

## **The Higher Education Capital Improvement Fund Act Statute**

### **18A:72A-72 Short title.**

1. This act shall be known and may be cited as the "Higher Education Capital Improvement Fund Act."

L.1999,c.217,s.1.

### **18A:72A-73 Findings, declarations relative to facilities improvements at institutions of higher education.**

2. The Legislature finds and declares that:

a. Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the work force of the future, by advancing knowledge and technology through research, and by providing lifelong learning opportunities for all citizens.

b. New Jersey has made a significant investment in its public and private institutions of higher education, and that investment must be protected to insure the continuing availability of affordable, accessible, and excellent higher educational opportunities within the State.

c. If New Jersey is to continue the expansion of its economic development through an adequately trained work force that retains and attracts industry to the State, the facilities and technology infrastructure at New Jersey's public and private institutions of higher education must be preserved and enhanced.

d. In order for New Jersey students and businesses to be competitive with their peers in today's global and technological society, the public and private sectors must continually take steps to preserve and enhance the facilities and technology at our colleges and universities. To do otherwise would result in the loss of potential students to more technologically advanced and well-developed and maintained institutions in other states.

e. In order to support the State's economy and preserve and enhance our higher education system, the State recently provided additional funds to capital needs at the two-year public colleges. There remains, however, a crucial need to provide additional funds to renew, renovate, improve, expand, construct, and reconstruct facilities and technology infrastructure at New Jersey's four-year public and private institutions of higher education.

L.1999,c.217,s.2.

### **18A:72A-74 "Higher Education Capital Improvement Fund."**

3. There is created within the New Jersey Educational Facilities Authority, established pursuant to chapter 72A of Title 18A of the New Jersey Statutes, the "Higher Education Capital Improvement Fund," hereinafter referred to as the "capital improvement fund." The capital improvement fund shall be maintained as a separate account and administered by the authority to

carry out the provisions of this act. The capital improvement fund shall consist of:

- a. moneys received from the issuance of bonds, notes or other obligations issued pursuant to section 7 of P.L.1999, c.217 (C.18A:72A-78) and an annual appropriation from the net proceeds of the State lottery established by P.L.1970, c.13 (C.5:9-1 et seq.) in an amount sufficient to pay the principal and interest on the bonds, notes or other obligations;
- b. all moneys appropriated by the State for the purposes of the capital improvement fund; and
- c. all interest and investment earnings received on moneys in the capital improvement fund.

L.1999,c.217,s.3.

**18A:72A-75 Use of capital improvement fund.**

4. The capital improvement fund shall be used to provide grants to New Jersey's four-year public and private institutions of higher education for the cost, or a portion of the cost, of the renewal, renovation, improvement, expansion, construction, and reconstruction of facilities and technology infrastructure. Each institution shall use the grants for existing renewal and renovations needs at instructional, laboratory, communication, research, and administrative facilities. An institution may use up to 20% of a grant within student-support facilities for renewal and renovation or improvement, expansion, construction, and reconstruction. If all renewal and renovation is completed at instructional, laboratory, communication, research, and administrative facilities or is accounted for through other funding sources, or if an institution is granted an exemption by the Commission on Higher Education for the purpose of maximizing federal grant fund recoveries or for the purpose of replacing a building when projected renewal and renovation costs exceed the projected cost of replacement, then grant funds may be used for the improvement, expansion, construction, and reconstruction of instructional, laboratory, communication, and research facilities, or technology infrastructure.

As used in this act:

" renewal and renovation" means making the changes necessary to address deferred capital maintenance needs, to meet all State and federal health, safety, fire, and building code standards, or to provide a safe and appropriate educational or working environment;

" student-support facilities" mean student resident halls, student dining facilities, student activity centers, and student health centers; and

" technology infrastructure" means video, voice, and data telecommunications equipment and linkages with a life expectancy of at least 10 years.

L.1999,c.217,s.4; amended 2002, c.96.

18A:72A-76 Allocation of fund.

5. a. An amount not to exceed \$550,000,000 in the capital improvement fund shall be allocated as follows:

\$169,000,000 for Rutgers, The State University;

\$95,062,500 for the University of Medicine and Dentistry of New Jersey;

\$60,937,500 for the New Jersey Institute of Technology;

\$175,000,000 for the State colleges and universities; and

\$50,000,000 for the private institutions of higher education.

b. The commission may reallocate any balance in an amount authorized in subsection a. of this section which has not been approved by the commission for grants within 24 months of the adoption of regulations by the commission. The commission may allocate any additional moneys in the capital improvement fund to institutions for capital improvement projects as the commission determines and shall determine the allocation of moneys deposited into the fund resulting from the issuance by the authority of new bonds because of the retirement of bonds previously issued by the authority.

c. The facilities and technology infrastructure funded by grants from the capital improvement fund shall follow the principles of affirmative action and equal opportunity employment. In furtherance of these principles, the commission shall continue its policy of encouraging institutions to solicit bids from, and award contracts to, minority and women-owned businesses.

L.1999,c.217,s.5.

