

## Chapter 72

### Educational Facilities Authority

#### New Jersey Statutes Annotated Title 18A Education

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### **18A:72A-1. Preamble, purpose of chapter**

18A:72A-1. It is hereby declared that a serious public emergency exists affecting and threatening the welfare, comfort, health, safety and prosperity of the people of the State and resulting from the fact that financial resources are lacking with which to construct required dormitory and other educational facilities at public and private institutions of higher education and that there is a shortage of working capital for the development, establishment, and operation of public and private institutions of higher education; that it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions of higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential

that all resources of the State be employed in order to meet the tremendous demand for higher educational opportunities; that all institutions of higher education in the State, both public and private, are an integral part of the total educational effort in the State for providing higher educational opportunities, and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable institutions of higher education in the State to provide the facilities which are sorely needed to accomplish the purposes of this chapter and to provide working capital to public and private institutions of higher education, all to the public benefit and good, to the extent and manner provided herein.

L.1967, c.271; amended 2021, c.415, s.1.

### **18A:72A-2. Short title**

This chapter shall be known and may be cited as the "New Jersey educational facilities authority law."

L.1967, c.271.

### **18A:72A-3 Definitions.**

18A:72A-3. As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a private college, a private institution of higher education, a public institution of higher education, a school, or a university, or a nonprofit organization exempt from federal tax under section 501(c)(3) of the Internal Revenue Code designated for the purpose of supporting an institution of higher education;

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

"Bond" means bonds or notes of the authority issued pursuant to this chapter;

"Control" means the power of the authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee;

"County college capital project" means any capital project of a county college certified pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2) and approved by the State Treasurer for funding pursuant to the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

"Dormitory" means a housing unit with necessary and usual attendant and related facilities and equipment, and shall include a dormitory of a public or private school, or of a public or private institution of higher education;

"Educational facility" means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, teaching hospital, and parking maintenance storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of a participating institution, and public libraries, and the necessary and usual attendant and related facilities and equipment, but shall not include any facility used or to be used for sectarian instruction or as a place for religious worship;

"Emerging needs program" means a program at one or more public or private institutions of higher education directed to meeting new and advanced technology needs or to supporting new academic programs in science and technology;

"Higher education equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications or instructional equipment;

"Participating institution" means a private college, a private institution of higher education, a public institution of higher education, a school, a university, or an affiliate, which, pursuant to the provisions of this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project;

"Private college" means an institution for higher education other than a public college which, by virtue of law or charter, is a nonprofit educational institution empowered to provide a program of education beyond the high school level and is situated within the State or, if incorporated and located outside of the State, the project for which assistance is provided by the authority is located within the State;

"Private institution of higher education" means independent colleges or universities incorporated and located in New Jersey, which by virtue of law or character or license, are nonprofit educational institutions authorized to grant academic degrees

and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid;

"Project" means (1) a dormitory or an educational facility or any combination thereof; (2) a county college capital project; or (3) the provision of working capital;

"Public institution of higher education" means Rutgers, The State University, the State colleges, the New Jersey Institute of Technology, Rowan University, Montclair State University, Kean University, the county colleges and any other public university or college now or hereafter established or authorized by law;

"School" means a secondary school, military school, or boarding school;

"University" means Rutgers, The State University; and

"Working capital" means, with respect to any participating institution, funds to be used in, or reserved for, the operation of the participating institution.

amended 1971, c.113; 1993, c.136, s.3; 1997, c.360, s.5; 1999, c.184, s.6; 2000, c.56, s.10; 2012, c.45, s.103; 2017, c.178, s.60; 2021, c.282, s.62; 2021, c.415, s.2.

#### **18A:72A-4 "New Jersey educational facilities authority."**

18A:72A-4. (a) There is hereby established in but not of the Department of the Treasury a public body corporate and politic, with corporate succession to be known as the "New Jersey educational facilities authority." Notwithstanding this allocation, the authority shall be independent of any supervision or control by the department or any officer thereof. The authority shall constitute a political subdivision of the State established as an instrumentality exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be an essential governmental function of the State.

(b) The authority shall consist of seven members, two of whom shall be the Secretary of Higher Education, ex officio, and the State Treasurer, ex officio, or when so designated by them, their deputies and five citizens of the State to be appointed by the Governor with the advice and consent of the Senate for terms of five years; provided that the terms of the members first appointed shall be arranged by the Governor so that one of such terms shall expire on April 30 in each successive year ensuing after such appointments. Members shall hold office for the term of their appointments and shall continue to serve during the term of their successors unless

and until his successor shall have been appointed and qualified. Any vacancy among the members appointed by the Governor shall be filled by appointment for the unexpired term only. A member of the authority shall be eligible for reappointment.

(c) Any member of the authority appointed by the Governor may be removed from office by the Governor for cause after a public hearing.

(d) The members of the authority shall serve without compensation, but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties.

(e) The authority, upon the first appointment of its members and thereafter on or after April 30 in each year, shall annually elect from among its members a chairman and a vice chairman who shall hold office until April 30 next ensuing and shall continue to serve during the terms of their respective successors unless and until their respective successors shall have been appointed and qualified. The authority may also appoint, retain and employ, without regard to the provisions of Title 11, Civil Service, of the Revised Statutes, such officers, agents, employees and experts as it may require, and it shall determine their qualifications, terms of office, duties, services and compensation.

(f) The powers of the authority shall be vested in the members thereof in office from time to time and a majority of the total authorized membership of the authority shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the authority at any meeting thereof by the affirmative vote of a majority of the members present, unless in any case the bylaws of the authority shall require a larger number. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(g) Before the issuance of any bonds under the provisions of this chapter, the members and the officer of the authority charged with the handling of the authority's moneys shall be covered by a surety bond or bonds in a penal sum of not less than \$25,000.00 per person conditioned upon the faithful performance of the duties of their respective offices, and executed by a surety company authorized to transact business in the State of New Jersey as surety. Each such bond shall be submitted to the Attorney General for his approval and upon his approval shall be filed in the Office of the Secretary of State prior to the issuance of any bonds by the authority. At all times after the issuance of any bonds by the authority the officer of the authority and each member charged with the handling of the authority's moneys shall maintain such surety bonds in full force and effect. All costs of such surety bonds shall be borne by

the authority.

(h) Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer or employee of a participating institution to serve as a member of the authority; provided such trustee, director, officer or employee shall abstain from discussion, deliberation, action and vote by the authority under this chapter in specific respect to such participating institution of which such member is a trustee, director, officer or employee.

(i) A true copy of the minutes of every meeting of the authority shall be forthwith delivered by and under the certification of the secretary thereof, to the Governor. No action taken at such meeting by the authority shall have force or effect until 10 days, Saturdays, Sundays and public holidays excepted, after such copy of the minutes shall have been so delivered. If, in said 10-day period, the Governor returns such copy of the minutes with veto of any action taken by the authority or any member thereof at such meeting, such action shall be null and of no effect. If the Governor shall not return the minutes within said 10-day period, any action therein recited shall have force and effect according to the wording thereof. At any time prior to the expiration of the said 10-day period, the Governor may sign a statement of approval of any such action of the authority, in which case the action so approved shall not thereafter be disapproved.

The powers conferred in this subsection (i) upon the Governor shall be exercised with due regard for the rights of the holders of bonds of the authority at any time outstanding, and nothing in, or done pursuant to, this subsection (i) shall in any way limit, restrict or alter the obligation or powers of the authority or any representative or officer of the authority to carry out and perform in every detail each and every covenant, agreement or contract at any time made or entered into by or on behalf of the authority with respect to its bonds or for the benefit, protection or security of the holders thereof.

amended 1994, c.48, s.236; 1999, c.46, s.48; 1999, c.217, s.11; 2009, c.308, s.30; 2021, c.415, s.3.

**18A:72A-5 Authority's powers.**

18A:72A-5. The authority shall have power:

- (a) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) To adopt and have an official common seal and alter the same at pleasure;

(c) To maintain an office at such place or places within the State as it may designate;

(d) To sue and be sued in its own name, and plead and be impleaded;

(e) To borrow money and to issue bonds and notes and other obligations of the authority and to provide for the rights of the holders thereof as provided in this chapter;

(f) To acquire, lease as lessee, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter;

(g) To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, any land or interest therein and other property which it may determine is reasonably necessary for any project, including any lands held by any county, municipality or other governmental subdivision of the State; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the authority's purposes; and when the term of a lease agreement with a participating institution has expired or the property acquired is no longer subject to any lease agreement and no bond proceeds remain outstanding with respect to the property, and the participating institution shall have complied with all applicable terms of the lease agreement and any other agreement for any other authority bonds with respect to the property, the authority or its designee may transfer all of its rights, title and interest in and to the property to the participating institution who entered into the lease agreement with the authority;

(h) To receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made;

(i) To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipment of projects for participating institutions under the provisions of this chapter, and from time to time to modify such plans, specifications, designs or estimates;

(j) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating

institutions; however, in any contract or contracts undertaken by the authority for the construction, reconstruction, rehabilitation or improvement of a project for any public institution of higher education where the cost of such work will exceed \$25,000, the contracting agent shall advertise for and receive in the manner provided by law:

- (1) separate bids for branches of work in the following categories:
  - (a) the plumbing and gas fitting work;
  - (b) the refrigeration, heating and ventilating systems and equipment;
  - (c) the electrical work, including any electrical power plants, tele-data, fire alarm, or security system;
  - (d) the structural steel and ornamental iron work;
  - (e) general construction, which shall include all other work and materials required for the completion of the project, or
- (2) bids for all work and materials required to complete the entire project if awarded as a single contract; or
- (3) both (1) and (2) above.

