

ASSEMBLY, No. 3141

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 21, 2012

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex)

SYNOPSIS

Establishes new public-private partnership agreement option for construction of State and county college facilities and changes reference from “Commission on Higher Education” to “Secretary of Higher Education” in higher education construction Educational Facilities Authority bond programs.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning construction of facilities at institutions of
2 higher education, revising various parts of the statutory law, and
3 supplementing Title 18A of the New Jersey Statutes.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to
9 read as follows:

10 43 a. (1) A State college or county college may enter into a
11 contract with a private entity, subject to subsection f. of this section,
12 to be referred to as a public-private partnership agreement, that
13 permits the private entity to assume full financial and administrative
14 responsibility for the on-campus construction, reconstruction,
15 repair, alteration, improvement **[or]**, extension, management, or
16 operation of a building, structure, or facility of, or for the benefit of,
17 the institution, provided that the project is financed in whole by the
18 private entity and that the State or institution of higher education, as
19 applicable, retains full ownership of the land upon which the project
20 is completed.

21 (2) A public-private partnership agreement may include an
22 agreement under which a State or county college leases to a private
23 entity the operation of a dormitory or other revenue-producing
24 facility to which the college holds title, in exchange for up-front or
25 structured financing by the private entity for the construction of
26 classrooms, laboratories, or other academic buildings. Under the
27 lease agreement, the college shall continue to hold title to the
28 facility, and the private entity shall be responsible for the
29 management, operation, and maintenance of the facility. The
30 private entity shall receive some or all, as per the agreement, of the
31 revenue generated by the facility and shall operate the facility in
32 accordance with college standards. A lease agreement shall not
33 affect the status or employment rights of college employees who are
34 assigned to, or provide services to, the leased facility. At the end of
35 the lease term, subsequent revenue generated by the facility, along
36 with management, operation, and maintenance responsibility, shall
37 revert to the college.

38 b. (1) A private entity that assumes financial and administrative
39 responsibility for a project pursuant to subsection a. of this section
40 shall not be subject to the procurement and contracting
41 requirements of all statutes applicable to the institution of higher
42 education at which the project is completed, including, but not
43 limited to, the "State College Contracts Law," P.L.1986, c.43
44 (C.18A:64-52 et seq.), and the "County College Contracts Law,"
45 P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 facilitating the financing of a project pursuant to subsection a. of
2 this section, a public entity may become the owner or lessee of the
3 project or the lessee of the land, or both, may become the lessee of a
4 dormitory or other revenue-producing facility to which the college
5 holds title, may issue indebtedness in accordance with the public
6 entity's enabling legislation and, notwithstanding any provision of
7 law to the contrary, shall be empowered to enter into contracts with
8 a private entity and its affiliates without being subject to the
9 procurement and contracting requirements of any statute applicable
10 to the public entity provided that the private entity has been selected
11 by the institution of higher education pursuant to a solicitation of
12 proposals or qualifications. For the purposes of this section, a
13 public entity shall include the New Jersey Economic Development
14 Authority, and any project undertaken pursuant to subsection a. of
15 this section of which the authority becomes the owner or lessee, or
16 which is situated on land of which the authority becomes the lessee,
17 shall be deemed a "project" under the "New Jersey Economic
18 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

19 (2) As the carrying out of any project described pursuant to this
20 section constitutes the performance of an essential public function,
21 all projects predominantly used in furtherance of the educational
22 purposes of the institution undertaken pursuant to this section,
23 provided it is owned by or leased to a public entity, non-profit
24 business entity, foreign or domestic, or a business entity wholly
25 owned by such non-profit business entity, shall at all times be
26 exempt from property taxation and special assessments of the State,
27 or any municipality, or other political subdivision of the State and,
28 notwithstanding the provisions of section 15 of P.L.1974, c.80
29 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or any
30 other section of law to the contrary, shall not be required to make
31 payments in lieu of taxes. The land upon which the project is
32 located shall also at all times be exempt from property taxation.
33 Further, the project and land upon which the project is located shall
34 not be subject to the provisions of section 1 of P.L.1984, c.176
35 (C.54:4-1.10) regarding the tax liability of private parties
36 conducting for profit activities on tax exempt land, or section 1 of
37 P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold
38 interests in exempt property that are held by nonexempt parties.

