

# STATE OF NEW YORK

9183

## IN ASSEMBLY

February 12, 2024

Introduced by M. of A. SMULLEN -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to authorizing school districts to opt-out of zero-emission school bus requirements

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

1 Section 1. Section 3638 of the education law, as added by section 1  
2 of subpart A of part B of chapter 56 of the laws of 2022, subdivision 7  
3 as added by section 19 of part A of chapter 56 of the laws of 2023, is  
4 amended to read as follows:

5 § 3638. Zero-emission school buses. 1. For the purposes of this  
6 section [~~"zero-emission";~~

7 (a) "Zero-emission school bus" shall mean a school bus that: is  
8 propelled by an electric motor and associated power electronics which  
9 provide acceleration torque to the drive wheels during normal vehicle  
10 operations and draws electricity from a hydrogen fuel cell or battery;  
11 or otherwise operates without direct emission of atmospheric pollutants.

12 (b) "Opt-out waiver" shall mean a formal instrument prescribed by the  
13 commissioner that a school district may submit once to the commissioner  
14 to secure a permanent exemption from the requirements of this section.

15 2. (a) No later than July first, two thousand twenty-seven, unless an  
16 opt-out waiver has been submitted, every school district shall:

17 (i) only purchase or lease zero-emission school buses when purchasing  
18 or leasing new buses;

19 (ii) include requirements in any procurement for school transportation  
20 services that any contractors providing transportation services for the  
21 school district must only purchase or lease zero-emission school buses  
22 when purchasing or leasing new school buses; and

23 (iii) include requirements in any procurement for the manufacturing or  
24 retrofitting of a zero-emission school bus and charging or fueling  
25 infrastructure that the components and parts used or supplied in the  
26 performance of the contract or any subcontract thereto shall be produced  
27 or made in whole or substantial part in the United States, its territo-  
28 ries or possessions and that final assembly of the zero-emission school

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

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1 bus and charging or fueling infrastructure shall occur in the United  
2 States, its territories or possessions.

3 (b) The commissioner, in consultation with the New York state energy  
4 research and development authority and office of general services, may  
5 waive the contracting requirements set forth in subparagraph (iii) of  
6 paragraph (a) of this subdivision if the commissioner determines that  
7 the requirements would not be in the public interest, would result in  
8 unreasonable costs, or that obtaining such zero-emission school buses  
9 and charging or fueling infrastructure components and parts in the  
10 United States would increase the cost of a school district's contract  
11 for zero-emission school buses and charging or fueling infrastructure by  
12 an unreasonable amount, or such zero-emission school busses and charging  
13 or fueling infrastructure components and parts cannot be produced, made,  
14 or assembled in the United States in sufficient and reasonably available  
15 quantities or of satisfactory quality. Such determination must be made  
16 on an annual basis no later than December thirty-first, after providing  
17 notice and an opportunity for public comment, and be made publicly  
18 available, in writing, on the department's website with a detailed  
19 explanation of the findings leading to such determination. If the  
20 commissioner has issued determinations for three consecutive years that  
21 no such waiver is warranted pursuant to this paragraph, then the commis-  
22 sioner shall no longer be required to provide the annual determinations  
23 required by this paragraph.

24 3. No later than July first, two thousand thirty-five, unless an opt-  
25 out waiver has been submitted, every school district shall:

26 (a) only operate and maintain zero-emission school buses; and

27 (b) include requirements in any procurement for school transportation  
28 services that any contractors providing transportation services for the  
29 school district must only operate zero-emission school buses when  
30 providing such transportation services to the school district.

31 4. A school district that has not submitted an opt-out waiver may  
32 apply to the commissioner, and the department may grant a one-time  
33 extension of up to twenty-four months to comply with the requirements of  
34 subdivision two of this section. The commissioner shall consider a  
35 school district's effort to meet the requirements of subdivision two of  
36 this section when granting an extension, including but not limited to,  
37 procurement efforts made by the school district, applications for state  
38 or federal funds, changes needed to school district operations to meet  
39 the requirements of this section, employee training, and receipt of  
40 technical assistance, if any. Upon a school district receiving an exten-  
41 sion, the New York state energy research and development authority, in  
42 consultation with the department, shall provide any additional technical  
43 assistance necessary to the district to meet the requirements of subdi-  
44 vision two of this section.

45 5. (a) Nothing in this section shall alter the rights or benefits, and  
46 privileges, including, but not limited to terms and conditions of  
47 employment, civil service status, and collective bargaining unit member-  
48 ship, of any current employees of school districts or any entity  
49 contracted to provide pupil transportation services, or services attend-  
50 ant thereto, including but not limited to drivers, attendants, dispatch-  
51 ers, and mechanics.