In the case of separate bids pursuant to paragraph (1) or (3) of this subsection, prime contractors shall not be required to name subcontractors for categories (a) through (d) in their bid. In the case of a single bid under paragraph (2) or (3), all bids submitted shall set forth the names and license numbers of, and evidence of performance security from, all subcontractors to whom the general contractor will subcontract the work described in the foregoing categories (a) through (d) in paragraph (1). Subcontractors who furnish non-specialty trade work pursuant to category (e), or subcontractors who furnish work to named subcontractors pursuant to categories (a) through (d), shall not be named in the bid. Notwithstanding the foregoing provisions of this subsection, an authority may choose to require in its bid specification that a subcontractor shall be named in a bid when, in the case of paragraph (1), separate bids for each category, the work of that subcontractor exceeds 35 percent of the authority's estimated amount of value of the work, which shall be set forth in the bid specification.

Contracts shall be awarded to the lowest responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the authority;

(k) To determine the location and character of any project to be undertaken pursuant to the provisions of this chapter, and to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same; to enter into contracts for any or all such purposes; to enter into contracts for the management and operation of a project, and to designate a participating institution as its agent to determine the location and character of a project undertaken by such participating institution under the provisions of this chapter and, as the agent of the authority, to construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all such purposes including contracts for the management and operation of such project;

(l) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution as its agent to establish rules and regulations for the use of a project undertaken by such participating institution;

(m) Generally to fix and revise from time to time and to charge and collect rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or other body, public or private, in respect thereof;

(n) To enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority or to carry out any power expressly given in this chapter;

(o) To invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by law for the investment of trust funds in the custody of the State Treasurer;

(p) To enter into any lease relating to higher education equipment with a public or private institution of higher education pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et al.);

(q) To enter into loan agreements with any county, to hold bonds or notes of the county evidencing those loans, and to issue bonds or notes of the authority to finance county college capital projects pursuant to the provisions of the "County College Capital Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);

(r) To issue bonds and notes and other obligations of the authority under the direction of law for the purpose of providing financial assistance for the installation of fire prevention and safety systems in dormitories;

(s) To consider and review public-private partnership agreements for certain building projects entered into by a private entity and the New Jersey Institute of Technology pursuant to section 4 of P.L.2018, c.90 (C.18A:64E-33) or by a private entity and a State or county college pursuant to section 43 of P.L. 2009, c. 90 (C.18A:64-85), for the purposes set forth therein and to provide to a private entity that is a party to an agreement any tax exempt private activity bond financing, including but not limited to a loan of funds under terms and conditions established by the authority in consultation with the State Treasurer and as otherwise authorized under State or federal law;

(t) To enter into loan agreements with any public institution of higher education or any affiliate of a public institution of higher education, to hold bonds or notes of the public institution of higher education evidencing these loans, and to issue bonds or notes of the authority in connection with the financing or refinancing of a project.

amended 1968, c.109; 1992, c.61, s.4; 1993, c.136, s.4; 1997, c.360, s.6; 2000, c.56, s.11; 2012, c.59, s.4; 2018, c.90, s.6; 2021, c.415, s.4.

### **18A:72A-5.1 Prevailing wage rate for workers employed on projects with New Jersey Educational Facilities Authority involvement.**

5. Each worker employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, tax exemptions or other incentives or financial assistance approved, provided, authorized, facilitated or administered by the New Jersey Educational Facilities Authority, or undertaken to fulfill any condition of receiving any of the incentives or financial assistance, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).

The Commissioner of Labor and Workforce Development shall determine the prevailing wage rate in the locality in which the construction or rehabilitation is to be performed for each craft, trade or classification of worker employed in the construction or rehabilitation, as if the construction or rehabilitation is "public work" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26).

L.2004,c.127,s.5.

### **18A:72A-5.2 Exercise of rights, powers or duties.**

6. For the purpose of implementing the provisions of sections 5 through 7 of this act, the Commissioner of Labor and Workforce Development shall, and a worker employed in the performance of work subject to this act or the employer or any designated representative of the worker may, exercise all rights, powers or duties granted or imposed upon them by P.L.1963, c.150 (C.34:11-56.25 et seq.).

L.2004,c.127,s.6.

### **18A:72A-5.3 Prevailing wage rules, regulations, adoption by New Jersey Educational Facilities Authority.**

7. The New Jersey Educational Facilities Authority shall, in consultation with the Commissioner of Labor and Workforce Development, adopt rules and regulations, consistent with the rules and regulations adopted by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.),requiring that not less than the prevailing wage be paid to workers employed in the construction or rehabilitation of facilities undertaken in connection with loans, loan guarantees, expenditures, investments, incentives or other financial assistance provided, authorized or administered by the authority. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.).

L.2004,c.127,s.7.

### **18A:72A-5.4 Inapplicability of C.18A:72A-5.1 through C.18A:72A-5.3.**

8. The provisions of sections 5 through 7 of this act shall not apply to construction and rehabilitation of facilities conducted entirely under contracts entered into prior to the effective date of this act or to the refinancing of the outstanding debt on projects in which all construction or rehabilitation of facilities was conducted under contracts entered into prior to the effective date of this act.

L.2004,c.127,s.8.

### **18A:72A-6. Expenses of authority**

All expenses incurred in carrying out the provisions of this chapter shall be payable from funds provided the authority therefor, and no liability or obligation shall be

incurred by the authority hereunder beyond the extent to which moneys shall have been provided therefor.

L.1967, c.271.

**18A:72A-7. Issuance of notes authorized**

The authority is authorized from time to time to issue its negotiable notes for any corporate purpose and renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution or resolutions authorizing bonds of the authority or any issue thereof, and the authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. All such notes shall be payable from the revenues or other moneys of the authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

L.1967, c.271.

**18A:72A-8 Issuance of negotiable bonds for corporate purpose.**

18A:72A-8. (a) The authority is authorized from time to time to issue its negotiable bonds for any corporate purpose. In anticipation of the sale of such bonds the authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of the original note. Such notes shall be paid from any revenues or other moneys of the authority available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds or notes shall be general obligations of the authority payable from any revenues or moneys of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys.

Notwithstanding that bonds and notes may be payable from a special fund, they shall

be fully negotiable within the meaning of Title 12A, the Uniform Commercial Code, of the New Jersey Statutes, subject only to the provisions of the bonds and notes for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding 50 years from their respective dates, bear interest at such rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

(i) pledging all or any part of the revenues of a project or any revenue-producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

(ii) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(iii) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(iv) limitations on the right of the authority or its agent to restrict and regulate the use of a project;

(v) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(vi) limitations on the issuance of additional bonds, the terms upon which additional

bonds may be issued and secured and the refunding of outstanding bonds;

(vii) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(viii) limitations on the amount of moneys derived from a project to be expended for operating, administrative or other expenses of the authority; and

(ix) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

(e) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

(g) In connection with any bonds or refunding 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; bank loan agreement; interest rate exchange agreement; currency exchange agreement; interest rate floor or 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 and other security agreement approved by the authority.

L.1967, c.271; amended 1999, c.217, s.12; 2021, c.415, s.5.

### **18A:72A-9. Bonds secured by trust agreement**

In the discretion of the authority, any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues or other moneys to be received or proceeds of any contract or contracts pledged. Such trust agreement or resolution providing for the issuance of such bonds may contain

such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of construction or operation of a project.

L.1967, c.271.

#### **18A:72A-10. Bonds not liability of state or political subdivision**

Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but shall be payable solely from the funds herein provided. All such bonds shall contain on the face thereof a statement to the effect that neither the state of New Jersey nor the authority shall be obligated to pay the same or the interest thereon except from revenues or other moneys of the authority and that neither the faith and credit nor the taxing power of the state of New Jersey or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation whatever therefor.

L.1967, c.271.

#### **18A:72A-11. Further powers of authority**

18A:72A-11. The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees and charges from such project so as to provide funds sufficient with other revenues or moneys, if any:

(a) to pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for;

(b) to pay the principal of and the interest on outstanding bonds of the authority issued in respect of such project as the same shall become due and payable; and

(c) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such bonds of the authority.

Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this State other than the authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such bonds issued to finance projects at a participating institution without distinction or priority of one over another; provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a participating institution and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in such

case, the authority may create separate sinking or other similar funds in respect of such subordinate lien bonds.

L.1967, c.271; amended 2021, c.415, s.6.

### **18A:72A-11.1 Refinancing outstanding mortgages of private lenders.**

1. In addition to other powers and duties which have been granted to the authority, whenever any participating institution has constructed or acquired any work or improvement or other project which would otherwise qualify under this act except for the fact that such construction, acquisition, or project was undertaken and financed without assistance from the authority, the authority may purchase such work or improvement, and lease the same to such participating institution, or may lend funds to such participating institution for the purpose of enabling the latter to retire obligations incurred for such construction or acquisition; except that the amount of any such price or loan shall not exceed the original project cost and administrative costs, reserves, and other costs associated with the retirement of such obligations. All powers, rights, obligations and duties granted to or imposed upon the authority, participating institutions, State departments and agencies or others by this chapter in respect to projects shall apply to the same extent with respect to transactions pursuant to this section; except that any action otherwise required to be taken at a particular time in the progression of a project may, where the circumstances are so required in connection with a transaction under this section, be taken with the same effect as if taken at that particular time.

