

2023 -- S 0537 SUBSTITUTE A

LC001149/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO EDUCATION -- SCHOOL FUNDS AND PROPERTY

Introduced By: Senators Pearson, Gallo, Acosta, Cano, Murray, DiPalma, Ruggiero,  
Valverde, LaMountain, and DiMario

Date Introduced: March 07, 2023

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 16-9 of the General Laws entitled "School Funds and Property" is  
2 hereby amended by adding thereto the following section:

3 **16-9-11. New school construction and renovations.**

4 Not later than June 30, 2024, the department of education and the office of energy resources  
5 are hereby authorized and directed to develop and adopt regulations requiring all school buildings  
6 to meet the latest Northeast Collaborative for High Performance Schools (NE-CHPS) standard of  
7 zero energy capable, as defined in § 16-7-36, by December 31, 2035.

8 (1) The regulations shall allow flexibility to the furthest extent possible for local education  
9 agencies to pursue state and federal funding sources that assist in financing energy efficiency or  
10 renewable energy systems without any penalties or reduction in state housing aid provided by the  
11 department of education.

12 (2) Furthermore, for local education agencies that pursue federal funding for renewable  
13 energy systems, the department's regulations shall direct and provide further guidance to local  
14 education agencies to build, own, and operate solar panels utilizing federal guidance established in  
15 I.R.C. § 6417.

16 SECTION 2. Sections 16-7-36, 16-7-39 16-7-40 and 16-7-41.1 of the General Laws in  
17 Chapter 16-7 entitled "Foundation Level School Support [See Title 16 Chapter 97 — The Rhode  
18 Island Board of Education Act]" are hereby amended to read as follows:

19 **16-7-36. Definitions.**

1           The following words and phrases used in §§ 16-7-35 to 16-7-47 [and in §16-9-11](#) have the  
2 following meanings:

3           (1) “Adjusted equalized weighted assessed valuation” means the equalized weighted  
4 assessed valuation for a community as determined by the division of property valuation within the  
5 department of revenue in accordance with § 16-7-21; provided, however, that in the case of a  
6 regional school district the commissioner of elementary and secondary education shall apportion  
7 the adjusted equalized weighted assessed valuation of the member cities or towns among the  
8 regional school district and the member cities or towns according to the proportion that the number  
9 of pupils of the regional school district bears to the number of pupils of the member cities or towns.

10           (2) “Approved project” means a project which has complied with the administrative  
11 regulations governing §§ 16-7-35 through 16-7-47, and which has been authorized to receive state  
12 school housing reimbursement by the commissioner of elementary and secondary education.

13           (3) “Commissioning agent” means a person or entity who ensures that systems are  
14 designed, installed, functionally tested, and capable of being operated and maintained to perform  
15 in conformity with the design intent of a project.

16           (4) “Community” means any city, town, or regional school district established pursuant to  
17 law; provided, however, that the member towns of the Chariho regional high school district, created  
18 by P.L. 1958, ch. 55, as amended, shall constitute separate and individual communities for the  
19 purposes of distributing the foundation level school support for school housing for all grades  
20 financed in whole or in part by the towns irrespective of any regionalization.

21           (5) “Facilities condition index” means the cost to fully repair the building divided by the  
22 cost to replace the building as determined by the school building authority.

23           (6) “Functional utilization” means the ratio of the student population within a school  
24 facility to the capacity of the school facility to adequately serve students as defined by the school  
25 building authority.

26           (7) “Maintenance expenditures” means amounts spent for repairs or replacements for the  
27 purpose of keeping a school facility open and safe for use, including repairs, maintenance, and  
28 replacements to a school facility’s heating, lighting, ventilation, security, and other fixtures to keep  
29 the facility or fixtures in effective working condition. Maintenance shall not include contracted or  
30 direct custodial or janitorial services, expenditures for the cleaning of a school facility or its  
31 fixtures, the care and upkeep of grounds, recreational facilities, or parking lots, or the cleaning of  
32 or repairs and replacements to movable furnishings or equipment.

33           (8) “Owner’s program manager” means owner’s program manager as defined in § 37-2-7.