52 (b) Nothing in this section shall result in: (i) the discharge,  
53 displacement, or loss of position, including partial displacement such  
54 as a reduction in the hours of non-overtime work, wages, or employment  
55 benefits; (ii) the impairment of existing collective bargaining agree-  
56 ments; (iii) the transfer of existing duties and functions; or (iv) the

1 transfer of future duties and functions, of any currently employed work-  
2 er impacted by the proposed purchase or lease who agrees to be  
3 retrained.

4 (c) Prior to the beginning of the procurement process for new zero-em-  
5 ission school buses, omnibuses, vehicles, charging infrastructure or  
6 equipment, fueling infrastructure or equipment, or other equipment, the  
7 school district, private school bus company, or other employer whose  
8 workers provide pupil transportation services or services attendant  
9 thereto, shall create and implement a workforce development report that:

10 (i) estimates the number of current positions that would be eliminated  
11 or substantially changed as a result of the purchase or lease, and the  
12 number of positions expected to be created at the school district,  
13 private school bus company or other employer whose workers provide pupil  
14 transportation services or services attendant thereto by the proposed  
15 purchase or lease over the intended life of the proposed purchase or  
16 lease; (ii) identifies gaps in skills of its current workforce that are  
17 needed to operate and maintain zero-emission school buses, omnibuses,  
18 vehicles, charging infrastructure or equipment, fueling infrastructure  
19 or equipment, or other equipment; (iii) includes a comprehensive plan to  
20 transition, train, or retrain employees that are impacted by the  
21 proposed purchase or lease; and (iv) contains an estimated budget to  
22 transition, train, or retrain employees that are impacted by the  
23 proposed purchase or lease.

24 (d) Nothing in this section shall: (i) limit rights of employees  
25 pursuant to a collective bargaining agreement, or (ii) alter the exist-  
26 ing representational relationships among collective bargaining represen-  
27 tatives or the bargaining relationships between the employer and any  
28 collective bargaining representative. Employees of public entities serv-  
29 ing in positions in newly created titles shall be assigned to the appro-  
30 priate bargaining unit.

31 (e) Prior to beginning the procurement process for zero-emission  
32 school buses, omnibuses, vehicles, charging infrastructure or equipment,  
33 fueling infrastructure or equipment, or other equipment, any employer of  
34 workers covered by this section shall inform its employees' collective  
35 bargaining representative of any potential impact on its members or  
36 unit, including positions that may be affected, altered, or eliminated  
37 as a result of the purchase.

38 6. When purchasing zero-emission school buses and charging or fueling  
39 infrastructure, school districts are encouraged to utilize the central-  
40 ized contracts for zero emission school buses and charging or fueling  
41 infrastructure established by the office of general services.

42 7. Beginning in the two thousand twenty-four--two thousand twenty-five  
43 school year, unless an opt-out waiver has been submitted, every school  
44 district shall annually submit to the commissioner a progress report on  
45 the implementation of zero-emission school buses as required under this  
46 section in a format prescribed by the commissioner and approved by the  
47 director of the budget. The report shall include, but not be limited to,  
48 (i) sufficiency of the school district's electric infrastructure to  
49 support anticipated electrical needs, (ii) the availability and instal-  
50 lation of charging or fueling stations and other components and capital  
51 infrastructure required to support the transition to and full implemen-  
52 tation of zero-emission school buses, (iii) whether the workforce devel-  
53 opment report pursuant to paragraph (c) of subdivision five of this  
54 section has been created and implemented, (iv) the number and proportion  
55 of zero-emission school buses the school district or any contractor  
56 providing transportation services is utilizing in the current school

1 year, and (v) the number and proportion of zero-emission school buses  
2 purchased or leased by the school district or any contractor providing  
3 transportation services in the current school year and the total antic-  
4 ipated number for the next two years. The progress report shall be due  
5 on or before August first of each year. Beginning October first, two  
6 thousand twenty-four, the commissioner shall annually submit a report to  
7 the governor, the temporary president of the senate and the speaker of  
8 the assembly on the progress of implementation of zero-emission school  
9 buses as reported by the school districts.

10 § 2. This act shall take effect immediately; provided, however, that  
11 the amendments to subdivision 7 of section 3638 of the education law  
12 made by section one of this act shall not affect the repeal of such  
13 subdivision and shall be deemed repealed therewith.