L.1980, c.31, s.1; amended 2009, c.308, s.31; 2021, c.415, s.7.

### **18A:72A-11.2 Loan agreement, provision of working capital to participating institution; terms.**

17. A participating institution and the authority may enter into a loan agreement in connection with a project which includes the provision of working capital to such institution. In no event shall working capital be considered a non-revenue-producing facility under chapter 72A of Title 18A of the New Jersey Statutes. Any loan agreement entered into under the provisions of this section may contain the provisions as may be agreeable to the participating institution and the authority and as may be necessary or desirable to secure the loan, including, without limitation, provisions for the granting of a security interest in personal property or receivables or a mortgage on all or any portion of the real property of the participating institution.

L.2021, c.415, s.17.

### **18A:72A-12. Moneys of authority; trust funds**

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this chapter and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

L.1967, c.271.

### **18A:72A-12.1. Investment or reinvestment of funds**

All functions, powers and duties relating to the investment or reinvestment of funds within the jurisdiction of the authority including the purchase, sale or exchange of any investments or securities may, at the request of the authority, be exercised and performed by the director of the Division of Investment, in accordance with written directions of the authority signed by an authorized officer.

L.1968, c. 400, s. 1, eff. Jan. 10, 1969.

### **18A:72A-12.2 Short title.**

1. Sections 1 through 4 of this act shall be known and may be cited as the "County College Capital Projects Fund Act."

L.1997,c.360,s.1.

### **18A:72A-12.3 Findings, declarations relative to county college capital projects fund.**

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 the education and training of the work force of the future;
  - b. The county colleges serve a vital role in the educational system of the State by providing students with an affordable means of obtaining higher education, thereby providing opportunities to the residents of the State which would not otherwise be available;
  - c. County colleges and the residents of the State would benefit from additional

funds and resources enabling counties to undertake and complete county college capital projects;

d. It would therefore be appropriate for the New Jersey Educational Facilities Authority created pursuant to N.J.S.18A:72A-1 et seq. to enter into contracts with counties and the State Treasurer to provide for the financing of county college capital projects.

L.1997,c.360,s.2.

### **18A:72A-12.4 County college capital projects fund, established.**

3. a. There is created within the New Jersey Educational Facilities Authority, established pursuant to chapter 72A of Title 18A of the New Jersey Statutes, hereinafter referred to as the "authority," a county college capital projects fund to finance county college capital projects. The authority may issue bonds to finance the State share of county college capital projects and the county share of county college capital projects as certified by the State Treasurer pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2). The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriation, shall pay the amount necessary to pay the principal and interest on bonds and notes of the authority issued to finance the State share of county college capital projects. The authority may enter into a loan agreement with each county in which a county college capital project is located for the purpose of funding the county share of the applicable county college capital project.

b. The authority may from time to time issue bonds or notes in an amount sufficient to finance county college capital projects and which shall also finance the administrative costs and any reserves or other issuance costs associated with the issuance of bonds or notes. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of this act and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq. The authority shall not issue any bonds or notes pursuant to this section without the prior written consent of the State Treasurer.

L.1997,c.360,s.3.

### **18A:72A-12.5 Loan agreement to issue bonds, notes.**

4. a. At any time within one year of the certification by the State Treasurer to the board of chosen freeholders, the county college at which the capital project is located,

and the authority, pursuant to section 2 of P.L.1971, c.12 (C.18A:64A-22.2), the board of chosen freeholders is authorized, in lieu of issuing bonds or notes pursuant to N.J.S.18A:64A-19, to enter into a loan agreement with the authority for the issuance of bonds or notes of the authority to fund the county share of the capital project. The county shall issue bonds and notes to the authority which shall be delivered to the authority to evidence the loan, and which shall be the source of payment for the bonds or notes issued by the authority to finance the county share of the capital project. The loan evidenced by the bonds or notes may be made subject to such terms and conditions as the authority determines to be consistent with the purposes thereof. Each loan by the authority shall be subject to approval by the State Treasurer and shall be evidenced by notes or bonds issued by the county which shall be authorized and issued as provided by law for the issuance of notes and bonds by the county. A loan to a county, and the notes, bonds or other obligations thereby issued shall bear interest at a rate or rates per annum as may be agreed upon by the authority and the county.

b. Any bonds or notes authorized by the county to be issued to the authority or to another entity for the purpose of funding the county share of a county college capital project shall be in addition to the sums authorized to be borrowed by the board of chosen freeholders pursuant to the provisions of N.J.S.18A:64A-19 for the purpose of funding the county's share of capital projects, and the additional borrowing, if entered into by the county, shall constitute a deduction from the gross debt of the county and shall not be considered in determining its net debt for debt incurring purposes.

L.1997,c.360,s.4.

### **18A:72A-12.6 "Dormitory Safety Trust Fund."**

6. a. There is created within the New Jersey educational facilities authority established pursuant to N.J.S.18A:72A-4, the "Dormitory Safety Trust Fund," hereinafter referred to as the "trust fund." The trust fund shall be maintained as a separate account and administered by the authority to carry out the provisions of P.L.2000, c.56 (C.52:27D-198.7 et al.). There shall be paid into this fund:

(1) moneys received from the sale of bonds or notes issued pursuant to section 8 of P.L.2000, c.56 (C.18A:72A-12.8);

(2) moneys appropriated by the Legislature, including moneys as may be appropriated annually in an amount sufficient to pay the principal and interest on the bonds or notes;

(3) all interest and investment earnings received on the moneys in the trust fund;  
and

(4) all repayments of loans authorized pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.).

b. The trust fund shall be used to provide loans to the schools and institutions of higher education which are required pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.) to install automatic fire suppression systems, for the cost, or a portion of the cost, of the construction, reconstruction, development, extension or improvement of dormitory safety facilities, including fire prevention and sprinkler systems.

L.2000,c.56,s.6.

### **18A:72A-12.7 Establishment of program to provide loans.**

7. a. The State Treasurer shall establish a program to provide the loans authorized pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.). The governing board of a public or private institution of higher education as defined pursuant to N.J.S.18A:72A-3 or of a public or private secondary school shall be eligible for and may determine by resolution to apply for a loan from the trust fund established pursuant to section 6 of P.L.2000, c.56 (C.18A:72A-12.6). The resolutions shall be transmitted to and in a manner to be determined by the State Treasurer. Owners of residences being utilized by fraternities or sororities, other than those owned by public or private institutions of education, who are responsible for the installation of an automatic fire suppression system pursuant to section 3 of P.L.2000, c.56 (C.52:27D-198.9) shall not be eligible for a loan from the trust fund established pursuant to section 6 of P.L.2000, c.56 (C.18A:72A-12.6), but shall be eligible and may apply for a life safety improvement loan pursuant to section 13 of P.L.1983, c.530 (C.55:14K-13) as amended by section 13 of P.L.2000, c.56.

b. Individual loan amounts from the trust fund shall be limited to no more than the projected costs as stated in the plan required to be filed with the Director of the Division of Fire Safety in the Department of Community Affairs pursuant to section 3 of P.L.2000, c.56 (C.52:27D-198.9), and loan amounts shall be disbursed in accordance with the need and the time frame established under the installation plan. If sufficient funds are not available to fully fund each request, the State Treasurer may limit the amounts loaned on a basis which shall provide the maximum amount of funding to the greatest number of buildings.

c. The loans issued pursuant to this subsection shall bear interest of not more than:

(1) zero percent per year for loans made to public or private institutions of higher education as defined pursuant to N.J.S.18A:72A-3; or

(2) two percent per year for loans made to secondary schools, military schools, boarding schools, or similar occupancies.

d. The term of a loan shall be for a period of not more than 15 years. Any loan approved pursuant to this subsection shall be contingent upon the applicant entering into a contract or contracts for the construction, reconstruction, development, extension or improvement required in the installation plan in accordance with section 3 of P.L.2000, c.56 (C.52:27D-198.9).

e. The State Treasurer shall:

(1) review each application and approve, disapprove, amend or modify the loan request;

(2) establish any other terms or conditions of each loan which are not otherwise provided under this section; and

(3) forward to the New Jersey educational facilities authority and the Department of Community Affairs a copy of any loan approval granted pursuant to this section, including information concerning the amount and terms of the loan.

f. All repayments of loans awarded pursuant to this section shall be made to the authority and deposited by the authority into the trust fund.

g. The State Treasurer shall promulgate the rules necessary to effectuate this section in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

L.2000,c.56,s.7.

### **18A:72A-12.8 Issuance of bonds, notes.**

8. a. The authority shall from time to time issue bonds or notes, in accordance with the provisions of the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., and in an amount sufficient to finance the loans provided under P.L.2000, c.56 (C.52:27D-198.7 et al.) and to finance the administrative costs associated with the approval process and the issuance of the bonds or notes, up to a

total amount not to exceed \$90,000,000; except that all administrative costs associated with the approval process and the issuance of bonds, notes or other obligations shall not be included within the total aggregate principal amount of the bonds, notes or other obligations issued; the term of any bond so issued shall not exceed 15 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1993, c.375 (C.18A:72A-49 et al.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., provided that no bonds or notes shall be issued pursuant to this section without the prior written consent of the State Treasurer.

b. Bonds or notes issued pursuant to P.L.2000, c.56 (C.52:27D-198.7 et al.) 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 or notes, unless funded or refunded by the bonds or notes of the authority, shall be payable solely from revenues of funds pledged or available for their payment as authorized by P.L.2000, c.56 (C.52:27D-198.7 et al.). Each bond 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.

c. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to the authorization hereunder 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 or notes, 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 and notes, 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 and notes, together with interest thereon, are fully met and discharged or provided for.

d. 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 P.L.2000, c.56 (C.52:27D-198.7 et al.) plus any amounts payable in connection with an agreement authorized under subsection (g) of N.J.S.18A:72A-8.

e. To assure the continued operation and solvency of the dormitory safety trust fund program, the authority shall require that if a school or institution of higher education fails or is unable to pay to the authority in full, when due, any obligation 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 school or institution" means any amount payable by the school or institution for dormitory safety facilities pursuant to an agreement with the authority.

