



# CHANGES TO LAWS ON SCHOOL BUILDINGS

By Lisa F. Tanselle, Esq., General Counsel



**T**he General Assembly made more changes to the laws on underutilized school buildings and making school buildings available to charter schools and post-secondary educational institutions this past legislative session. These changes will go into effect July 1, 2024. For those school corporations with

declining enrollment and those that are looking at the use of existing school buildings, it is important to review P.L. 36-2024 (SEA 270) to understand the actions that are required by the laws.

## UNDERUTILIZED SCHOOL BUILDINGS<sup>1</sup>

In 2023, the General Assembly enacted provisions applicable

to school corporations experiencing a 10% decline in in-person enrollment in a school year as compared to the previous five school years and with more than one school building serving the same grade levels. Those provisions require the school boards of such school corporations to annually review the usage of school buildings and report to the Department of Education (DOE) the designed occupancy and usage of all its buildings. The statutes also define when a school building is considered to be “underutilized” and permit a school board to close the school building if it has been underutilized for three years and there is another school building within 20 minutes of travel time by car or bus that has the capacity to take the students enrolled in the underutilized building. Lastly, the statutes create a process whereby charter schools or state educational institutions can petition the DOE for a determination that a school building meets the definition of an underutilized school building and therefore should be made available to the charter school or state educational institution.

This past legislative session, the General Assembly made two changes to these existing statutes. The first change was to the definition of an underutilized school building. Current law refers to a building being underutilized if the number of students enrolled in the building for the current school year and two previous school years was not at least 60% of the known classroom design capacity. Starting July 1, 2024, that percentage will drop to 50%, meaning a school building will be considered underutilized if in the current school year and the two previous school years the number of students enrolled in the building is not at least 50% of the known classroom design capacity.<sup>2</sup>

The second change made by the legislature was to the language that permits a school board to make an underutilized school building available to a charter school or state educational institution. Starting July 1, 2024, the law will require a school board to make such a building available to a charter school or post-secondary institution that goes through the process set forth in statute.

## CLOSED SCHOOL BUILDINGS<sup>3</sup>

For several years, school boards have been required by law to notify the DOE of when a school building has been vacant and/or closed in order to make such buildings available to charter schools and state educational institutions for purchase or lease for \$1. The law has been the subject of several lawsuits, including one that challenged the constitutionality of making school buildings available to charter schools and post-secondary schools for \$1, but its validity remains intact.<sup>4</sup>

In an effort to further define when school buildings must be made available to these institutions, the General Assembly made several changes to existing statutes. Again, these changes will take effect July 1, 2024.<sup>5</sup>

## NOTICE TO THE DOE

No later than 30 days after the date a school board determines at a public meeting to cease using a school building “for classroom instruction on student instructional days,” the school corporation must provide written notice to the DOE of the date that the school building has ceased or will cease being used for classroom instruction.

The written notice must state whether the school corporation intends to make the school building available for purchase or lease by a charter school or state educational institution. If the school corporation does not intend to make the building available, the school corporation must state “the factual and legal basis for the

school corporation’s contention that the covered school building is not required to be made available.”

If a school corporation fails to provide the required written notice to the DOE, any claim for exclusion from a requirement to make a building available is waived. Additionally, any claim for exclusion that is not stated in the written notice is waived.

## DOE NOTICE REQUIREMENTS

Within 15 days of receiving a school corporation’s notice, the DOE must provide written notice to all interested persons. Interested persons is defined as each state educational institution, each charter school within the county of the school corporation that submits the required notice, all charter school authorizers, each trade or professional organization representing charter schools, and the Indiana charter school board.<sup>6</sup>

If a school corporation acknowledges that its school building will be made available, the DOE notice must state that an interested person must submit a notice of interest within 60 days of receiving the department’s notice. If a school corporation submits a claim that a school building will not be made available, the DOE must inform interested persons that they have 30 days to submit a rebuttal to the factual and legal basis for not making a building available as submitted by the school corporation.

## CHALLENGE PROCESS

If a rebuttal is submitted by an interested person, the DOE has 60 days to make a determination as to whether the school building must be made available. The DOE is required to publish a copy of its determination on the DOE website. The school corporation or the interested person may appeal the decision within 30 days after the date the Department issues its determination to the State Board of Education, pursuant to the procedures in IC 20-26-11-15(b).

Within 15 days of either the expiration of the time period for appealing to the State Board or the State Board concludes that a building must be made available to an interested person, the school corporation must make the building available for inspection by the interested person and provide information on the estimated operating expenses of the building and the overall condition of the building. If the school corporation fails to do so, the DOE must request that the Attorney General take steps to enforce the order.

## FINAL ACTIONS

An interested person who wishes to purchase or lease a school building must submit a preliminary request to the DOE within

90 days of receiving the DOE notice above. The charter school or state educational institution must submit the name of the institution that is interested in leasing or purchasing the building and the time frame for occupying the school building. The time frame may not exceed three years (it was previously two years).

If the DOE does not receive any preliminary requests to purchase or lease a school building within 90 days, the DOE must send notification to the school corporation and the school corporation may then sell or otherwise dispose of the school building.

In addition to making the above changes, the General Assembly added language to the chapter further clarifying its intent. The new language states that the provisions in the chapter “shall be liberally construed to serve the legislative purpose of making closed covered school buildings available for use by charter schools.”<sup>77</sup> This language will be used by the DOE, the State Board of Education, the Attorney General, and the courts in their interpretations of what the law requires of school corporations.

Over the years, the legislature has expressed its belief that school corporations are not making buildings available to charter schools and state educational institutions as intended by this body. The changes made this past session are another attempt to set forth their expectations. School boards and school administrators, along with local counsel, need to review these changes to abide by the legislature’s intent.

*This article is written for informational purposes only and is not an exact recitation of IC 20-26-7-47 and IC 20-26-7.1. School officials should consult with local counsel as decisions regarding school buildings are made.* 📌

**REFERENCES**

- 1 IC 20-26-7-47 & IC 20-26-7-48
- 2 P.L. 36-2024, SEC. 2
- 3 IC 20-26-71
- 4 Lake Ridge Sch. Corp. v. Holcomb, 198 N.E.3d 715 (Ind. Ct. App. 2022)
- 5 P.L. 36-2024, SEC. 5
- 6 IC 20-26-71-2.2
- 7 P.L. 36-2024, SEC. 9



## Jouley: Electric School Bus

With the Saf-T-Liner C2 Jouley, electric bus, we're driving the industry-and our future-in a whole new direction.

- Runs emissions-free; reduces noise pollution, uses no fossil fuels
- Drives up to 65 mph
- Accelerates from 0 to 60 in 45 seconds
- Built with up to 220 kWh power
- Charges in 2-3 hours at a DC fast charging station
- Has up to 135-mile operating range



**Bus Sales & Leasing**  
**800-331-8942**  
[www.kerlinbus.com](http://www.kerlinbus.com)



# Partner with Schneider Electric to realize your district's vision

Let us work alongside your team to help you reach your district's goals



Federal Stimulus



Capital Lease



Local and Regional Programs



Rebate Programs



Tax Rebates and Incentives



Competitive Grants

Schneider Electric has partnered with school leaders across the country on Energy Savings Performance Contracts and Design-Build projects. Contact us to learn how we can join your team to help you dramatically improve mission-critical infrastructure, create healthier indoor environments, and benefit students for years to come.

Reach out to begin discussions today



**Cameron Pavelschak**  
 (813) 481-9845  
[Cameron.Pavelschak@se.com](mailto:Cameron.Pavelschak@se.com)

[se.com/enable](http://se.com/enable)