34           (9) “Prime contractor” means the construction contractor who is responsible for the

1 completion of a project.

2 (10) "Reference year" means the year next prior to the school year immediately preceding  
3 that in which aid is to be paid.

4 (11) "Subject to inflation" means the base amount multiplied by the percentage of increase  
5 in the Producer Price Index (PPI) Data for Nonresidential Building Construction (NAICS 236222)  
6 as published by the United States Department of Labor, Bureau of Labor Statistics determined as  
7 of September 30 of the prior calendar year.

8 (12) "Zero energy capable" means the building:

9 (i) Meets the latest Northeast Collaborative for High Performance Schools (NE-CHPS)  
10 standard of a zero energy capable school building whereby the actual annual energy delivered other  
11 than as described in subsection (12)(ii) of this section, must be less than or equal to the renewable  
12 energy generated onsite; or

13 (ii) The actual annual energy delivered must be less than or equal to the sum of:

14 (A) The renewable energy generated onsite;

15 (B) The renewable energy generated offsite through a power purchase agreement; and

16 (C) The value of purchased NE-GIS certificates that meet the standard for a new renewable  
17 energy resources as defined in § 39-26-2.

18 **16-7-39. Computation of school housing-aid ratio.**

19 For each community, the percent of state aid for school housing costs shall be computed in  
20 the following manner:

21 (1) The adjusted equalized weighted assessed valuation for the district is divided by the  
22 resident average daily membership for the district (grades twelve (12) and below); (2) The adjusted  
23 equalized weighted assessed valuation for the state is divided by the resident average daily  
24 membership for the state (grades twelve (12) and below); (1) is then divided by (2) and the resultant  
25 ratio is multiplied by a factor currently set at sixty-two percent (62%) which represents the  
26 approximate average district share of school support; the resulting product is then subtracted from  
27 one hundred percent (100%) to yield the housing aid share ratio, provided that in no case shall the  
28 ratio be less than thirty percent (30%). Provided, that effective July 1, 2010, and annually at the  
29 start of each fiscal year thereafter, the thirty percent (30%) floor on said housing-aid share shall be  
30 increased by five percent (5%) increments each year until said floor on the housing-aid share ratio  
31 reaches a minimum of not less than forty percent (40%). This provision shall apply only to school  
32 housing projects completed after June 30, 2010, that received approval from the board of regents  
33 prior to June 30, 2012. Provided further, for the fiscal year beginning July 1, 2012, and for  
34 subsequent fiscal years, the minimum housing aid share shall be thirty-five percent (35%) for all

1 projects receiving council on elementary and secondary education approval after June 30, 2012.  
2 The resident average daily membership shall be determined in accordance with § 16-7-22(1).

3 (2) No district shall receive a combined total of more than twenty (20) incentive percentage  
4 points for projects that commence construction by December 30, 2023, and five (5) incentive points  
5 for projects that commence construction thereafter; provided further, these caps shall be in addition  
6 to amounts received under §§ 16-7-40(a)(1), ~~and~~ 16-7-40(a)(2), [16-7-40\(j\)\(1\)](#) and [16-7-40\(j\)\(2\)](#).  
7 Furthermore, a district's share shall not be decreased by more than half of its regular share  
8 irrespective of the number of incentive points received nor shall a district's state share increase by  
9 more than half of its regular share, including amounts received under §§ 16-7-40(a)(1) and 16-7-  
10 40(a)(2), irrespective of the number of incentive points received.

11 **16-7-40. Increased school housing ratio.**

12 (a)(1) In the case of regional school districts, the school housing aid ratio shall be increased  
13 by two percent (2%) for each grade so consolidated.

14 (2) Regional school districts undertaking renovation project(s) shall receive an increased  
15 share ratio of four percent (4%) for those specific project(s) only, in addition to the combined share  
16 ratio calculated in § 16-7-39 and this subsection.

17 (b) In the case of projects undertaken by districts specifically for the purposes of school  
18 safety and security, the school housing aid share ratio shall be increased by five percent (5%) for  
19 these specific projects only, in the calculation of school housing aid. The increased share ratio shall  
20 continue to be applied for as long as the project(s) receives state housing aid. In order to qualify for  
21 the increased share ratio, seventy-five percent (75%) of the project costs must be specifically  
22 directed to school safety and security measures. The council on elementary and secondary  
23 education shall promulgate rules and regulations for the administration and operation of this  
24 section.