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

L.2000,c.56,s.8.

### **18A:72A-13. Bondholders; enforcement of rights**

Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this chapter or by such resolution or trust agreement to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

L.1967, c.271.

### **18A:72A-14. Refunding bonds; additional purposes**

(a) The authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

(b) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(c) Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(d) The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in obligations of or guaranteed by the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner.

(e) All such bonds shall be subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

L.1967, c.271.

### **18A:72A-15. Bonds as legal investments**

Bonds and notes issued by the authority under the provisions of this chapter are hereby made securities in which the state and all political subdivisions of the state, their officers, boards, commissions, departments or other agencies, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest any funds, including capital belonging to them or within their control; and said bonds, notes or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officers or agency of the state for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

L.1967, c.271

### **18A:72A-16. Chapter complete authority for issuance of bonds**

Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau, agency or officer of the state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specifically required by this chapter.

L.1967, c.271.

### **18A:72A-17. Power to mortgage**

The authority shall not have power to mortgage any of its real property or projects.

L.1967, c.271.

### **18A:72A-18. Exemptions from taxes; bonds; property**

The exercise of the powers granted by this chapter will be in all respects for the benefit of the people of this state, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the authority or its agent will constitute the performance of an essential public function, neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the authority or its agent under the provisions of this chapter or upon the income therefrom, and any bonds issued under the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the state and by the municipalities and other political subdivisions in the state.

L.1967, c.271.

### **18A:72A-19. Restriction on alteration of powers**

18A:72A-19. The State of New Jersey does pledge to and agree with the holders of the bonds, notes and other obligations issued pursuant to authority contained in this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the State will not limit, alter or restrict the rights hereby vested in the authority and the participating institutions to maintain, construct, reconstruct and operate any project as defined in this chapter or to establish and collect such rents, fees, receipts or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant to the provisions of this chapter, or in any way impair the rights or remedies of the holders of such bonds or such parties until the bonds, together with interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority. The authority as a public body corporate and politic shall have the right to include the pledge herein made in its bonds and contracts.

L.1967, c.271; amended 2021, c.415, s.8.

### **18A:72A-20. Authority not subject to 18A:62-2**

In carrying out the provisions of this chapter the authority shall not be subject to the provisions of section 18A:62-2.

L.1967, c.271.

### **18A:72A-21. Annual report and audit**

On or before March 31 in each year, the authority shall make an annual report of its activities for the preceding calendar year to the governor and the legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants.

L.1967, c.271.

### **18A:72A-22. Contracts of property; conflicts of interest**

Except as otherwise expressly provided in this chapter, any member, officer, agent or employee of the authority who is interested, either directly or indirectly, in any contract of another with the authority, or in the sale of any property, either real or personal, to the authority, shall be guilty of a misdemeanor.

L.1967, c.271.

### **18A:72A-23. Comptroller of treasury; powers of examination**

The comptroller of the treasury and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial standing.

L.1967, c.271.

### **18A:72A-24. Visitorial powers; Governor**

18A:72A-24. The Governor may visit, examine into and inspect, the authority as an institution under the educational supervision of the State, and may require, as often as desired, duly verified reports therefrom giving such information and in such form as the Governor shall prescribe.

L.1967, c.271; amended 1994,c.48,s.237.

### **18A:72A-25. Services of state departments or agencies**

The authority shall be entitled to call to its assistance and avail itself of the services of such employees of any state department or agency as it may require and as may be available to it for said purpose.

L.1967, c.271.

**18A:72A-26 Powers and duties of treasurer; institutions under State jurisdiction.**

18A:72A-26. In order to provide new dormitories and to enable the construction and financing thereof, to refinance indebtedness hereafter created by the authority for the purpose of providing a dormitory or dormitories or additions or improvements thereto, or for any one or more of said purposes, but for no other purpose unless authorized by law, each of the following bodies shall have the powers hereafter enumerated to be exercised upon such terms and conditions, including the fixing of any consideration or rental to be paid or received, as it shall determine by resolution as to such property and each shall be subject to the performance of the duties hereafter enumerated, that is to say, the treasurer as to such as are located on land owned by the State or by the authority, the board of governors of the university, the board of trustees of the New Jersey Institute of Technology, Rowan University, Montclair State University, or Kean University, the board of trustees of a State college, the board of trustees of a county college, or the governing body of an affiliate of a public institution of higher education as to such as are located on land owned by the university or by the particular public institution of higher education respectively, namely:

- a. The power to sell and to convey to the authority title in fee simple in any such land and any existing dormitories thereon owned by the State or owned by the board of trustees of a county college or the power to sell and to convey to the authority such title as the university or the college respectively may have in any such land and any existing dormitories thereon.
- b. The power to lease to the authority or any other entity which is a participating institution any land and any existing dormitories thereon so owned for a term or terms not exceeding 50 years each.
- c. The power to lease or sublease from the authority or any other entity which is a participating institution, and to make available, any such land and existing dormitories conveyed or leased to the authority or entity under subsections a. and b. of this section, and any new dormitories erected upon such land or upon any other land owned by the authority or entity, any rentals to be payable, as to the university or as to any such college from available funds other than moneys appropriated to it by the

State.

d. The power and duty, upon receipt of notice of any assignment by the authority or any other entity which is a participating institution of any lease or sublease made under subsection c. of this section, or of any of its rights under any such lease or sublease, to recognize and give effect to such assignment, and to pay to the assignee thereof rentals or other payments then due or which may become due under any such lease or sublease which has been so assigned by the authority or entity.

e. The power to enter into loan agreements with the authority in connection with the financing or refinancing of a project upon terms and conditions deemed necessary to effect the financing by the authority and the participating public institution of higher education or affiliate thereof.

amended 1971, c.77, s.1; 1994, c.48, s.238; 2012, c.45, s.104; 2017, c.178, s.61; 2021, c.282, s.63; 2021, c.415, s.9.

### **18A:72A-27 Additional powers of boards of governors, trustees.**

18A:72A-27. In addition thereto the board of governors of the university and the board of trustees of each of said colleges including county colleges shall have the following powers and shall be subject to the following duties as to its lands and dormitories:

a. The power to pledge and assign all or any part of the revenues derived from the operation of such new dormitories as security for the payment of rentals due and to become due under any lease or sublease of such new dormitories under subsection c. of the preceding section.

b. The power to covenant and agree in any lease or sublease of such new dormitories made under subsection c. of the preceding section to impose fees, rentals or other charges for the use and occupancy or other operation of such new dormitories in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

c. The power to apply all or any part of the revenues derived from the operation of any dormitories to the payment of rentals due and to become due under any lease or sublease made under subsection c. of the preceding section.

d. The power to pledge and assign all or any part of the revenues derived from the operation of any dormitories to the payment of rentals due and to become due under

any lease or sublease made under subsection c. of the preceding section.

e. The power to covenant and agree in any lease or sublease made under subsection c. of the preceding section to impose fees, rentals or other charges for the use and occupancy or other operation of any dormitories in an amount calculated to produce net revenues sufficient to pay the rentals due and to become due under such lease or sublease.

f. The power to indemnify the authority from any liability for loss or damage to any person or property of others resulting from any project financed or to be financed by the authority for the benefit of the college.

L.1967, c.271; amended 1971, c.77, s.2; 1999, c.217, s.13.

### **18A:72A-27.1 Powers and duties, revenue producing facilities.**

18A:72A-27.1. In addition to the powers and duties with respect to dormitories given under N.J.S.18A:72A-26 and N.J.S.18A:72A-27 the treasurer, the board of governors of the university, the board of trustees of the New Jersey Institute of Technology, the board of trustees of a State college, the board of trustees of Rowan University, the board of trustees of Montclair State University, the board of trustees of Kean University, the board of trustees of a county college, and the governing body of an affiliate of a public institution of higher education shall also have the same power and be subject to the same duties in relation to any conveyance, lease or sublease made under subsection a., b., or c. of N.J.S.18A:72A-26 or loan agreement under subsection e. of N.J.S.18A:72A-26, with respect to revenue-producing facilities; that is to say, structures or facilities which produce revenues sufficient to pay the rentals due and to become due under any lease or sublease made under subsection c. of N.J.S.18A:72A-26 or loan payments due and to become due under any loan agreement made under subsection e. of N.J.S.18A:72A-26 including, without limitation, student unions and parking facilities.

amended 1971, c.74; 1971, c.77, s.3; 1994, c.48, s.239; 2012, c.45, s.105; 2017, c.178, s.62; 2021, c.282, s.64; 2021, c.415, s.10.

