



CHAPTER 12

Rules and Procedures for Implementation of the Capital Improvement Fund Bond Act

Office of the Secretary of Higher Education

SUBCHAPTER 1. GENERAL PROVISIONS

9A:12-1.1 Purpose and authority

This chapter is promulgated by the Secretary of Higher Education to implement the Higher Education Capital Improvement Fund Act, P.L. 1999, c. 217, as amended by P.L. 2012, c. 42 and P.L. 2017, c. 98. This chapter is adopted in order to provide the mechanism by which eligible institutions may apply for and receive grants from the Higher Education Capital Improvement Fund.

9A:12-1.2 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 Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 through 80.

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

"Capital improvement fund" means the Higher Education Capital Improvement Fund as created by the Act.

"Capital improvement project" or "project" means a project approved by the Secretary for a grant under 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, 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.

"Deferred maintenance" means scheduled or unscheduled maintenance to facilities that was not performed.

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

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

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

"Renewal and renovation" means making the changes necessary to address deferred 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.

"Secretary" means the Secretary of Higher Education.

"Student support facilities" means student residence halls, student dining facilities, student activity centers, and student health centers.

"Technology infrastructure" means video, voice, and data telecommunications equipment and networking with a life expectancy of at least 10 years, including future developments in multimedia equipment and networking. Only computer software that is part of the operating or data base management systems is considered part of technology infrastructure for the purpose of the Act; application software, for purposes such as word processing, spreadsheets, desktop publishing, and email, does not qualify as technology infrastructure.

9A:12-1.3 Project eligibility

(a) Moneys from the capital improvement fund shall be awarded in the form of 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.

(b) Each institution shall use the grants for existing renewal and renovations needs at instructional, laboratory, communication, research, and administrative facilities.

(c) An institution may use up to 20 percent of a grant within student support facilities for renewal and renovation or improvement, expansion, construction, and reconstruction.

(d) Grants funds may be used for the improvement, expansion, construction, and reconstruction of instructional, laboratory, communication, and research facilities, or technology infrastructure if:

1. The institution establishes that all renewal and renovation is completed at instructional, laboratory, communication, research, and administrative facilities or is accounted for through other funding sources;

2. The institution proposes the project for the purpose of maximizing Federal grant recoveries; or

3. The institution proposes to replace a building when the projected renewal and renovation costs exceed the projected cost of replacement.

(e) 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 capital improvement fund grant to advance that plan;

2. Commit, by resolution of its governing board, to maintaining the capital improvement project funded by the grant;
3. Certify that it will use the funds for renewal or renovation of instructional, laboratory, communication, research, and administrative facilities, or for the alternatives provided in (d) above;
4. Commit to paying one-third (1/3) of debt service on the bonds issued to fund the capital improvement project if a public institution and one-half (1/2) of debt service if a private institution.

9A:12-1.4 Grant applications

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

1. A certification that the eligibility requirements provided in N.J.A.C. 9A:12-1.3 have been met;
2. A complete description of the proposed capital improvement project, including design information, and for renewal and renovation projects, an explanation of modifications to the facilities other than repairs;
3. A copy of the institution's governing board's resolution approving the institution's application and committing the institution 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 addresses the institution's long-range facilities plan and meets the estimated need for renewal and renovation;

6. The estimated schedule for completing the project, including cash flow requirements;

7. Cost data for the project, along with identification of all sources of revenue to be used for any costs not funded by the grant;

8. Identification of all sources of revenue to be used for the institution's share of debt service on the bonds issued for the capital improvement project;

9. The useful life of any equipment as determined either by reference to the Internal Revenue Service's Class Life Asset Depreciation Range System set forth in Revenue Procedure 87-56, as amended, supplemented or superseded, or by appraisal of any independent engineering or accounting firm, as appropriate;

10. Certification by the institution that the project will comply with all laws, regulations, codes, statutes, and government guidelines, including the principles of affirmative action and equal employment opportunity, where applicable, as specified in the Act;

11. For applications requesting an exemption by the Secretary of the requirements of N.J.A.C. 9A:12-1.3(a) and (b) for the purpose of maximizing Federal grant recoveries, the application shall explain how the capital improvement project shall maximize such recoveries. The explanation shall include both sources of funds and dollar estimates of the Federal grant fund recoveries that shall be generated by the proposed project;

12. For any improvement, expansion, construction, reconstruction, or technology infrastructure projects proposed as alternatives or additions to renewal and renovation

projects, the application shall explain how the institution shall meet its total estimated need for renewal and renovation as contained in its long-range facilities plan. The explanation shall identify specific renewal and renovation projects, their funding sources, and a timetable for their completion;

13. For any building replacement proposed as an alternative to renewing or renovating a specific facility, the application shall include a justification for the replacement, including a comparison of the replacement costs with the costs of renewing or renovating that facility;

14. Any additional information the institution deems necessary to demonstrate how the institution's proposed project meets the objectives identified at N.J.A.C. 9A:12-1.5(b);

15. Any information regarding the prioritization of deferred maintenance projects, including those supported by a review done by an outside facilities data analytics and planning company;

16. Documentation supporting the energy efficiency of the proposed project, including manufacturer information or engineer reports; and

17. Any other information as the Secretary may require 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:12-1.5 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; or

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 capital improvement project 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. The cost-effectiveness of the project;
5. Consistency with the institution's long-range facilities plan;
6. The degree to which the project is construction ready;
7. Demonstrated commitment over the past 10 years to appropriate maintenance of facilities previously funded by State of New Jersey grant programs; and
8. Directly addresses deferred maintenance concerns or projects that will mitigate the need for future maintenance; and
9. Any other information relating to a specific application that the Secretary may require.

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

9A:12-1.6 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:12-1.5(b), and the amount of the grant.

(c) The Secretary shall submit to the Legislature a copy of the grant application and a copy of the written certification preliminarily approving the grant, including the amount approved, 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 45 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 (b) 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 capital improvement 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 capital improvement 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)3 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.

(i) 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:12-1.5(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. Project modifications will be reviewed on a case-by-case basis and must be authorized under the terms and conditions of the grant agreement, tax certificate, and any other applicable bond documents. Material modifications to the grant agreement are prohibited. Additionally, the Secretary may, in a manner consistent with the allocations provided in the Act, allocate any balance in an approved grant to another approved grant of the same institution.

9A:12-1.7 Payment of principal and interest

(a) Each four-year public institution shall pay the Authority, or the bond trustee, if so directed by the Authority, one-third (1/3) and each four-year private institution shall pay the Authority, or bond trustee, if so directed by the Authority, one-half (1/2) of the amount necessary to pay the principal and interest on the portion of bonds allocated to finance the capital improvement projects for the institution and in accordance with its grant agreement.

(b) 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 for the principal and interest on the bonds, notes, or other obligations of the Authority issued to finance projects 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:12-1.8 Reporting requirements

(a) Each institution shall annually submit, by May 31st or such other date, as determined by the Secretary, a report to the Authority pursuant to and in accordance with the requirements set forth by the grant agreement.

(b) 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 such 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.