



## CHAPTER 14

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# Rules and Procedures for Implementation of the Equipment Leasing Fund Bond Act

Office of the Secretary of Higher Education

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **9A:14-1.1 Purpose and authority**

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Equipment Leasing Fund Act, P.L. 1993, c. 136, as amended by P.L. 2012, c. 42.

#### **9A:14-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Educational Facilities Authority Act, N.J.S.A. 18A:72A-1 et seq.

"Amending Act" means P.L. 2012, c. 42, the law that supplements and amends the Act.

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority shall be given by law.

"Bond" means a bond or note of the Authority issued pursuant to the authority granted by the Act.

"Cost-effectiveness" means the degree to which a project produces a positive economic analysis when considering the construction expenses, operating, and maintenance expenses, compared to the project's resultant facilities and/or equipment, the life span of the facilities and/or equipment, facility usage and capacity, user productivity, and, where appropriate, such attributes as aesthetics, historic preservation, security, and safety.

"Equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications, or instructional equipment for use by institutions.

"Equipment leasing fund" means the Higher Education Equipment Leasing Fund as created by the Act.

"Institution" means a public or private institution of higher education that is eligible to receive State aid.

"Lease agreement" means any lease agreement by and between the Authority and any participating institution entered into pursuant to the Act.

"Secretary" means the Secretary of Higher Education.

### **9A:14-1.3 Process for approval of a higher education equipment purchase**

(a) Following approval by its governing board, an institution of higher education may apply to the Secretary for approval of a higher education equipment purchase(s) to be financed by the equipment leasing fund. The institution's application shall include the following:

1. A copy of the institution's governing board resolution approving the institution's equipment purchase and committing to support the annual operating costs and maintenance requirements for any new equipment;
2. A brief description of the process used to generate the application for approval of the proposed purchase;
3. A description of how the proposed purchase relates to the current institutional mission and plans;
4. A description of how the proposed purchase supports industry-valued credentialing programs and experiential learning opportunities;
5. The program(s) or function(s) to be served by the equipment, including the specific educational objectives to be met;
6. A description of the equipment to be purchased;
7. For each item of equipment described at (a)6 above, where the estimated per unit cost of the equipment to be purchased exceeds \$ 10,000, the estimated cost and number of units of the equipment to be purchased;
8. The useful life of the equipment either by reference to the Internal Revenue Service's Class Life Asset Description Range System set forth at Revenue Procedure 87-56, incorporated herein by reference, as amended and supplemented, or by appraisal of any independent engineering or accounting firm, as appropriate;
9. The estimated timetable for the acquisition and installation of the equipment;
10. Identification of all sources of revenue to be used to pay the institution's annual share of principal and interest on bonds issued to acquire equipment for use by the institution;
11. Certification by the institution that the project will comply with all applicable rules, codes, statutes, and government guidelines;

12. Any information regarding the energy efficiency of the proposed project, including manufacturer information or engineer reports; and

13. Any additional information the institution deems necessary to demonstrate how the institution's proposed purchase meets the objectives identified at N.J.A.C. 9A:14-1.4(b).

14. Any other information as may be required by the Secretary on a case-by-case basis and relating to a specific application.

(b) No application shall be for an amount totaling less than \$ 50,000, unless it is for the final portion of an institution's allocation, or the submission of an application for such smaller amount has been authorized by the Secretary.

(c) Descriptions of the equipment submitted pursuant to (a)6 above may be illustrative and the equipment to be purchased may be changed as a result of the bidding processes, advances in technology, or for other reasons, provided that the equipment is consistent with the application approved by the governing board of the affected institution and by the Secretary, and is authorized pursuant to the lease agreement. The Secretary shall require that an institution demonstrate that the proposed equipment has been approved by the institution's governing board.

(d) Applications for purchase approval shall be submitted in a format provided by the Secretary.

#### **9A:14-1.4 Application review and approval process**

(a) The Secretary shall conduct a review of the applications. Such applications will be reviewed based on:

1. The completed application bearing the earliest submission date;
2. A competitive application process whereby all applications will be submitted by a date certain and will be evaluated to determine which applications are the most qualified to receive funding.

(b) In determining whether a proposed higher education equipment purchase shall be approved, the Secretary shall consider the degree to which the proposed purchase supports the following objectives:

1. Improvement and expansion of educational opportunities for students;
2. Promotion of academic research excellence, workforce readiness, and the enhancement of the State's academic and economic competitiveness and prosperity by assisting in the production of a highly skilled workforce;
3. Consistency with the institution's educational mission;
4. Consistency with the institution's long-range facilities plan;
5. The cost-effectiveness of the purchase;
6. Demonstrated commitment over the past 10 years to appropriate maintenance of equipment previously funded by State of New Jersey grant programs;
7. Supports industry-valued credentialing programs and experiential learning opportunities; and
8. Enrichment of existing material and coursework in support of current academic curricula.

(c) Preference will be given to projects that promote energy efficiency.