### **18A:72A-27.2. Powers of board of trustees**

1. In addition to the powers and duties with respect to dormitories and revenue-producing facilities given under the provisions of this chapter, the board of trustees of a State college shall have the following powers with respect to any educational facility, as defined in N.J.S. 18A:72A-3:

a. To enter into any conveyance, lease, sublease, or loan agreement of the type provided for in N.J.S. 18A:72A-26, N.J.S.18A:72A-27, and N.J.S.18A:72A-27.1 with the authority, with respect to the acquisition, construction and financing of any educational facility;

b. To enter into any other agreement with the authority, with respect to the acquisition, construction or financing of an educational facility according to terms and conditions which the authority and the board of trustees shall determine in accordance with the powers of the authority;

c. To pledge and assign all or any part of any funds appropriated to the State college and available for the purposes provided in subsections a. and b. of this section or any other available moneys of the State college to the payment of any amount due and owing under any agreement made under subsections a. and b. of this section if that agreement expressly states that the payment of any and all amounts due and owing thereunder shall, to the extent the funds shall be derived from appropriations, depend on appropriations being made by the Legislature.

L.1988, c.159, s.1; amended 2021, c.415, s.11.

### **18A:72A-27.3 Submission of proposed projects to the Legislature.**

2. The board of trustees of the public institution of higher education shall submit a copy of a resolution approving any non-revenue-producing facility project to the President of the Senate and the Speaker of the General Assembly and shall submit informational copies of the proposal to the members of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee and to the Secretary of Higher Education. The submission shall include all appropriate supporting information including, but not limited to, a description of the project, its impact, cost and construction schedule, and a detailed explanation of the sources of revenue which will be dedicated to the financing of the project. If the Legislature does not disapprove the proposal by the adoption of a concurrent resolution within 45 days, the proposal shall be deemed to be approved.

L.1988,c.159,s.2; amended 1994, c.48, s.240; 1999, c.46, s.49; 1999, c.217, s.14; 2021, c.415, s.12.

### **18A:72A-28. Approval of plans, specifications and locations**

The board of governors of the university or the board of trustees of the Newark College of Engineering or the board of trustees of a State college or the board of

trustees of a county college shall approve the plans and specifications and location of each dormitory undertaken for it or under its control, prior to the undertaking thereof by the authority.

L.1967, c.271; amended by L.1971, c. 77, s. 4, eff. April 5, 1971.

### **18A:72A-29 Lands, assets titled in name of State.**

18A:72A-29. All lands and other assets real or personal presently titled in the name of the State Board of Higher Education or the State Department of Higher Education, which are occupied by a public institution of higher education shall be titled in the name of the State of New Jersey only. All conveyances, leases and subleases, pursuant to this chapter shall be made, executed and delivered in the name of the State and shall be signed by the State Treasurer and sealed with the seal of the State.

To the extent not otherwise expressly provided under existing law, all powers and duties conferred upon the university or an affiliate pursuant to this chapter shall be exercised and performed by resolution of its governing board and all powers and duties conferred upon any of said colleges pursuant to this chapter shall be exercised and performed by resolution of its board of trustees.

All conveyances, leases and subleases made pursuant to this chapter, when duly authorized by the university, shall be made, executed and delivered in the name of the university and shall be signed by its president or a vice president and sealed with the seal of the university and all conveyances, leases and subleases made pursuant to this chapter, when duly authorized by any of said colleges, shall be made, executed and delivered in the name of the college and shall be signed by the president or a vice president and sealed with the seal of the college.

L.1967, c.271; amended 1994, c.48, s.241; 1999, c.46, s.50; 2021, c.415, s.13.

### **18A:72A-30. Additional powers; private colleges**

18A:72A-30. In addition to the foregoing powers, the authority with respect to private colleges, shall have power:

(a) upon application of the private college to construct, acquire or otherwise provide projects for the use and benefit of the private college and the students, faculty and staff of such private college. The private college for which such a project is undertaken by the authority shall, if applicable, approve the plans and specifications

and location of such project;

(b) to operate and manage any project provided pursuant to this section, or the authority may lease any such project to the private college for which such project is provided. At such time as the liabilities of the authority incurred for any such project have been met and the bonds of the authority issued therefor have been paid, or such liabilities and bonds have otherwise been discharged, the authority shall transfer title to all the real and personal property of such project vested in the authority, to the private college in connection with which such project is then being operated, or to which such project is then leased; provided, however, that if at any time prior thereto such private college ceases to offer educational facilities, then such title shall vest in the State of New Jersey.

Any lease of a project authorized by this section shall be a general obligation of the lessee except as the authority expressly agrees and may contain provisions, which shall be a part of the contract with the holders of the bonds of the authority issued for such project, as to:

(i) pledging all or any part of the moneys, earnings, income and revenues derived by the lessee from such project or any part or parts thereof, or other personal property of the lessee, to secure payments required under the terms of such lease;

(ii) the rates, rentals, fees and other charges to be fixed and collected by the lessee, the amounts to be raised in each year thereby, and the use and disposition of such moneys, earnings, income and revenues;

(iii) the setting aside of reserves and the creation of special funds and the regulation and disposition thereof;

(iv) the procedure, if any, by which the terms of such lease may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(v) vesting in a trustee or trustees such specified properties, rights, powers and duties as shall be deemed necessary or desirable for the security of the holders of the bonds of the authority issued for such projects;

(vi) the obligations of the lessee with respect to the replacement, reconstruction, maintenance, operation, repairs and insurance of such project;

(vii) defining the acts or omissions to act which shall constitute a default in the

obligations and duties of the lessee, and providing for the rights and remedies of the authority and of its bondholders in the event of such default;

(viii) any other matters, of like or different character, which may be deemed necessary or desirable for the security or protection of the authority or the holders of its bonds.

L.1967, c.271; amended 2021, c.415, s.14.

### **18A:72A-31. Construction loans; terms**

18A:72A-31. The authority also shall have power:

(a) to make loans to any participating institution for the construction or acquisition of projects in accordance with a loan agreement and plans and specifications, as appropriate, approved by the authority. No such loan shall exceed the total cost of such project and the equipment therefor as determined by the authority. Each such loan shall be premised upon an agreement between the authority and the participating institution as to payment, security, maturity, redemption, interest and other appropriate matters.

(b) to make loans to any participating institution to refund existing bonds, mortgages or advances given or made by such participating institution for the construction of projects to the extent that this will enable such participating institution to offer greater security for loans for new project construction or acquisition.

L.1967, c.271; amended 2021, c.415, s.15.

### **18A:72A-32. Power of private colleges to mortgage**

18A:72A-32. For the purpose of obtaining and securing loans under N.J.S.18A:72A-31 every participating institution shall, notwithstanding the provisions of any other law, have power to mortgage and pledge any of its real or personal property, and to pledge any of its income from whatever source to repay the principal of and interest on any loan made to it by the authority or to pay the interest on and principal and redemption premium, if any, of any note, bond or other evidence of indebtedness evidencing the debt created by any such loan; provided that the foregoing shall not be construed to authorize actions in conflict with specific legislation, trusts, endowment, or other agreements relating to specific properties or funds.

L.1967, c.271; amended 2021, c.415, s.16.

### **18A:72A-33. Moneys; separate account**

Moneys of the authority received from any private college in payment of any sum due to the authority pursuant to the terms of any loan or other agreement or any bond, note or other evidence of indebtedness, shall be deposited in an account in which only moneys received from private colleges shall be deposited and shall be kept separate and apart from and not commingled with any other moneys of the authority. Moneys deposited in such account shall be paid out on checks signed by the chairman of the authority or by such other person or persons as the authority may authorize.

L.1967, c.271.

### **18A:72A-34. Authority; construction, operation and management**

(a) Whenever the authority under section 18A:72A-30 undertakes to construct, acquire or otherwise provide and operate and manage a project, the authority shall be responsible for the direct operation and maintenance costs of such project, but each private college in connection with which such a project is provided and operated and managed shall be responsible at its own expense for the overall supervision of each project, for the overhead and general administrative costs of the private college which are incurred because of such project and for the integration of each project operation into the institution's educational program.

(b) Whenever the authority under section 18A:72A-30 undertakes to construct, acquire or otherwise provide a project and to lease the same to a private college, the lessee shall be responsible for the direct operation and maintenance costs of such project and, in addition, shall be responsible for the overall supervision of each project, for the overhead and general administrative costs of the lessee which are incurred because of such project and for the integration of each project operation into the lessee's educational program.

(c) Whenever the authority under section 18A:72A-31 makes loans for the construction of a project, the private college at which such project is located shall be responsible for the direct operation and maintenance costs of such project and, in addition, shall be responsible for the overall supervision of each project, for the overhead and general administrative costs of the private college which are incurred because of such project and for the integration of each project operation into the institution's educational program.

L.1967, c.271.

### **18A:72A-35. Private colleges; pledges**

Any pledge of moneys, earnings, income or revenues authorized with respect to private colleges, pursuant to the provisions of this chapter, shall be valid and binding from the time when the pledge is made. The moneys, earnings, income or revenues so pledged and thereafter received by the pledgor shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the pledgor irrespective of whether such parties have notice thereof. No instrument by which such a pledge is created need be filed or recorded in any manner.

L.1967, c.271.

### **18A:72A-36. Construction of chapter**

This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof.

L.1967, c.271.

### **18A:72A-37. No liability or pledge of credit of state**

Nothing contained in this chapter shall be deemed or construed to create or constitute a debt, liability, or a loan or pledge of the credit, of the state.

L.1967, c.271.

### **18A:72A-38. Powers supplemental and not derogatory**

The foregoing sections of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds.

L.1967, c.271.

### **18A:72A-39. Inconsistent laws inapplicable**

The powers granted to the authority by this chapter may be exercised without regard or reference to any department or agency of the state. All other general or special laws, or parts thereof, inconsistent with this chapter are hereby declared to be inapplicable to the provisions of this chapter.