25 (c) For purposes of addressing health and safety deficiencies as defined by the school  
26 building authority, including the remediation of hazardous materials, the school housing aid ratio  
27 shall be increased by five percent (5%) so long as the construction of the project commences by  
28 December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar  
29 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to  
30 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum  
31 of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

32 (d) For purposes of educational enhancement, including projects devoted to the  
33 enhancement of early childhood education and career and technical education, the school housing  
34 aid ratio shall be increased by five percent (5%) so long as construction of the project commences

1 by December 30, 2023, is completed by December 30, 2028, and a two hundred fifty million dollar  
2 (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order to  
3 qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum  
4 of five hundred thousand dollars (\$500,000) must be specifically directed to these purposes.

5 (e) For replacement of a facility that has a facilities condition index of sixty-five percent  
6 (65%) or higher, the school housing ratio shall be increased by five percent (5%) so long as  
7 construction of the project commences by December 30, 2023, is completed by December 30, 2028,  
8 does not receive a bonus pursuant to subsection (f) or subsection (g), and a two hundred fifty million  
9 dollar (\$250,000,000) general obligation bond is approved on the November 2018 ballot. In order  
10 to qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a minimum  
11 of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

12 (f) For any new construction or renovation that increases the functional utilization of any  
13 facility from less than sixty percent (60%) to more than eighty percent (80%), including the  
14 consolidation of school buildings within or across districts, the school housing aid ratio shall be  
15 increased by five percent (5%) so long as construction of the project commences by December 30,  
16 2023, is completed by December 30, 2028, and a two hundred fifty million dollar (\$250,000,000)  
17 general obligation bond is approved on the November 2018 ballot. In order to qualify for the  
18 increased share ratio, twenty-five percent (25%) of the project costs or a minimum of five hundred  
19 thousand dollars (\$500,000) must be specifically directed to this purpose.

20 (g) For any new construction or renovation that decreases the functional utilization of any  
21 facility from more than one hundred twenty percent (120%) to between eighty-five percent (85%)  
22 to one hundred five percent (105%), the school housing ratio shall be increased by five percent  
23 (5%) so long as construction of the project commences by December 30, 2023, is completed by  
24 December 30, 2028, and a two hundred fifty million dollar (\$250,000,000) general obligation bond  
25 is approved on the November 2018 ballot. In order to qualify for the increased share ratio, twenty-  
26 five percent (25%) of the project costs or a minimum of five hundred thousand dollars (\$500,000)  
27 must be specifically directed to this purpose.

28 (h) For consolidation of two (2) or more school buildings, within or across districts into  
29 one school building, the school housing aid ratio shall be increased by five percent (5%) so long as  
30 construction of the project commences by December 30, 2023, is completed by December 30, 2028,  
31 a two hundred fifty million dollar (\$250,000,000) general obligation bond is approved on the  
32 November 2018 ballot, and does not receive a bonus pursuant to subsection (f) or subsection (g).  
33 In order to qualify for the increased share ratio, twenty-five percent (25%) of the project costs or a  
34 minimum of five hundred thousand dollars (\$500,000) must be specifically directed to this purpose.

1 (i) Any regionalized and/or non-regionalized school district receiving an increased share  
2 ratio for a project approved prior to July 1, 2018, shall continue to receive the increased share ratio  
3 for as long as the project receives state housing aid.

4 (j)(1) In the case of projects undertaken by districts specifically for the purposes of high-  
5 performance school design, the school housing aid share ratio shall be increased by five percent  
6 (5%) for these specific projects only, in the calculation of school housing aid. The increased share  
7 ratio shall continue to be applied for as long as the project(s) receives state housing aid. In order to  
8 qualify for the increased share ratio, seventy-five percent (75%) of the project costs must be  
9 specifically directed to this purpose. The council on elementary and secondary education shall  
10 promulgate rules and regulations for the administration and operation of this section.