39 c. Each worker employed in the construction, rehabilitation, or
40 building maintenance services of facilities by a private entity that
41 has entered into a public-private partnership agreement with a State
42 or county college pursuant to subsection a. of this section shall be
43 paid not less than the prevailing wage rate for the worker's craft or
44 trade as determined by the Commissioner of Labor and Workforce
45 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)
46 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

47 d. (1) All construction projects under a public-private
48 partnership agreement entered into pursuant to this section shall

1 contain a project labor agreement. The project labor agreement
2 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et
3 seq.), and shall be in a manner that to the greatest extent possible
4 enhances employment opportunities for individuals residing in the
5 county of the project's location. Further, the general contractor,
6 construction manager, design-build team, or subcontractor for a
7 construction project proposed in accordance with this paragraph
8 shall be registered pursuant to the provisions of P.L.1999, c.238
9 (C.34:11-56.48 et seq.), and shall be classified by the Division
10 of Property Management and Construction to perform work
11 on a public-private partnership higher education project. All
12 construction projects proposed in accordance with this paragraph
13 shall be submitted to the New Jersey Economic Development
14 Authority for its review and approval and, when practicable, are
15 encouraged to adhere to the Leadership in Energy and
16 Environmental Design Green Building Rating System as adopted by
17 the United States Green Building Council.

18 (2) Where no public fund has been established for the financing
19 of a public improvement, the chief financial officer of the public
20 owner shall require the private entity for whom the public
21 improvement is being made to post, or cause to be posted, a bond
22 guaranteeing prompt payment of moneys due to the contractor, his
23 or her subcontractors and to all persons furnishing labor or
24 materials to the contractor or his or her subcontractors in the
25 prosecution of the work on the public improvement.

26 e. A general contractor, construction manager, design-build
27 team, or subcontractor shall be registered pursuant to the provisions
28 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified
29 by the Division of Property Management and Construction to
30 perform work on a public-private partnership higher education
31 project.

32 f. (1) On or before August 1, 2013, all projects proposed in
33 accordance with this section shall be submitted to the New Jersey
34 Economic Development Authority for its review and approval;
35 except that in the case of projects proposed in accordance with
36 paragraph (2) of subsection a. of this section, all projects shall be
37 submitted on or before August 1, 2014. The projects are
38 encouraged, when practicable, to adhere to the green building
39 manual prepared by the Commissioner of Community Affairs
40 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any
41 application that is deemed to be incomplete on August 2, 2013, or
42 on August 2, 2014 in the case of an application submitted pursuant
43 to paragraph (2) of subsection a. of this section, shall not be eligible
44 for consideration.

45 (2) (a) In order for an application to be complete and considered
46 by the authority it shall include, but not be limited to: (i) a public-
47 private partnership agreement between the State or county college
48 and the private developer; (ii) a full description of the project,

1 including a description of any agreement for the lease of a revenue-
2 producing facility related to the project; (iii) the estimated costs and
3 financial documentation for the project; (iv) a timetable for
4 completion of the project extending no more than five years after
5 consideration and approval; and (v) any other requirements that the
6 authority deems appropriate or necessary.

7 (b) As part of the estimated costs and financial documentation
8 for the project the application shall contain a long-range
9 maintenance plan and shall specify the expenditures that qualify as
10 an appropriate investment in maintenance. This long-range
11 maintenance plan shall be approved by the authority pursuant to
12 regulations promulgated by the authority that reflect national
13 building maintenance standards and other appropriate building
14 maintenance benchmarks. All contracts to implement a long-range
15 maintenance plan pursuant to this paragraph shall contain a project
16 labor agreement. The project labor agreement shall be subject to
17 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in
18 a manner that to the greatest extent possible enhances employment
19 opportunities for individuals residing in the county of the project's
20 location.

21 (3) The authority shall review all completed applications, and
22 request additional information as is needed to make a complete
23 assessment of the project. No project shall be undertaken until final
24 approval has been granted by the authority; provided, however, that
25 the authority shall retain the right to revoke approval if it
26 determines that the project has deviated from the plan submitted
27 pursuant to paragraph (2) of this subsection.

28 (4) The authority may promulgate any rules and regulations
29 necessary to implement this subsection, including provisions for
30 fees to cover administrative costs.