L.1967, c.271.

#### **18A:72A-40. Short title**

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

L.1993,c.136,s.1.

#### **18A:72A-41 Findings, declarations.**

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 the education and training of the work force of the future and by advancing science and technology through research;
  - b. The rapid technological changes occurring throughout the world have a considerable impact on the quality of teaching, learning, and research at colleges and universities;
  - c. The current inventory of instructional and research equipment at the colleges and universities within the State is aging, both chronologically and technologically, and much of it has been rendered obsolete; and
  - d. The Secretary of Higher Education, who is statutorily responsible for the coordination and planning of higher education in New Jersey, has identified a crucial need to establish a regular financing mechanism for scientific, engineering, technical, computer, communications, and instructional equipment at New Jersey's public and private institutions of higher education.

L.1993, c.136, s.2; amended 2009, c.308, s.32; 2012, c.42, s.2.

#### **18A:72A-42 Higher education equipment leasing fund; issuance of bonds.**

5. a. There is created within the New Jersey Educational Facilities Authority,

established pursuant to chapter 72A of Title 18A of the New Jersey Statutes, hereinafter referred to as the "authority," a higher education equipment leasing fund to finance the purchase of higher education equipment at public and private institutions of higher education. The authority shall issue bonds to finance the purchase of higher education equipment for lease to public and private institutions of higher education and to finance the administrative costs associated with the approval process and the issuance of bonds provided that the total outstanding principal amount of the bonds shall not exceed \$100,000,000, except that all administrative costs associated with the approval process and the issuance of bonds shall not be included within the total aggregate principal amount of bonds issued, and the term of any bond issued shall not exceed 10 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriation, shall pay the amount necessary to pay the principal and interest on bonds and notes of the authority issued pursuant to this section. In entering into a lease agreement with a public or private institution of higher education, the authority shall include such lease provisions as may be necessary to insure that the institution shall pay an amount equal to 25% of the amount necessary to pay the principal and interest on the bonds and notes of the authority issued pursuant to this section to finance the purchase of higher education equipment at that institution. Upon receipt of such moneys from the public or private institution of higher education, the authority shall remit the moneys immediately to the State Treasurer.

b. The authority shall from time to time issue bonds or notes in an amount sufficient to finance the purchase of higher education equipment pursuant to lease agreements with public and private institutions of higher education and which shall also finance the administrative costs associated with the issuance of bonds or notes. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1993, c.136 (C.18A:72A-40 et al.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq. The authority shall not issue any bonds or notes pursuant to this section without the prior written consent of the State Treasurer.

c. Bonds or notes 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 or notes, unless funded or refunded by the bonds or notes of the authority, shall be payable solely from

revenues of funds pledged or available for their payment as authorized by this act. Each bond 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.

d. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to authorization of P.L.1993, c.136 (C.18A:72A-40 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 or notes, 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 and notes, 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 and notes, together with interest thereon, are fully met and discharged or provided for.

L.1993, c.136, s.5; amended 2009, c.308, s.33.

### **18A:72A-43 Allocation of moneys.**

6. The moneys deposited into the fund created pursuant to section 5 of P.L.1993, c.136 (C.18A:72A-42) shall be allocated in the following manner:

a. A minimum of \$24,000,000 for the leasing of higher education equipment at the State colleges;

b. A minimum of \$19,440,000 for the leasing of higher education equipment at Rutgers, The State University;

c. A minimum of \$10,080,000 for the leasing of higher education equipment at the University of Medicine and Dentistry of New Jersey;

d. A minimum of \$6,480,000 for the leasing of higher education equipment at the New Jersey Institute of Technology;

e. A minimum of \$22,000,000 for the leasing of higher education equipment at the county colleges;

f. A minimum of \$10,500,000 for the leasing of higher education equipment at private institutions of higher education; and

g. A minimum of \$7,500,000 for the leasing of higher education equipment for emerging needs programs at public and private institutions of higher education.

The Secretary of Higher Education may apportion the amounts authorized in subsection g. among any other amounts authorized in subsections a. through f.

The Secretary of Higher Education may reallocate any balance in the amounts authorized in subsections a. through g. of this section which have not been fully committed within 18 months of the effective date of this act.

The Secretary of Higher Education 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.

L.1993, c.136, s.6; amended 2009, c.308, s.34; 2012, c.42, s.3.

#### **18A:72A-44. Lease agreements to finance acquisition of higher education equipment**

7. The authority may enter into a lease agreement with a public or private institution of higher education to finance the acquisition of higher education equipment by the institution and which provides for the lease of the equipment by the authority to the institution. The higher education equipment shall have a useful life equal to or greater than the term of the bonds issued to finance the purchase of the equipment. During the period of the lease, the authority shall hold title to the equipment. At such time as the liabilities of the authority incurred for the purchase of the higher education equipment have been met and the bonds of the authority issued therefor have been paid, or such liabilities and bonds have otherwise been discharged, the authority shall transfer title to the higher education equipment to the institution to which the equipment is leased. However, if at any time prior thereto the institution ceases to operate, then title shall vest in the authority.

L.1993,c.136,s.7.

#### **18A:72A-45 Approval for lease agreements.**

8. The authority shall not enter into a lease agreement with an institution of higher education unless the Secretary of Higher Education has approved the purchase of the higher education equipment by the institution. The secretary shall provide a written certification of such approval including the amount approved to the authority.

L.1993, c.136, s.8; amended 2009, c.308, s.35; 2012, c.42, s.4.

#### **18A:72A-45.1 JBOC approval required for lease agreement.**

23. The authority shall not enter into a lease agreement with an institution of higher education without the review and approval of the Joint Budget Oversight Committee. The 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.

L.2012, c.42, s.23.

#### **18A:72A-46. Amount retained by State to satisfy deficiency**

9. a. To assure the continued operation and solvency of the leasing fund program, the authority shall require that if an institution of higher education fails or is unable to pay to the authority in full, when due, any obligation 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 equipment leasing pursuant to a lease agreement with the authority.

b. The amount retained by the State Treasurer shall be deducted from the corresponding appropriation or apportionment of State aid payable to the institution of higher education and shall not obligate the State to make, nor entitle the institution to receive, any additional appropriation or apportionment.

L.1993,c.136,s.9.

#### **18A:72A-47 Annual report.**

10. The Secretary of Higher Education shall annually submit a report to the Governor and the Legislature on the higher education equipment purchases at public and private institutions of higher education which have been approved by the secretary and financed by the New Jersey Educational Facilities Authority pursuant to

lease agreements with the institutions.

L.1993, c.136, s.10; amended 2009, c.308, s.36; 2012, c.42, s.5.

### **18A:72A-48 Rules, regulations.**

11. The Secretary of 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.1993, c.136, s.11; amended 2009, c.308, s.37; 2012, c.42, s.6.

### **18A:72A-49. Short title**

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

L.1993,c.375,s.1.

### **18A:72A-50. Findings, declarations**

2. The Legislature finds and declares that:

a. Higher education plays a vital role in the economic development of the nation and of the State by providing the education and training of the work force of the future and by advancing science and technology through research.

b. New Jersey has an intense concentration of high technology industries and research facilities and is the headquarters of some of the world's most productive corporations. In the last decade of the 20th century, it has become obvious that New Jersey's institutions of higher education will have to change and improve their educational and research facilities in order not only to prepare students to fill existing jobs in a highly technical world, but also to create new jobs as well.

c. In order for New Jersey students and businesses to be competitive with their international peers, the public and private sectors must continually take steps to enhance the technology and research facilities at our colleges and universities. To do otherwise would result in the failure of New Jersey businesses to remain competitive, a decrease in the number of jobs available to New Jersey workers, a decline in State and personal income, and the loss of potential students to other, more technologically

advanced institutions in other states.

d. If New Jersey is to maintain the expansion of its economic development and continue to provide an adequately trained work force to retain and attract industry to the State, New Jersey's public and private institutions of higher education must be strengthened to provide services to meet the needs of the 21st century.

e. In order to protect the State's economy and preserve and enhance our higher education system in today's global and technological society, there is a crucial need to identify an ongoing funding source to construct, expand, and update instructional, laboratory, communication, and research facilities at New Jersey's public and private institutions of higher education.

L.1993,c.375,s.2.

### **18A:72A-51 "Higher Education Facilities Trust Fund."**

3. There is created within the New Jersey Educational Facilities Authority, established pursuant to N.J.S.18A:72A-1 et seq., the "Higher Education Facilities Trust Fund," hereinafter referred to as the "trust fund." The trust fund shall be maintained as a separate account and administered by the authority to carry out the provisions of this act. The trust fund shall consist of:

- a. moneys received from the issuance of bonds or notes pursuant to section 9 of P.L.1993, c.375 (C.18A:72A-57) and an annual appropriation in an amount sufficient to pay the principal and interest on the bonds or notes;
- b. all moneys appropriated by the State for the purposes of the trust fund; and
- c. all interest and investment earnings received on moneys in the trust fund.

L.1993, c.375, s.3; amended 2017, c.98, s.21.

### **18A:72A-52. Use of trust fund**

4. The trust fund shall be used to provide 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, and improvement of instructional, laboratory, communication, and research facilities.

L.1993,c.375,s.4.