**9A:14-1.5 Authorization process**

(a) The Secretary shall establish a review committee comprised of representation from the Office of the Secretary of Higher Education, the New Jersey Educational Facilities Authority, the New Jersey Schools Development Authority, the New Jersey Economic Development Authority, and an external advisor with technical expertise to evaluate higher education equipment purchase applications and make recommendations on funding.

(b) The Secretary shall examine the recommendations of the review committee and shall, via a written certification, provide preliminary approval or disapproval of the purchase, pursuant to N.J.A.C. 9A:14-1.4(b), and the amount of the approval.

(c) The Secretary shall forward to the Authority a copy of the institution's application and a copy of the written certification of such approval, including the amount of the grant. The Authority shall thereafter submit a copy of the proposed lease agreement or lease information in connection with the purchase of equipment preliminarily approved by the Secretary to the Legislature Joint Budget Oversight Committee for review. The Legislature Joint Budget Oversight Committee shall approve or disapprove each lease agreement within 10 working days of receipt of the lease information or the lease agreement shall be deemed approved by the Legislature Joint Budget Oversight Committee and by the Secretary.

(d) The Authority shall not enter into a lease agreement with an institution of higher education without the review and approval of the Legislature Joint Budget Oversight Committee.

(e) Lease agreements with institutions for the lease-purchase of equipment approved by the Secretary shall require the respective institutions to pay to the Authority 25 percent of the principal and interest on the bonds to be issued to finance the equipment purchase for the respective institutions.

(f) The Authority shall not issue bonds to finance the equipment purchase with terms exceeding the useful life of the equipment to be purchased and in no case exceeding 10 years.

(g) No bonds shall be issued by the Authority without the prior written consent of the State Treasurer.

(h) Proceeds from the sale of bonds shall cover the cost of bond issuance and administrative costs of the program.

(i) Any purchase of equipment by an institution shall be in the name of the Authority. The Authority shall hold title to the equipment until the bonds issued to finance the purchases have been repaid whereupon title shall be transferred to the respective institutions at their cost.

(j) Each institution that receives approval for the purchase of higher education equipment shall provide such information as the Secretary may request regarding the status of the equipment purchase.

**9A:14-1.6 Cancellation or reduction in approved amounts**

(a) The Secretary may reduce or cancel entirely any balance in the amounts authorized if the amounts are not committed within 18 months of the allocations made by the Secretary. Funds will be considered committed when a lease agreement has been entered into between an institution and the Authority.

(b) No reduction in the balance shall be made pursuant to (a) above if:

1. The request for approval has been received by the Secretary within 18 months of the allocation;
2. The facility in which the equipment will be housed is under construction or renovation;
3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements not attributable to the institution; or
4. Other compelling and documentable reasons exist as determined by the Secretary.

(c) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments on bonds issued to finance equipment for such institution shall not constitute good cause for not committing funds as required in (b) above.

(d) In the event that an institution requires a modification to an approved project, a formal request must be sent to the Secretary, prior to any action being taken by the institution, in order for the Secretary to evaluate the merits of the proposed project modification against the

objectives set forth at N.J.A.C. 9A:14-1.4(b). The Secretary may exercise discretion to allow a grantee to modify its project if such modification is reasonable and consistent with the scope, objectives, purpose, and intent of the originally approved project and if such modification does not constitute a material change. Material changes to the grant agreement will not be allowed. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the lease agreement, tax certificate, and any other applicable bond documents. Additionally, the Secretary may, in a manner consistent with the allocations provided in the Act, allocate any balance to another approved grant of the same institution.

#### **9A:14-1.7 Payment of principal and interest**

(a) Each institution shall pay the Authority, or the bond trustee if so directed by the Authority, 25 percent of the principal and interest on bonds deemed issued to acquire equipment for the institution and in accordance with its lease agreement.

(b) Upon receipt of funds under (a) above, the Authority, or the bond trustee if so directed by the Authority, shall remit all such payments immediately to the State Treasurer.

(c) If an institution fails or is unable to pay to the Authority in full, when due, any such obligation of an institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or any other State appropriation allotted to the institution. As used in this subsection, "obligation of an institution" means any amount payable by the institution under a lease agreement to meet principal and interest on the bonds issued to acquire equipment for the institution under this program. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation of each institution. A copy of such notification shall be submitted to the Secretary.



### **9A:14-1.8 Reporting requirements**

- (a) The Authority shall report its equipment purchases to the Secretary once in each year in which equipment purchases are made. The Secretary shall then report to the Governor and the Legislature on equipment purchases that have been approved by the Secretary and financed through this chapter.
- (b) Each institution shall annually submit by May 31st, or such other date as determined by the Secretary, a report to the Authority pursuant to the requirements set forth by the grant agreement.
- (c) Each institution shall, whenever requested by the Authority, provide and certify, in a form satisfactory to the Authority, such information concerning the institution and the project, the operations and finances of the institution, and any other matters that the Authority considers to be necessary in order to enable the Authority to make any reports, including reports to the Secretary, which are required by any law or governmental regulations in connection with the bonds issued under the Act.