31 Where no public fund has been established for the financing of a
32 public improvement, the chief financial officer of the public owner
33 shall require the private entity for whom the public improvement is
34 being made to post, or cause to be posted, a bond guaranteeing
35 prompt payment of moneys due to the contractor, his or her
36 subcontractors and to all persons furnishing labor or materials to the
37 contractor or his or her subcontractors in the prosecution of the
38 work on the public improvement.

39 g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall
40 not apply to any project carried out pursuant to this section.
41 (cf: P.L.2012, c.10, s.1)

42
43 2. Section 2 of P.L.1993, c.136 (C.18A:72A-41) is amended to
44 read as follows:

45 2. The Legislature finds and declares that:

46 a. Higher education plays a vital role in the economic
47 development of the nation and the State by providing the education

1 and training of the work force of the future and by advancing
2 science and technology through research;

3 b. The rapid technological changes occurring throughout the
4 world have a considerable impact on the quality of teaching,
5 learning, and research at colleges and universities;

6 c. The current inventory of instructional and research
7 equipment at the colleges and universities within the State is aging,
8 both chronologically and technologically, and much of it has been
9 rendered obsolete; and

10 d. The **【Commission on】** Secretary of Higher Education, which
11 is statutorily responsible for the coordination and planning of higher
12 education in New Jersey, has identified a crucial need to establish a
13 regular financing mechanism for scientific, engineering, technical,
14 computer, communications, and instructional equipment at New
15 Jersey's public and private institutions of higher education.

16 (cf: P.L.2009, c.308, s.32)

17
18 3. Section 6 of P.L.1993, c.136 (C.18A:72A-43) is amended to
19 read as follows:

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

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

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

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

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

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

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

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

39 The **【Commission on】** Secretary of Higher Education may
40 apportion the amounts authorized in subsection g. among any other
41 amounts authorized in subsections a. through f.

42 The **【Commission on】** Secretary of Higher Education may
43 reallocate any balance in the amounts authorized in subsections a.
44 through g. of this section which have not been fully committed
45 within 18 months of the effective date of this act.

46 The **【Commission on】** Secretary of Higher Education shall
47 determine the allocation of moneys deposited into the fund resulting

1 from the issuance by the authority of new bonds because of the
2 retirement of bonds previously issued by the authority.

3 (cf: P.L.2009, c.308, s.34)

4
5 4. Section 8 of P.L.1993, c.136 (C.18A:72A-45) is amended to
6 read as follows:

7 8. The authority shall not enter into a lease agreement with an
8 institution of higher education unless the **【Commission on】**
9 Secretary of Higher Education has adopted a resolution which
10 approves the purchase of the higher education equipment by the
11 institution. The **【commission】** secretary shall forward a copy of the
12 resolution along with the amount of the approved purchase to the
13 authority.

14 (cf: P.L.2009, c.308, s.35)

15
16 5. Section 10 of P.L.1993, c.136 (C.18A:72A-47) is amended
17 to read as follows:

18 10. The **【Commission on】** Secretary of Higher Education shall
19 annually submit a report to the Governor and the Legislature on the
20 higher education equipment purchases at public and private
21 institutions of higher education which have been approved by the
22 **【commission】** secretary and financed by the New Jersey
23 Educational Facilities Authority pursuant to lease agreements with
24 the institutions.

25 (cf: P.L.2009, c.308, s.36)

26
27 6. Section 11 of P.L.1993, c.136 (C.18A:72A-48) is amended
28 to read as follows:

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

34 (cf: P.L.2009, c.308, s.37)

35
36 7. Section 5 of P.L.1993, c.375 (C.18A:72A-53) is amended to
37 read as follows:

38 5. The initial grants from the trust fund shall be allocated as
39 follows:

- 40 a. \$48,000,000 for facilities at the State Colleges;
41 b. \$38,880,000 for facilities at Rutgers, The State University;
42 c. \$20,160,000 for facilities at the University of Medicine and
43 Dentistry of New Jersey;
44 d. \$12,960,000 for facilities at the New Jersey Institute of
45 Technology;
46 e. \$44,000,000 for facilities at the county colleges;

1 f. \$21,000,000 for facilities at the private institutions of higher
2 education;

3 g. \$15,000,000 for South Jersey multi-institutional economic
4 development facilities. As used in this section, "South Jersey multi-
5 institutional economic development facilities" means facilities
6 which would promote economic development in the eight
7 southernmost counties of the State and which involve more than one
8 public or private institution of higher education; and

9 h. \$20,000,000 for a new facility for Rutgers, The State
10 University, School of Law, Newark.