#### **18A:72A-77 Application for grant.**

6. a. The governing board of a four-year public or private institution of higher education may determine, by resolution, to apply for a grant from the capital improvement fund. Upon adoption of the resolution, the board shall file an application with the commission, which application shall include a complete description of the project to be financed and an identification of any additional sources of revenue to be used.

b. In order to ensure the most effective utilization of the moneys in the capital improvement fund and to guide governing boards which elect to apply for a grant, the commission shall establish a list of grant criteria and shall specify the information to be included in a grant application.

c. The commission shall review the application and, by resolution, approve or disapprove the grant. When a grant is approved, the commission shall establish the amount and shall forward a copy of the resolution along with the amount of the grant to the authority.

d. The commission shall submit to the Legislature a copy of the resolution approving the grant along with the amount of the grant. If the Legislature does not disapprove the grant by the

adoption of a concurrent resolution within 45 days, the grant shall be deemed to be authorized.

e. When a grant is awarded pursuant to this act, it shall be contingent upon the governing board of the recipient institution entering into a contract or contracts for the commencement of the renewal, renovation, improvement, expansion, construction, and reconstruction of facilities and technology infrastructure within one year of the date on which the funds for the grant are made available.

L.1999,c.217,s.6.

### **18A:72A-78 Issuance of bonds, notes, other obligations.**

7. a. The authority shall from time to time issue bonds, notes or other obligations in an amount sufficient to finance the grants provided under this act and to finance the administrative costs associated with the approval process and the issuance of the bonds, notes, or other obligations, except that the total outstanding principal amount of the bonds, notes or other obligations shall not exceed \$550,000,000, and the term of any bond, note, or other obligation issued shall not exceed 30 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds, notes or other obligations which have been retired or which shall be issued for refunding purposes, provided that the refunding is determined by the authority to result in a debt service savings. The authority shall issue the bonds, notes or other obligations in such manner as it shall determine in accordance with the provisions of P.L.1999, c.217 (C.18A:72A-72 et al.) and the "New Jersey educational facilities law," N.J.S.18A:72A-1 et seq., provided that no bonds, notes or other obligations shall be issued pursuant to this section without the prior written consent of the State Treasurer.

b. The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriations, shall pay the amount necessary to pay the principal and interest on bonds, notes and other obligations of the authority issued pursuant to this act plus any amounts payable in connection with an agreement authorized under subsection e. of this section. The authority shall enter into a contractual agreement with each institution receiving a capital improvement fund grant, and the agreements shall be approved by a resolution of the authority. All agreements with the four-year public institutions of higher education shall include provisions as may be necessary to insure that each institution pays an amount equal to one-third of the amount necessary to pay the principal and interest on the bonds, notes and other obligations of the authority issued pursuant to this section to finance the projects approved at the institution plus its share of any amounts payable in connection with an agreement authorized under subsection e. of this section. All agreements with the four-year private institutions of higher education shall include provisions as may be necessary to insure that each institution pays an amount equal to one-half of the amount necessary to pay the principal and interest on the bonds, notes and other obligations of the authority issued pursuant to this section to finance the projects approved at the institution plus its share of any amounts payable in connection with an agreement authorized under subsection e. of this section. Upon receipt of the moneys from the public or private institutions of higher education, the authority shall apply the moneys in a manner specified in the contract with the State Treasurer.

c. Bonds, notes or other obligations issued pursuant to this act shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision thereof, or be or constitute a pledge of the faith and credit of the State or of any political subdivision thereof, but all bonds, notes or other obligations, unless funded or refunded by the bonds, notes or other obligations of the authority, shall be payable solely from revenues of funds pledged or available for their payment as authorized by this act. Each bond, note or other obligation shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof, redemption premium, if any, or the interest thereon only from revenue or funds of the authority, and that neither the State nor any political subdivision thereof is obligated to pay the principal thereof, redemption premium, if any, or interest thereon, and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of, redemption premium, if any, or the interest on the bonds, notes or other obligations.

d. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds, notes or other obligations issued pursuant to the authorization of P.L.1999, c.217 (C.18A:72A-72 et al.) that the State shall not limit or alter the rights or powers hereby vested in the authority to perform and fulfill the terms of any agreement made with the holders of the bonds, notes or other obligations, or to fix, establish, charge and collect such rents, fees, rates, payments, or other charges as may be convenient or necessary to produce sufficient revenues to meet all expenses of the authority and to fulfill the terms of any agreement made with the holders of the bonds, notes and other obligations together with interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders, until the bonds, notes and other obligations, together with interest thereon, are fully met and discharged or provided for.

e. In connection with any bonds or refunding of bonds issued pursuant to this section, the authority may also enter into any revolving credit agreement; agreement establishing a line of credit or letter of credit; reimbursement agreement; interest rate exchange agreement; currency exchange agreement; interest rate floor cap, option, put or call to hedge payment, currency, rate, spread or similar exposure, or similar agreement; float agreement; forward agreement; insurance contract; surety bond; commitment to purchase or sell bonds; purchase or sale agreement; or commitment or other contract or agreement or other security agreement approved by the authority.

L.1999,c.217,s.7.

#### **18A:72A-79 Retention of amount to ensure repayment.**

8. a. The authority shall require that if an institution of higher education fails or is unable to pay the authority in full, when due, any obligations of the 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 section, "obligation of the institution" means any amount payable by the institution for the principal and interest on the bonds, notes or other obligations of the authority for the institution's capital improvement fund grant.

b. The amount retained by the State Treasurer shall be deducted from the appropriation or apportionment of State aid payable to the institution of higher education and shall not obligate the State to make, or entitle the institution to receive, any additional appropriation or apportionment.

L.1999,c.217,s.8.

**18A:72A-80 Rules, regulations.**

15. The Commission on Higher Education, in consultation with the New Jersey Educational Facilities Authority , shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations necessary to carry out the provisions of this act.

L.1999,c.217,s.15.