

(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 Cancelation 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.

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 an appropriation payable 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 Secretary.

9A:14-1.8 Reporting requirements

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.

(a)

SECRETARY OF HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Facilities Trust Fund Act

Adopted New Rules: N.J.A.C. 9A:15

Proposed: January 22, 2013 at 45 N.J.R. 98(a).

Adopted: March 25, 2013 by Rochelle Hendricks, Secretary of Higher Education, Office of the Secretary of Higher Education.

Filed: March 26, 2013 as R.2013 d.074, **without change**.

Authority: N.J.S.A. 18A:72A-49 and P.L. 1993, c. 375 and P.L. 2012, c. 42.

Effective Date: May 6, 2013.

Expiration Date: May 6, 2020.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The adopted new rules do not require a Federal standards analysis under Executive Order No. 27 (1994) because the Higher Education Facilities Trust Fund Act was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirements or standards.

Full text of the adopted new rules follows:

CHAPTER 15

RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION FACILITIES TRUST FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9A:15-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Facilities Trust Fund Act, P.L. 1993, c. 375, as amended by P.L. 2012, c. 42. This chapter is adopted in order to provide a mechanism by which eligible institutions may apply for and receive grants from the Higher Education Facilities Trust Fund.

9A:15-1.2 Definitions

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

"Act" means the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 through 58.

"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.

"Construction ready" means the extent to which the planning and design work have been completed and construction is able to begin, and the degree to which a project shall be completed expeditiously once begun. An evaluation of whether a project is construction ready shall include the status of the design work, project site readiness, zoning and permitting approvals, as well as the anticipated timeframe during which the project will be completed, and the pacing of related construction.

"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.

"Facilities trust fund" or "trust fund" means the Higher Education Facilities Trust Fund as created by the Act.

"Grant" means a grant of moneys from the facilities trust fund approved by the Secretary for a facilities project.

"Grant agreement" means the grant agreement between the institution and the Authority, which shall set forth the terms and conditions of the grant, amount of the grant, and disbursement schedule.

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

"Project" means a capital construction project to construct, reconstruct, develop, extend, or improve instructional, laboratory, communication, or research facilities.

"Secretary" means the Secretary of Higher Education.

9A:15-1.3 Project eligibility

(a) Moneys from the trust fund shall be awarded in the form of grants to New Jersey's public and private institutions of higher education for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

(b) For a project to be eligible to receive a grant, the institution must:

1. Have an up-to-date long-range facilities plan approved by the institution's governing board that includes provisions to address deferred

maintenance and other capital renewal requirements and pledges to use the facilities trust fund grant to advance that plan;

2. Commit, by resolution of its governing board, to maintaining the facilities project funded by the grant; and

3. Certify that it will use the funds for the cost, or a portion of the cost, of the construction, reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities.

9A:15-1.4 Grant applications

(a) Following approval by its governing board at a duly authorized meeting, an institution of higher education may apply to the Secretary for a grant from the trust fund. The institution's application shall include the following:

1. A certification that the eligibility requirements provided in N.J.A.C. 9A:15-1.3 have been met;

2. A complete description of the project, including design information if appropriate for the project;

3. A copy of the institution's governing board's resolution approving the application and committing to support the annual operating costs of and maintenance requirements for the proposed project;

4. A copy of the institution's current long-range facilities plan approved by the institution's governing board that includes provisions to address deferred maintenance and other capital renewal requirements or a certification that such a plan has already been submitted to the Secretary pursuant to P.L. 2009, c. 90;

5. A description of how the proposed project relates to the current institutional mission, plans, and priorities;

6. The program(s) or function(s) to be served by the project, including specific educational objectives to be met;

7. The estimated schedule for the completion of the project;

8. Cost data for the project along with the identification of all sources of revenue to be used to pay any cost not funded by the grant;

9. Certification by the institution that the project would be in compliance with all applicable laws, rules, codes, statutes, and government guidelines;

10. Any additional information the institution deems necessary to demonstrate how the institution's proposed project meets the objectives identified in N.J.A.C. 9A:15-1.5(b); and

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

(b) Grant applications shall be submitted in a format provided by the Secretary.

(c) Only grant applications that are complete will be reviewed by the Secretary.

9A:15-1.5 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 an application shall be approved for a grant, the Secretary shall consider the degree to which the proposed facilities project supports the following objectives:

1. Advancement of student education in the State of New Jersey;

2. Improvement and expansion of educational opportunities for students;

3. 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;

4. Promotion of innovation and improvement in the delivery of higher education;

5. Advancement of study at all levels in science, technology, engineering, and mathematics education;

6. Consistency with the institution's educational mission;

7. Consistency with the institution's long-range facilities plan;

8. The cost-effectiveness of the project;

9. The degree to which the project is construction ready;

10. Consistency of the project with the State's goals and priorities for development and redevelopment, including the promotion of industry clusters, job and business opportunities in areas designated by the State for

growth, transportation choice and efficient mobility of goods and people, and promotion of access to opportunity for all New Jersey residents;

11. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and

12. Whether it serves the best interests of higher education in the State as a whole.

9A:15-1.6 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 project grant 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 grant, pursuant to N.J.A.C. 9A:15-1.5(b), and the amount of the grant.

(c) The Secretary shall submit to the Legislature a copy of the grant application, a copy of the written certification approving the grant, and the amount of the grant, with a copy of such material to the Authority. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days of receipt from the Secretary, the grant shall be deemed to be approved by the Legislature and by the Secretary.

(d) Upon authorization of the grant pursuant to (c) above, the institution shall enter into a grant agreement with the Authority, which shall set forth the terms of the grant award and be provided to the board of the Authority for approval by resolution.

(e) Each grant award shall be contingent upon the recipient governing board's entering into a contract or contracts to construct the facilities project within one year of the date on which the grant funds are made available. The funds shall be considered available on the date of the Authority's issuance of the bonds to fund the facilities project or on the date of the authorization of the grant, whichever is later.

(f) Each recipient of a grant shall provide such information as the Secretary may request regarding the use of the grant and the progress of the project.

(g) The Secretary may reduce or cancel entirely the amount of a grant:

1. If an institution determines not to undertake a project for which a grant was awarded;

2. To adjust for actual project expenses in a manner consistent with the approved grant; or

3. If the project is not substantially completed and the grant substantially disbursed six months after the estimated construction completion date set forth in the grant application, as adjusted for any actual delay to the institution entering into a construction contract consistent with (d) above.

(h) No reduction in the grant amount shall be made pursuant to (g) above if:

1. Delays are the result of Federal, State, or local government approvals or regulatory requirements not attributable to the institution; or

2. In the sole determination of the Secretary, there are other compelling and documentable reasons.

(a)

SECRETARY OF HIGHER EDUCATION

Rules and Procedures for Implementation of the Building Our Future Bond Act

Adopted New Rules: N.J.A.C. 9A:18

Proposed: January 22, 2013 at 45 N.J.R. 100(a).

Adopted: March 25, 2013 by Rochelle Hendricks, Secretary of Higher Education, Office of the Secretary of Higher Education.

Filed: March 26, 2013 as R.2013 d.075, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 18A:72-1 et seq. and P.L. 2012, c. 41.