

# STATE OF NEW YORK

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1761

2021-2022 Regular Sessions

## IN SENATE

January 15, 2021

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Introduced by Sen. COONEY -- read twice and ordered printed, and when printed to be committed 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.

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

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

(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 support facilities modernization phase three program and the program manager by developing and implementing 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 applicable.

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

(q) "Comprehensive school facilities modernization plan" or "facilities modernization plan" or "facilities modernization program" shall mean the comprehensive, strategic plan developed by the city school district and the RJSCB to be implemented in several phases for the construction, renovation, rehabilitation and equipping of new and existing educational facilities, and athletic and recreational facilities located in the city, which plan shall be included in a special section of the city school district's ongoing five-year capital improvement plan, as required by subdivision 6 of section 3602 of the education law and the regulations of the commissioner, and such other matters set forth in this section; which plan shall identify by the number of buildings to be constructed or reconstructed to the satisfaction of SED and include a district wide technology plan and related incidental expenses as adopted by the RJSCB after a public hearing.

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

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

§ 2. Subdivision (b) of section 3 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, is amended to read as follow:

(b) Such board shall be composed of seven voting members: three of whom shall be appointed by, and serve at the pleasure of the mayor of

1 the city; three of whom shall be appointed by, and serve at the pleasure  
2 of the superintendent of the board of education of the city school  
3 district; and one of whom shall be independent from both the city school  
4 district and the city but who shall have been agreed upon by the mayor  
5 and the superintendent; and one non-voting member who shall be the inde-  
6 pendent compliance officer, or the representative of the independent  
7 compliance officer. One of the voting members shall be chosen, by such  
8 voting members, to serve as chair of the board. Members of the board  
9 shall not receive a salary or other compensation for such board duties,  
10 but shall be entitled to reimbursement for actual and necessary expenses  
11 incurred in the performance of his or her board duties. Members of the  
12 board shall not be disqualified from holding public office or employ-  
13 ment, nor shall they forfeit any office or employment by reason of their  
14 appointment, notwithstanding the provisions of any general, special, or  
15 local law, ordinance or city charter to the contrary. [~~The board will~~  
16 ~~be reconstituted~~] To provide for the continuing functioning of the  
17 multiphase facilities modernization program, on the effective date of  
18 the chapter of the laws of [~~2014~~] 2021 that amended this subdivision  
19 [~~and the term of each prior board member shall automatically expire on~~  
20 ~~such date provided however that nothing shall preclude the reappointment~~  
21 ~~of an existing board member~~], the board in its constituted form shall  
22 continue to exist for the accomplishment of any of the purposes speci-  
23 fied in this act and the board, its members, officers and employees and  
24 its operations and activities shall in all respects be governed by the  
25 provisions of this act.

26 § 3. Sections 4, 5, 9, 10, 11 and 21 of chapter 416 of the laws of  
27 2007, establishing the city of Rochester and the board of education of  
28 the city school district of the city of Rochester school facilities  
29 modernization program act, as amended by chapter 533 of the laws of  
30 2014, are amended to read as follow:

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

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

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

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

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

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

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

51 (a) The RJSCB may require a contractor, as a condition to being  
52 awarded a contract, subcontract, lease, grant, bond, covenant or other  
53 agreement for a project to enter into a project labor agreement for the  
54 work involved with such project when such requirement is made part of  
55 the bid specifications for the project and when the RJSCB determines  
56 that the record supporting the decision to enter into such an agreement

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

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

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

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

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

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



tors 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 phase three upon the adoption of findings that doing so would be in the public interest or select a phase three independent compliance officer

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

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

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

52 (c) On or before June 30, 2031, or upon completion of the 16 school  
53 building projects, including district-wide technology, authorized in  
54 phase three pursuant to this act, whichever shall first occur, the RJSCB  
55 shall issue a report to the city, the city school district, the gover-  
56 nor, the commissioner, the comptroller, the temporary president of the

1 senate, the speaker of the assembly, the minority leader of the senate,  
2 the minority leader of the assembly, the state board of regents, and the  
3 chairs and ranking minority members of the New York state senate and  
4 assembly committees on education, the finance committee of the New York  
5 state senate, and the ways and means committee of the New York state  
6 assembly. Such report shall identify the fiscal and pedagogical results  
7 of the projects undertaken pursuant to this act, along with recommenda-  
8 tions for its continuance, amendments, or discontinuance.

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

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

18 § 5. This act shall take effect immediately.