11 (2) For any new construction or renovation that includes energy efficiency and renewable  
12 energy upgrades for the building to meet the standard of Zero Energy Capable school building  
13 pursuant to § 16-7-36(12), the school housing aid ratio shall be increased by ten percent (10%).

14 **16-7-41.1. Eligibility for reimbursement.**

15 (a) School districts, not municipalities, may apply for and obtain approval for a project  
16 under the necessity of school construction process set forth in the regulations of the council on  
17 elementary and secondary education, provided, however, in the case of a municipality that issues  
18 bonds through the Rhode Island health and educational building corporation to finance or refinance  
19 school facilities for a school district that is not part of the municipality, the municipality may apply  
20 for and obtain approval for a project. Such approval will remain valid until June 30 of the third  
21 fiscal year following the fiscal year in which the council on elementary and secondary education's  
22 approval is granted. Only those projects undertaken at school facilities under the care and control  
23 of the school committee and located on school property may qualify for reimbursement under §§  
24 16-7-35 — 16-7-47. Facilities with combined school and municipal uses or facilities that are  
25 operated jointly with any other profit or nonprofit agency do not qualify for reimbursement under  
26 §§ 16-7-35 — 16-7-47. Projects completed by June 30 of a fiscal year are eligible for  
27 reimbursement in the following fiscal year. A project for new school housing or additional housing  
28 shall be deemed to be completed when the work has been officially accepted by the school  
29 committee or when the housing is occupied for its intended use by the school committee, whichever  
30 is earlier.

31 (b) Notwithstanding the provisions of this section, the board of regents shall not grant final  
32 approval for any project between June 30, 2011, and May 1, 2015, except for projects that are  
33 necessitated by immediate health and safety reasons. In the event that a project is requested during  
34 the moratorium because of immediate health and safety reasons, those proposals shall be reported

1 to the chairs of the house and senate finance committees.

2 (c) Any project approval granted prior to the adoption of the school construction  
3 regulations in 2007, and which are currently inactive; and any project approval granted prior to the  
4 adoption of the school construction regulations in 2007 which did not receive voter approval or  
5 which has not been previously financed, are no longer eligible for reimbursement under this  
6 chapter. The department of elementary and secondary education shall develop recommendations  
7 for further cost containment strategies in the school housing aid program.

8 (d) Beginning July 1, 2015, the council on elementary and secondary education shall  
9 approve new necessity of school construction applications on an annual basis. The department of  
10 elementary and secondary education shall develop an annual application timeline for local  
11 education agencies seeking new necessity of school construction approvals.

12 (e) Beginning July 1, 2019, no state funding shall be provided for projects in excess of ten  
13 million dollars (\$10,000,000) unless the prime contractor for the project has received  
14 prequalification from the school building authority.

15 (f) Beginning July 1, 2019, the necessity of school construction process set forth in the  
16 regulations of the council on elementary and secondary education shall include a single statewide  
17 process, developed with the consultation of the department of environmental management, that will  
18 ensure community involvement throughout the investigation and remediation of contaminated  
19 building sites for possible reuse as the location of a school. That process will fulfill all provisions  
20 of § 23-19.14-5 related to the investigation of reuse of such sites for schools.

21 (g) Beginning July 1, 2019, school housing projects exceeding one million five hundred  
22 thousand dollars (\$1,500,000) subject to inflation shall include an owner's program manager and a  
23 commissioning agent. The cost of the program manager and commissioning agent shall be  
24 considered a project cost eligible for aid pursuant to §§ 16-7-41 and 16-105-5.

25 (h) Temporary housing, or swing space, for students shall be a reimbursable expense so  
26 long as a district can demonstrate that no other viable option to temporarily house students exists  
27 and provided that use of the temporary space is time limited for a period not to exceed twenty-four  
28 (24) months and tied to a specific construction project.

29 (i) Environmental site remediation, as defined by the school building authority, shall be a  
30 reimbursable expense up to one million dollars (\$1,000,000) per project.

31 (j) If, within thirty (30) years of construction, a newly constructed school is sold to a private  
32 entity, the state shall receive a portion of the sale proceeds equal to that project's housing aid  
33 reimbursement rate at the time of project completion.

