and payment of state aid
54 and assistance pursuant to the education law from the city school
55 district until such time that the RJSCB has complied with such require-
56 ments. Provided further that in the event state aid is temporarily with-

1 held from the city school district due to reporting deficiencies as
2 provided in this section, state aid payments shall continue to be
3 subject to withholding pursuant to section 99-b of the state finance law
4 should the city school district default in the payment of the principal
5 of its bonds or notes issued for purposes of this act or the payment of
6 interest on such bonds or notes or in the payment of both principal of
7 and interest on such bonds or notes.

8 § 3. Paragraph a of subdivision 6 of section 3602 of the education law
9 is amended by adding a new subparagraph 9 to read as follows:

10 (9) Notwithstanding any other provision of law to the contrary, for
11 the purpose of computation of building aid for reconstruction or modern-
12 izing of no more than six projects pursuant to chapter four hundred
13 sixteen of the laws of two thousand seven, as amended, enacting the
14 third phase of the city of Rochester school facilities modernization
15 program act, multi-year cost allowances for each project shall be estab-
16 lished and utilized two times in the first five-year period. Subsequent
17 multi-year cost allowances shall be established no sooner than ten years
18 after establishment of the first maximum cost allowance authorized
19 pursuant to this subparagraph.

20 § 4. This act shall take effect immediately and shall apply to all
21 contracts entered into, renewed, modified or amended on or after such
22 effective date.