**18A:72A-53 Allocation of initial grants.**

5. The initial grants from the trust fund shall be allocated as follows:
  - a. \$48,000,000 for facilities at the State Colleges;
  - b. \$38,880,000 for facilities at Rutgers, The State University;
  - c. \$20,160,000 for facilities at the University of Medicine and Dentistry of New Jersey;
  - d. \$12,960,000 for facilities at the New Jersey Institute of Technology;
  - e. \$44,000,000 for facilities at the county colleges;
  - f. \$21,000,000 for facilities at the private institutions of higher education;
  - g. \$15,000,000 for South Jersey multi-institutional economic development facilities. As used in this section, "South Jersey multi-institutional economic development facilities" means facilities which would promote economic development in the eight southernmost counties of the State and which involve more than one public or private institution of higher education; and
  - h. \$20,000,000 for a new facility for Rutgers, The State University, School of Law, Newark.

The amount authorized in subsection g. may be apportioned among any other amounts authorized in subsections a. through f. of this section.

The Secretary of Higher Education may reallocate any balance in an amount authorized in subsections a. through h. of this section which has not been approved by the secretary for a grant within 18 months of the effective date of this act.

The Secretary of Higher Education shall determine the allocation of moneys deposited into the trust fund resulting from the issuance by the authority of new bonds because of the retirement of bonds previously issued by the authority.

The facilities funded by grants from the trust fund shall follow the principles of

affirmative action and equal opportunity employment. In furtherance of these principles, the Secretary of Higher Education shall continue the policy of encouraging institutions to solicit bids from, and award contracts to, minority and women-owned businesses.

L.1993, c.375, s.5; amended 2009, c.308, s.38; 2012, c.42, s.7.

#### **18A:72A-54 Application for grant.**

6. a. The governing board of a public or private institution of higher education may determine, by resolution, to apply for a grant from the trust fund. Upon adoption of the resolution, the board shall file an application with the Secretary of Higher Education, 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. The Secretary of Higher Education shall review the application and approve or disapprove the grant. For each grant which is approved, the secretary shall establish the amount and shall send a written certification of such approval including the amount approved to the authority.

c. The Secretary of Higher Education shall submit to the Legislature a copy of the written certification of the approval of the grant and the amount thereof. If the Legislature does not disapprove the grant by the adoption of a concurrent resolution within 60 days, the grant shall be deemed to be authorized. In addition, the resolution approving the grant for the new instructional and research facility for Rutgers, The State University, School of Law, Newark, shall be submitted by the secretary to the Joint Budget Oversight Committee for its approval prior to the commission's submission of the resolution to the Legislature. The secretary shall provide to the committee such information concerning the grant as the committee may require for its consideration.

d. Each grant awarded under this act shall be contingent upon the recipient governing board entering into a contract or contracts for the commencement of the construction, reconstruction, development, extension, or improvement of the facility within one year of the date on which the funds of the grant are made available.

L.1993, c.375, s.6; amended 2009, c.308, s.39; 2012, c.42, s.8.

#### **18A:72A-55 List of selection criteria.**

7. In order to ensure the most effective utilization of the moneys in the trust fund

and to guide governing boards which elect to apply for a grant, the Secretary of Higher Education shall establish a list of selection criteria and shall specify the information to be included in a grant application.

L.1993, c.375, s.7; amended 2009, c.308, s.40; 2012, c.42, s.9.

### **18A:72A-56 "Higher Education Facilities Trust Fund Board."**

8. In order to ensure proper oversight and review, there is created the "Higher Education Facilities Trust Fund Board" which shall consist of four members as follows: the Secretary of Higher Education; the State Treasurer or a designee; the President of the Senate or a designee; and the Speaker of the General Assembly or a designee. The board shall ensure that the revenue provided to the trust fund is adequate to support the grants approved by the Secretary of Higher Education. At the end of each three-year period following the approval of this act, the board shall review, in consultation with the Secretary of Higher Education, the physical plant needs of public and private institutions of higher education in the State and shall recommend to the Governor and the Legislature a plan to increase, as necessary, the availability and uses of grants made from the trust fund.

L.1993, c.375, s.8; amended 2009, c.308, s.41; 2012, c.42, s.10.

### **18A:72A-57 Issuance of bonds, notes.**

9. a. The authority shall from time to time issue bonds or notes 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 or notes, provided that the total outstanding principal amount of the bonds or notes shall not exceed \$220,000,000, except that all administrative costs associated with the approval process and the issuance of bonds shall not be included within the total aggregate principal amount of bonds issued, and the term of any bond issued shall not exceed 15 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1993, c.375 (C.18A:72A-49 et al.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq., provided that no bonds or notes shall be issued pursuant to this section without the prior written consent of the State Treasurer. Notwithstanding any other provision of law to the contrary, the State Treasurer shall not consent to the issuance of any bonds or notes unless the amount scheduled for the annual debt service payments for each

series of bonds or notes, consisting of the payment of interest and principal on the bonds or notes, are, as far as may be practicable, level for each fiscal year that any bonds or notes of the series are outstanding, except for a fiscal year in which the first or last payment on a series is the only payment made for that series during that fiscal year.

b. Bonds or notes 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 or notes, unless funded or refunded by the bonds or notes of the authority, shall be payable solely from revenues of funds pledged or available for their payment as authorized by this act. Each bond 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.

c. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to the authorization of P.L.1993, c.375 (C.18A:72A-49 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 or notes, 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 and notes, 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 and notes, together with interest thereon, are fully met and discharged or provided for.

L.1993, c.375, s.9; amended 1995, c.146; 2009, c.308, s.42.

### **18A:72A-58 Rules, regulations.**

11. The Secretary of 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.1993, c.375, s.11; amended 2009, c.308, s.43; 2012, c.42, s.11.

**18A:72A-59 Short title.**

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

L.1997,c.238,s.1.

**18A:72A-60 Findings, declarations relative to higher education technology infrastructure.**

2. The Legislature finds and declares that:

a. New Jersey's public and independent colleges and universities contribute substantially to the local, State, and national economies by developing the workforce, advancing knowledge through research and scholarship, and serving as a repository for information.

b. An integrated technology infrastructure is increasingly critical to teaching, research, workforce training, and the effectiveness and efficiency of New Jersey's higher education system.

c. Up-to-date telecommunications and information technology, including connectivity within and among institutions and with libraries and elementary and secondary schools, will enable students and faculty to access information and educational opportunities efficiently and effectively and will increase opportunities for institutions to collaborate and share resources.

d. Consortial arrangements and distance learning offer significant potential to reduce costs and increase access, but these new modes of delivery cannot succeed without a technology infrastructure which insures compatibility and connectivity.

e. Colleges and universities must address substantial, yet varying, technological needs in order to participate fully in a comprehensive, current telecommunications network. To strengthen New Jersey's competitiveness and enhance the State's higher education system in a global and highly technological economy, it is essential to establish a dedicated source of funding to support investment by New Jersey's public and independent higher education institutions in technology infrastructure.

L.1997,c.238,s.2.

**18A:72A-61 "Higher Education Technology Infrastructure Fund."**

3. There is created within the New Jersey Educational Facilities Authority, established pursuant to N.J.S.18A:72A-1 et seq., the "Higher Education Technology Infrastructure Fund," hereinafter referred to as the "technology fund." The technology fund shall be maintained as a separate account and administered by the authority to carry out the provisions of this act. The technology fund shall consist of:

- a. moneys received from the issuance of bonds or notes pursuant to section 7 of P.L.1997, c.238 (C.18A:72A-65);
- b. all moneys appropriated by the State for the purposes of the fund; and
- c. all interest and investment earnings received on moneys in the technology fund.

L.1997,c.238,s.3.

**18A:72A-62 Use of technology fund.**

4. The technology fund shall be used to develop technology infrastructure within and among New Jersey's institutions of higher education in order to provide access effectively and efficiently to information, educational opportunities, and workforce training. Funds may also be used to enhance the connectivity of higher education institutions to libraries and elementary and secondary schools.

As used in this act, "technology infrastructure" means video, voice, and data telecommunications equipment and linkages, including transport services and network interconnections.

L.1997,c.238,s.4.

**18A:72A-63 Grant conditions, allocations.**

5. The use of a grant from the technology fund shall require a matching amount from an institution equal to the amount of the grant provided. The initial grants from the technology fund shall be allocated as follows:

- a. a minimum of \$12,600,000 for the acquisition of higher education technology

infrastructure at the State colleges;

b. a minimum of \$7,722,000 for the acquisition of higher education technology infrastructure at Rutgers, The State University;

c. a minimum of \$4,306,500 for the acquisition of higher education technology infrastructure at the University of Medicine and Dentistry of New Jersey;

d. a minimum of \$2,821,500 for the acquisition of higher education technology infrastructure at the New Jersey Institute of Technology;

e. a minimum of \$12,600,000 for the acquisition of higher education technology infrastructure at the county colleges;

f. a minimum of \$4,950,000 for the acquisition of higher education technology infrastructure at private institutions of higher education;

g. a maximum of \$5,000,000 for interconnectivity among the higher education institutions. Expenditures shall be based on an inter-institutional needs assessment. If, as a result of the needs assessment, less than \$5,000,000 is expended from the funds allocated in this subsection, the remaining funds shall be allocated among the institutions designated in subsections a. through f. of this section based on the percentage of the total funds allocated in each of the subsections a. through f.; and

h. a minimum of \$5,000,000 for non-matching public library grants or for Statewide library technology initiatives through the New Jersey State Library.

The Secretary of Higher Education may reallocate any balance in the amount authorized in subsections a. through g. of this section, which has not been approved by the secretary for a grant within 18 months of the effective date of P.L.1997, c.238 (C.18A:72A-59 et seq.).