34 (k) All projects must comply with § 37-13-6, ensuring that prevailing wage laws are being

1 followed, and § 37-14.1-6, ensuring that minority business enterprises reach a minimum of ten  
2 percent (10%) of the dollar value of the bid, [and § 37-13-3.1, ensuring apprenticeship program](#)  
3 [utilization.](#)

4 [\(l\) Using reviewable criteria, all projects seeking school housing aid shall complete an](#)  
5 [independent, objective, reasoned study on all projects over ten million dollars \(\\$10,000,000\) to](#)  
6 [determine whether adoption of a project labor agreement on the proposed project or projects will](#)  
7 [help achieve the goals of the state purchases act.](#)

8 SECTION 3. Section 16-105-3 of the General Laws in Chapter 16-105 entitled "School  
9 Building Authority" is hereby amended to read as follows:

10 **16-105-3. Roles and responsibilities.**

11 The school building authority roles and responsibilities shall include:

12 (1) Management of a system with the goal of ensuring equitable and adequate school  
13 housing for all public school children in the state;

14 (2) Prevention of the cost of school housing from interfering with the effective operation  
15 of the schools;

16 (3) Management of school housing aid in accordance with statute;

17 (4) Reviewing and making recommendations to the council on elementary and secondary  
18 education on necessity of school construction applications for state school housing aid and the  
19 school building authority capital fund, based on the recommendations of the school building  
20 authority advisory board;

21 (5) Promulgating, managing, and maintaining school construction regulations, standards,  
22 and guidelines applicable to the school housing program, based on the recommendations of the  
23 school building authority advisory board, created in § 16-105-8. Said regulations shall require  
24 conformance with the minority business enterprise requirements set forth in § 37-14.1-6 [and with](#)  
25 [the latest Northeast Collaborative for High Performance Schools \(NE-CHPS\) standards or](#)  
26 [equivalent, contingent on approval from the council on elementary and secondary education;](#)

27 (6) Developing a prequalification and review process for prime contractors, architects, and  
28 engineers seeking to bid on projects in excess of ten million dollars (\$10,000,000) in total costs  
29 subject to inflation. Notwithstanding any general laws to the contrary, a prequalification shall be  
30 valid for a maximum of two (2) years from the date of issuance. Factors to be considered by the  
31 school building authority in granting a prequalification to prime contractors shall include, but not  
32 be limited to, the contractor's history of completing complex projects on time and on budget, track  
33 record of compliance with applicable environmental and safety regulations, evidence that  
34 completed prior projects prioritized the facility's future maintainability, and compliance with



1 applicable requirements for the use of women and minority owned subcontractors;

2 (i) At least annually, a list of prequalified contractors, architects, and engineers shall be  
3 publicly posted with all other program information;

4 (7) Providing technical assistance and guidance to school districts on the necessity of  
5 school construction application process;

6 (8) Providing technical advice and assistance, training, and education to cities, towns,  
7 and/or local education agencies and to general contractors, subcontractors, construction or project  
8 managers, designers and others in planning, maintenance, and establishment of school facility  
9 space;

10 (9) Developing a project priority system, based on the recommendations of the school  
11 building authority advisory board, in accordance with school construction regulations for the school  
12 building authority capital fund, subject to review and, if necessary, to be revised on intervals not to  
13 exceed five (5) years. Project priorities shall include, but not be limited to, the following order of  
14 priorities:

15 (i) Projects to replace or renovate a building that is structurally unsound or otherwise in a  
16 condition seriously jeopardizing the health and safety of school children where no alternative exists;

17 (ii) Projects needed to prevent loss of accreditation;

18 (iii) Projects needed for the replacement, renovation, or modernization of the HVAC  
19 system in any schoolhouse to increase energy conservation and decrease energy-related costs in  
20 said schoolhouse;

21 (iv) Projects needed to replace or add to obsolete buildings in order to provide for a full  
22 range of programs consistent with state and approved local requirements; and

23 (v) Projects needed to comply with mandatory, instructional programs;