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

14 The **【Commission on】** Secretary of Higher Education may
15 reallocate any balance in an amount authorized in subsections a.
16 through h. of this section which has not been approved by the
17 **【commission】** secretary for a grant within 18 months of the
18 effective date of this act.

19 The **【Commission on】** Secretary of Higher Education shall
20 determine the allocation of moneys deposited into the trust fund
21 resulting from the issuance by the authority of new bonds because
22 of the retirement of bonds previously issued by the authority.

23 The facilities funded by grants from the trust fund shall follow
24 the principles of affirmative action and equal opportunity
25 employment. In furtherance of these principles, the **【Commission**
26 **on】** Secretary of Higher Education shall continue **【its】** the policy of
27 encouraging institutions to solicit bids from, and award contracts to,
28 minority and women-owned businesses.

29 (cf: P.L.2009, c.308, s.38)

30

31 8. Section 6 of P.L.1993, c.375 (C.18A:72A-54) is amended to
32 read as follows:

33 6. a. The governing board of a public or private institution of
34 higher education may determine, by resolution, to apply for a grant
35 from the trust fund. Upon adoption of the resolution, the board shall
36 file an application with the **【Commission on】** Secretary of Higher
37 Education, which application shall include a complete description
38 of the project to be financed and an identification of any additional
39 sources of revenue to be used.

40 b. The **【Commission on】** Secretary of Higher Education shall
41 review the application and, by resolution, approve or disapprove the
42 grant. For each grant which is approved, the **【commission】**
43 secretary shall establish the amount and shall forward a copy of the
44 resolution along with the amount of the grant to the authority.

45 c. The **【Commission on】** Secretary of Higher Education shall
46 submit to the Legislature a copy of the resolution approving the
47 grant along with the amount of the grant. If the Legislature does not

1 disapprove the grant by the adoption of a concurrent resolution
2 within 60 days, the grant shall be deemed to be authorized. In
3 addition, the resolution approving the grant for the new
4 instructional and research facility for Rutgers, The State University,
5 School of Law, Newark, shall be submitted by the **【commission】**
6 secretary to the Joint Budget Oversight Committee for its approval
7 prior to the commission's submission of the resolution to the
8 Legislature. The **【commission】** secretary shall provide to the
9 committee such information concerning the grant as the committee
10 may require for its consideration.

11 d. Each grant awarded under this act shall be contingent upon
12 the recipient governing board entering into a contract or contracts
13 for the commencement of the construction, reconstruction,
14 development, extension, or improvement of the facility within one
15 year of the date on which the funds of the grant are made available.
16 (cf: P.L.2009, c.308, s.39)

17

18 9. Section 7 of P.L.1993, c.375 (C.18A:72A-55) is amended to
19 read as follows:

20 7. In order to ensure the most effective utilization of the
21 moneys in the trust fund and to guide governing boards which elect
22 to apply for a grant, the **【Commission on】** Secretary of Higher
23 Education shall establish a list of selection criteria and shall specify
24 the information to be included in a grant application.
25 (cf: P.L.2009, c.308, s.40)

26

27 10. Section 8 of P.L.1993, c.375 (C.18A:72A-56) is amended to
28 read as follows:

29 8. In order to ensure proper oversight and review, there is
30 created the "Higher Education Facilities Trust Fund Board" which
31 shall consist of **【five】** four members as follows: the **【Chair and**
32 **Vice Chair of the Commission on】** Secretary of Higher Education;
33 the State Treasurer or a designee; the President of the Senate or a
34 designee; and the Speaker of the General Assembly or a designee.
35 The board shall ensure that the revenue provided to the trust fund is
36 adequate to support the grants approved by the **【Commission on】**
37 Secretary of Higher Education. At the end of each three-year period
38 following the approval of this act, the board shall review, in
39 consultation with the **【Commission on】** Secretary of Higher
40 Education, the physical plant needs of public and private
41 institutions of higher education in the State and shall recommend to
42 the Governor and the Legislature a plan to increase, as necessary,
43 the availability and uses of grants made from the trust fund.
44 (cf: P.L.2009, c.308, s.41)

45

46 11. Section 11 of P.L.1993, c.375 (C.18A:72A-58) is amended
47 to read as follows:

1 11. The **【Commission on】** Secretary of Higher Education, in
2 consultation with the New Jersey Educational Facilities Authority,
3 shall adopt, pursuant to the "Administrative Procedure Act,"
4 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations
5 necessary to carry out the provisions of this act.
6 (cf: P.L.2009, c.308, s.43)
7

8 12. Section 5 of P.L.1997, c.238 (C.18A:72A-63) is amended to
9 read as follows:

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

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

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

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

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

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

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

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

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

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

46 The **【commission】** secretary shall determine the allocation of
47 moneys deposited into the technology fund resulting from the

1 issuance by the authority of new bonds because of the retirement of
2 bonds previously issued by the authority.