The secretary shall determine the allocation of moneys deposited into the technology fund resulting from the issuance by the authority of new bonds because of the retirement of bonds previously issued by the authority.

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

L.1997, c.238, s.5; amended 2012, c.42, s.12.

**18A:72A-64 Application for grant, conditions.**

6. a. The governing board of a public or private institution of higher education may determine, by resolution, to apply for a grant from the technology fund. Upon adoption of the resolution, the board shall file an application with the Secretary of Higher Education, which application shall include a complete description of the technology infrastructure to be acquired and an identification of the sources of revenue to be used for the required institutional match.

b. The secretary shall review the application and approve or disapprove the grant. For each grant which is approved, the secretary shall establish the amount and shall send written certification of the approval of the grant including the approved amount to the authority.

c. Each grant awarded under this act shall be contingent upon the recipient governing board entering into a contract or contracts for the acquisition of technology infrastructure within one year of the date on which the funds of the grant are made available to the institution.

L.1997, c.238, s.6; amended 2012, c.42, s.13.

**18A:72A-64.1 JBOC approval required for provision of grant funding.**

24. The authority shall not provide grant funding without the review and approval of the Joint Budget Oversight Committee. The Joint Budget Oversight Committee shall approve or disapprove each grant within 10 working days of receipt of the grant information or the grant shall be deemed approved.

L.2012, c.42, s.24.

**18A:72A-65 Issuance of bonds, notes.**

7. a. The authority shall from time to time issue bonds or notes 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 and notes for the purchase of higher education technology infrastructure for public and private institutions of higher education, provided that the total outstanding principal amount of the bonds and notes shall not exceed \$55,000,000, except that all

administrative costs associated with the approval process and the issuance of bonds shall not be included within the total aggregate principal amount of bonds issued, and the term of any bond issued shall not exceed 15 years. In computing the foregoing limitation as to amount, there shall be excluded all bonds or notes which shall be issued for refunding purposes, provided that the refunding shall be determined by the authority to result in a debt service savings. The State Treasurer is hereby authorized to enter into a contract with the authority pursuant to which the State Treasurer, subject to available appropriation, shall pay the amount necessary to pay the principal and interest on bonds and notes of the authority issued pursuant to this section.

b. Bonds or notes 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 or notes, unless funded or refunded by the bonds or notes of the authority, shall be payable solely from revenues of funds pledged or available for their payment as authorized by this act. Each bond or note 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.

c. The State of New Jersey does hereby pledge to and covenant and agree with the holders of any bonds or notes issued pursuant to P.L.1997, c.238 (C.18A:72A-59 et seq.) 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 or notes, 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 and notes, 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 and notes, together with interest thereon, are fully met and discharged or provided for.

L.1997, c.238, s.7; amended 2009, c.308, s.44.

**18A:72A-66 Agreements between authority and institutions of higher education.**

8. The authority may enter into an agreement with a public or private institution of higher education to finance the acquisition of higher education technology infrastructure by the institution. In entering into an agreement with a public or private institution of higher education, the authority shall include in the agreement such provisions as may be necessary to ensure that the institution shall provide a matching amount at least equal to the amount of the grant provided.

L.1997,c.238,s.8.

#### **18A:72A-67 Approval for entry into agreements.**

9. The authority shall not enter into an agreement with an institution of higher education unless the Secretary of Higher Education has approved the acquisition of the higher education technology infrastructure by the institution.

L.1997, c.238, s.9; amended 2012, c.42, s.14.

#### **18A:72A-68 Financing of matching amounts.**

10. a. To finance the matching amounts for institutions of higher education which have received grants from the technology fund, the authority may from time to time issue bonds or notes in an amount sufficient to finance the purchase of higher education technology infrastructure pursuant to agreements with public and private institutions of higher education and to finance the administrative costs associated with the issuance of bonds or notes. The authority shall issue the bonds or notes in such manner as it shall determine in accordance with the provisions of P.L.1997, c.238 (C.18A:72A-59 et seq.) and the "New Jersey educational facilities authority law," N.J.S.18A:72A-1 et seq. The bonds or notes issued pursuant to this section shall be repaid by the institutions of higher education from any available funds, except grant funds provided to the institution of higher education pursuant to this act.

b. The authority shall require that if an institution of higher education fails or is unable to pay to the authority in full, when due, any obligation 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 and paid to the authority. As used in this subsection, "obligation of the institution" means any amount payable by the institution for technology infrastructure pursuant to an agreement with the authority.

c. The amount retained by the State Treasurer shall be deducted from the

corresponding appropriation or apportionment of State aid payable to the institution of higher education and shall not obligate the State to make, nor entitle the institution to receive, any additional appropriation or apportionment.

L.1997,c.238,s.10.

### **18A:72A-69 Criteria for approval, specific information in grant application.**

11. In order to ensure the most effective utilization of the moneys in the technology fund and to guide governing boards which elect to apply for a grant, the Secretary of Higher Education shall establish criteria for approval and shall specify the information to be included in a grant application.

L.1997, c.238, s.11; amended 2012, c.42, s.15.

### **18A:72A-70 Rules, regulations.**

12. The Secretary of 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.1997, c.238, s.12; amended 2012, c.42, s.16.

### **18A:72A-71 Report to Governor, Legislature.**

13. The Secretary of Higher Education shall annually submit a report to the Governor and the Legislature on the higher education technology infrastructure purchases at public and private institutions of higher education, which have been approved by the secretary and financed by the New Jersey Educational Facilities Authority pursuant to this act.

L.1997, c.238, s.13; amended 2012, c.42, s.17.

### **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 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; amended 2017, c.98, s.22.

#### **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 Secretary of 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; 2012, c.42, s.18.

### **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 secretary may reallocate any balance in an amount authorized in subsection a. of this section which has not been approved by the secretary for grants within 24 months of the adoption of regulations by the secretary. The secretary may allocate any additional moneys in the capital improvement fund to institutions for capital improvement projects as the secretary 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 secretary shall continue the policy of encouraging institutions to solicit bids from, and award contracts to, minority and women-owned businesses.

L.1999, c.217, s.5; amended 2012, c.42, s.19.

### **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 secretary, 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 secretary shall establish a list of grant criteria and shall specify the information to be included in a grant application.

c. The secretary shall review the application and approve or disapprove the grant. When a grant is approved, the secretary shall establish the amount and shall send a written certification of the approval of the grant and the amount of the grant to the authority.

d. The secretary shall submit to the Legislature a copy of the written certification of the grant and the amount thereof. 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; amended 2012, c.42, s.20.

### **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, provided that the total outstanding principal amount of the bonds, notes or other obligations shall not exceed \$550,000,000, except that all administrative costs associated with the approval process and the issuance of bonds shall not be included within the total aggregate principal amount of bonds issued, 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; amended 2009, c.308, s.45.

### **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 Secretary of 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; amended 2012, c.42, s.21.

### **18A:72A-81 Short title.**

47. Sections 47 through 49 of P.L.2009, c.90 (C.18A:72A-81 et seq.) shall be known and may be cited as the "Higher Education Partnership Agreements Act."

L.2009, c.90, s.47.

### **18A:72A-82 Definitions relative to higher education partnership agreements.**

48. As used in sections 48 and 49 of P.L.2009, c.90 (C.18A:72A-82 and C.18A:72A-83):

"Board" means the Local Finance Board established in the Division of Local Government Services in the Department of Community Affairs.

"Bonds" mean bonds, notes or other obligations issued to finance or refinance higher education projects by a municipality, or on behalf of a municipality by a county improvement authority created pursuant to the "county improvement authorities law," P.L.1960, c.183 (C.40:37A-44 et seq.).

"Higher education partnership agreement" means an agreement between a municipality and an institution of higher education providing for the issuance of bonds

by the municipality, a county improvement authority or a redevelopment entity, and the pledge of payments by the institution of higher education to secure those bonds to finance a higher education project, or part thereof.

"Higher education project" means the establishment and construction of higher education buildings and the expansion and construction of additional facilities at, and the acquisition of additional and upgraded equipment for existing higher education buildings, including but not limited to the planning, erecting, purchasing, improving, developing, constructing, reconstructing, extending, rehabilitating, renovating, upgrading, demolishing and equipping of facilities at institutions of higher education.

"Institution of higher education" means: Rutgers, The State University; a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes; the New Jersey Institute of Technology; Rowan University; Montclair State University; Kean University; a county college and any other public university or college now or hereafter established or authorized by State law; and any college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis or other professional persons in the field of religion.

"Municipality" means the municipal governing body or an entity acting on behalf of the municipality if permitted by the federal Internal Revenue Code of 1986, or, if a redevelopment agency or redevelopment entity is established in the municipality pursuant to P.L.1992, c.79 (C.40A:12A-1 et seq.) and the municipality so provides, the redevelopment agency or entity so established.

L.2009, c.90, s.48; amended 2012, c.45, s.106; 2017, c.178, s.63; 2021, c.282, s.65.

### **18A:72A-83 Higher education partnership agreements.**

49. A municipality and an institution of higher education may enter into a higher education partnership agreement for the development of a higher education project. The board shall promulgate rules and regulations, modeled after the procedures and protections set forth in the "Redevelopment Area Bond Financing

Law," sections 1 through 10 of P.L.2001, c.310 (C.40A:12A-64 et seq.), within 120 days following the enactment of sections 47 through 49 of P.L.2009, c.90 (C.18A:72A-81 et seq.) in order to effectuate the purposes of this section.

L.2009, c.90, s.49.