24 (10) Maintaining a current list of requested school projects and the priority given them;

25 (11) Collecting and maintaining readily available data on all the public school facilities in  
26 the state;

27 (12) Collecting, maintaining, and making publicly available quarterly progress reports of  
28 all ongoing school construction projects that shall include, at a minimum, the costs of the project  
29 and the time schedule of the project;

30 (13) Recommending policies and procedures designed to reduce borrowing for school  
31 construction programs at both state and local levels;

32 (14) At least every five (5) years, conducting a needs survey to ascertain the capital  
33 construction, reconstruction, maintenance, and other capital needs for schools in each district of the  
34 state, including public charter schools. [Beginning in 2023, this needs survey shall include progress](#)

1 [towards and recommendations for energy efficiency and renewable energy upgrades to bring all](#)  
2 [state school buildings to the definition of a zero energy capable school building pursuant to § 16-](#)  
3 [7-36;](#)

4 (15) Developing a formal enrollment projection model or using projection models already  
5 available;

6 (16) Encouraging local education agencies to investigate opportunities for the maximum  
7 utilization of space in and around the district;

8 (17) Collecting and maintaining a clearinghouse of prototypical school plans that may be  
9 consulted by eligible applicants;

10 (18) Retaining the services of consultants, as necessary, to effectuate the roles and  
11 responsibilities listed within this section;

12 [\(19\) Hiring an appropriate staff member who shall create and implement a plan to bring all](#)  
13 [Rhode Island school buildings in compliance with the standard of a zero energy capable school](#)  
14 [building pursuant to § 16-7-36 and who shall provide technical advice and assistance, training, and](#)  
15 [education to cities, towns, and/or local education agencies, and to general contractors,](#)  
16 [subcontractors, construction or project managers, designers and others on the latest NE-CHPS](#)  
17 [standards;](#)

18 ~~(19)~~(20) No district shall receive a combined total of more than twenty (20) incentive  
19 percentage points for projects that commence construction by December 30, 2023, and five (5)  
20 incentive points for projects that commence construction thereafter; provided further, these caps  
21 shall be in addition to amounts received under §§ 16-7-40(a)(1), ~~and~~ 16-7-40(a)(2), [16-7-40\(j\)\(1\),](#)  
22 [and 16-7-40\(j\)\(2\).](#) Furthermore, a district's share shall not be decreased by more than half of its  
23 regular share irrespective of the number of incentive points received, nor shall a district's state  
24 share increase by more than half of its regular share, including amounts received under §§ 16-7-  
25 40(a)(1) and 16-7-40(a)(2), irrespective of the number of incentive points received.  
26 Notwithstanding any provision of the general laws to the contrary, the reimbursement or aid  
27 received under this chapter or chapter 38.2 of title 45 shall not exceed one hundred percent (100%)  
28 of the sum of the total project costs plus interest costs. If a two hundred and fifty million dollar  
29 (\$250,000,000) general obligation bond is approved on the November 2018 ballot, projects  
30 approved between May 1, 2015, and January 1, 2018, are eligible to receive incentive points (above  
31 and beyond what the project was awarded at the time of approval) pursuant to § 16-7-39 and § 16-  
32 7-40. Provided, however, any project approved during this time period with a project cost in excess  
33 of one million five hundred thousand dollars (\$1,500,000), which does not include an owner's  
34 program manager and a commissioning agent, shall only be eligible to receive five (5) incentive

1 points. Incentive points awarded pursuant to the provisions of this subsection shall only be applied  
2 to reimbursements occurring on or after July 1, 2018. Any project approved between May 1, 2015,  
3 and January 1, 2018, that is withdrawn and/or resubmitted for approval shall not be eligible for any  
4 incentive points.

5 SECTION 4. This act shall take effect upon passage.

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LC001149/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO EDUCATION -- SCHOOL FUNDS AND PROPERTY

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1           This act would provide that not later than June 30, 2024, the department of education would  
2 develop and adopt, in consultation with the office of energy resources, regulations requiring all  
3 school buildings to meet the standard of zero energy capable, as defined in § 16-7-36, by December  
4 31, 2035.

5           This act would take effect upon passage.

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