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

9 (cf: P.L.1997, c.238, s.5)

10
11 13. Section 6 of P.L.1997, c.238 (C.18A:72A-64) is amended to
12 read as follows:

13 6. a. The governing board of a public or private institution of
14 higher education may determine, by resolution, to apply for a grant
15 from the technology fund. Upon adoption of the resolution, the
16 board shall file an application with the **【Commission on】** Secretary
17 of Higher Education, which application shall include a complete
18 description of the technology infrastructure to be acquired and an
19 identification of the sources of revenue to be used for the required
20 institutional match.

21 b. The **【commission】** secretary shall review the application
22 and, by resolution, approve or disapprove the grant. For each grant
23 which is approved, the **【commission】** secretary shall establish the
24 amount and shall forward a copy of the resolution along with the
25 amount of the grant to the authority.

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

31 (cf: P.L.1997, c.238, s.6)

32
33 14. Section 9 of P.L.1997, c.238 (C.18A:72A-67) is amended to
34 read as follows:

35 9. The authority shall not enter into an agreement with an
36 institution of higher education unless the **【Commission on】**
37 Secretary of Higher Education has adopted a resolution which
38 approves the acquisition of the higher education technology
39 infrastructure by the institution.

40 (cf: P.L.1997, c.238, s.9)

41
42 15. Section 11 of P.L.1997, c.238 (C.18A:72A-69) is amended
43 to read as follows:

44 11. In order to ensure the most effective utilization of the
45 moneys in the technology fund and to guide governing boards
46 which elect to apply for a grant, the **【Commission on】** Secretary of

1 Higher Education shall establish criteria for approval and shall
2 specify the information to be included in a grant application.

3 (cf: P.L.1997, c.238, s.11)

4
5 16. Section 12 of P.L.1997, c.238 (C.18A:72A-70) is amended
6 to read as follows:

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

12 (cf: P.L.1997, c.238, s.12)

13
14 17. Section 13 of P.L.1997, c.238 (C.18A:72A-71) is amended
15 to read as follows:

16 13. The **【Commission on】** Secretary of Higher Education shall
17 annually submit a report to the Governor and the Legislature on the
18 higher education technology infrastructure purchases at public and
19 private institutions of higher education, which have been approved
20 by the **【commission】** secretary and financed by the New Jersey
21 Educational Facilities Authority pursuant to this act.

22 (cf: P.L.1997, c.238, s.13)

23
24 18. Section 4 of P.L.1999, c.217 (C.18A:72A-75) is amended to
25 read as follows:

26 4. The capital improvement fund shall be used to provide
27 grants to New Jersey's four-year public and private institutions of
28 higher education for the cost, or a portion of the cost, of the
29 renewal, renovation, improvement, expansion, construction, and
30 reconstruction of facilities and technology infrastructure. Each
31 institution shall use the grants for existing renewal and renovations
32 needs at instructional, laboratory, communication, research, and
33 administrative facilities. An institution may use up to 20% of a
34 grant within student-support facilities for renewal and renovation or
35 improvement, expansion, construction, and reconstruction. If all
36 renewal and renovation is completed at instructional, laboratory,
37 communication, research, and administrative facilities or is
38 accounted for through other funding sources, or if an institution is
39 granted an exemption by the **【Commission on】** Secretary of Higher
40 Education for the purpose of maximizing federal grant fund
41 recoveries or for the purpose of replacing a building when projected
42 renewal and renovation costs exceed the projected cost of
43 replacement, then grant funds may be used for the improvement,
44 expansion, construction, and reconstruction of instructional,
45 laboratory, communication, and research facilities, or technology
46 infrastructure.

47 As used in this act:

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

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

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

11 (cf: P.L.2002, c.96)

12
13 19. Section 5 of P.L.1999, c.217 (C.18A:72A-76) is amended to
14 read as follows:

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

17 \$169,000,000 for Rutgers, The State University;

18 \$95,062,500 for the University of Medicine and Dentistry of
19 New Jersey;

20 \$60,937,500 for the New Jersey Institute of Technology;

21 \$175,000,000 for the State colleges and universities; and

22 \$50,000,000 for the private institutions of higher education.

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

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

41 (cf: P.L.1999, c.217, s.5)

42
43 20. Section 6 of P.L.1999, c. 217 (C.18A:72A-77) is amended to
44 read as follows:

45 6. a. The governing board of a four-year public or private
46 institution of higher education may determine, by resolution, to
47 apply for a grant from the capital improvement fund. Upon

1 adoption of the resolution, the board shall file an application with
2 the **【commission】** secretary, which application shall include a
3 complete description of the project to be financed and an
4 identification of any additional sources of revenue to be used.

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

10 c. The **【commission】** secretary shall review the application
11 and, by resolution, approve or disapprove the grant. When a grant
12 is approved, the **【commission】** secretary shall establish the amount
13 and shall forward a copy of the resolution along with the amount of
14 the grant to the authority.

15 d. The **【commission】** secretary shall submit to the Legislature
16 a copy of the resolution approving the grant along with the amount
17 of the grant. If the Legislature does not disapprove the grant by the
18 adoption of a concurrent resolution within 45 days, the grant shall
19 be deemed to be authorized.

20 e. When a grant is awarded pursuant to this act, it shall be
21 contingent upon the governing board of the recipient institution
22 entering into a contract or contracts for the commencement of the
23 renewal, renovation, improvement, expansion, construction, and
24 reconstruction of facilities and technology infrastructure within one
25 year of the date on which the funds for the grant are made available.
26 (cf: P.L.1999, c.217, s.6)

27
28 21. Section 15 of P.L.1999, c.217 (C.18A:72A-80) is amended
29 to read as follows:

30 15. The **【Commission on】** Secretary of Higher Education, in
31 consultation with the New Jersey Educational Facilities Authority,
32 shall adopt, pursuant to the "Administrative Procedure Act,"
33 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations
34 necessary to carry out the provisions of this act.
35 (cf: P.L.1999, c.217, s.15)

36
37 22. (New section) The Secretary of Higher Education shall
38 exercise all the powers and duties previously exercised by the
39 Commission on Higher Education under the Higher Education
40 Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et
41 seq.), the "Higher Education Facilities Trust Fund Act," P.L.1993,
42 c.375 (C.18A:72A-49 et seq.), the "Higher Education Technology
43 Infrastructure Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.),
44 and the "Higher Education Capital Improvement Fund Act,"
45 P.L.1999, c.217 (C.18A:72A-72 et seq.).

46
47 23. This act shall take effect immediately.

STATEMENT

This bill amends the current law that allows State and county colleges to enter into public-private partnerships that permit a private entity to assume full financial and administrative responsibility for an on-campus construction project, provided that that the project is financed entirely by the private entity and the State or institution, as applicable, retains ownership of the land and any building resulting from the project. This bill provides colleges with another public-private partnership option for the financing of college facilities. Under the bill, a public-private partnership agreement may be one in which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college will continue to hold title to the facility, and the private entity will be responsible for the management, operation, and maintenance of the facility. The private entity will receive some or all of the revenue generated by the facility and must operate the facility in accordance with college standards. At the end of the lease term, subsequent revenue generated by the facility will revert, along with management, operation, and maintenance responsibility, to the college.

The bill also amends a number of existing laws that authorize the New Jersey Educational Facilities Authority (EFA) to issue bonds for the construction and renovation of facilities, and the purchase of equipment, at public and independent institutions of higher education. The bill eliminates reference to the "Commission on Higher Education" and inserts reference to the "Secretary of Higher Education." The purpose of this change is to clarify that the Secretary of Higher Education has the authority to approve projects for financing under those EFA bond programs. The programs, and the amount currently available for issuance under each of the programs, are as follows: the "Higher Education Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et seq.), approximately \$100 million; the "Higher Education Facilities Trust Fund Act," P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately \$220 million; the "Higher Education Technology Infrastructure Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately \$55 million; and the "Higher Education Capital Improvement Fund Act," P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165 million.