

ASSEMBLY, No. 5867

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JUNE 14, 2021

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman LINDA S. CARTER

District 22 (Middlesex, Somerset and Union)

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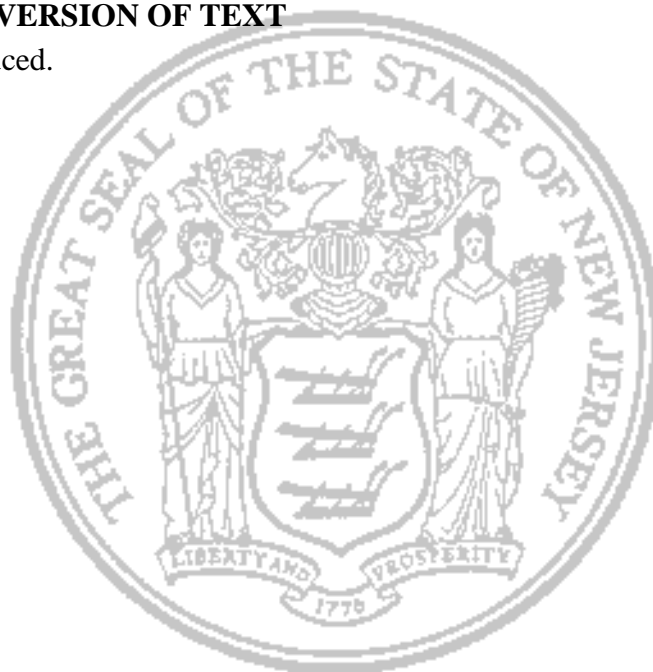
Assemblyman Tully and Assemblywoman Swain

SYNOPSIS

Expands bonding authority of New Jersey Educational Facilities Authority to permit financing for general funding needs at New Jersey's institutions of higher education.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2022)

1 AN ACT concerning the New Jersey Educational Facilities
2 Authority, revising parts of statutory law, and supplementing
3 chapter 72A of 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. N.J.S.18A:72A-1 is amended to read as follows:

9 18A:72A-1. It is hereby declared that a serious public
10 emergency exists affecting and threatening the welfare, comfort,
11 health, safety and prosperity of the people of the state and resulting
12 from the fact that financial resources are lacking with which to
13 construct required dormitory and other educational facilities at
14 public and private institutions of higher education and that there is a
15 shortage of working capital for the development, establishment, and
16 operation of public and private institutions of higher education; that
17 it is essential that this and future generations of youth be given the
18 fullest opportunity to learn and to develop their intellectual and
19 mental capacities; that it is essential that institutions for higher
20 education within the state be provided with appropriate additional
21 means to assist such youth in achieving the required levels of
22 learning and development of their intellectual and mental
23 capacities; that it is essential that all resources of the state be
24 employed in order to meet the tremendous demand for higher
25 educational opportunities; that all institutions of higher education in
26 the state, both public and private, are an integral part of the total
27 educational effort in the state for providing higher educational
28 opportunities, and that it is the purpose of this chapter to provide a
29 measure of assistance and an alternative method to enable
30 institutions of higher education in the state to provide the facilities
31 which are sorely needed to accomplish the purposes of this chapter
32 and to provide working capital to public and private institutions of
33 higher education, all to the public benefit and good, to the extent
34 and manner provided herein.

35 (cf: N.J.S.18A:72A-1)

36
37 2. N.J.S.18A:72A-3 is amended to read as follows:

38 18A:72A-3. As used in this act, the following words and terms
39 shall have the following meanings, unless the context indicates or
40 requires another or different meaning or intent:

41 “Affiliate” means a person that directly, or indirectly through
42 one or more intermediaries, controls, or is controlled by, or is under
43 common control with, a private college, a private institution of
44 higher education, a public institution of higher education, a school,
45 or a university, or a nonprofit organization exempt from federal tax

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 under section 501(c)(3) of the Internal Revenue Code designated for
2 the purpose of supporting an institution of higher education;

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

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

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

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

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

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

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

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

39 "Participating **[**college**]** institution" means a **[**public institution
40 of higher education or**]** private college , a private institution of
41 higher education, a public institution of higher education, a school,
42 a university, or an affiliate, which, pursuant to the provisions of this
43 chapter, participates with the authority in undertaking the financing
44 and construction or acquisition of a project;

45 **[**"Project" means a dormitory or an educational facility or any
46 combination thereof, or a county college capital project;**]**

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

8 "Private institution of higher education" means independent
9 colleges or universities incorporated and located in New Jersey,
10 which by virtue of law or character or license, are nonprofit
11 educational institutions authorized to grant academic degrees and
12 which provide a level of education which is equivalent to the
13 education provided by the State's public institutions of higher
14 education as attested by the receipt of and continuation of regional
15 accreditation by the Middle States Association of Colleges and
16 Schools, and which are eligible to receive State aid;

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

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

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

27 "University" means Rutgers, The State University; and

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

31 (cf: P.L.2017, c.178, s.60)

32

33 3. N.J.S.18A:72A-4 is amended to read as follows:

34 18A:72A-4. (a) There is hereby established in but not of the
35 Department of the Treasury a public body corporate and politic,
36 with corporate succession to be known as the "New Jersey
37 educational facilities authority." Notwithstanding this allocation,
38 the authority shall be independent of any supervision or control by
39 the department or any officer thereof. The authority shall constitute
40 a political subdivision of the State established as an instrumentality
41 exercising public and essential governmental functions, and the
42 exercise by the authority of the powers conferred by this chapter
43 shall be deemed and held to be an essential governmental function
44 of the State.

45 (b) The authority shall consist of seven members, two of whom
46 shall be the **【**chairman of the Commission on**】** Secretary of Higher
47 Education, ex officio, and the State Treasurer, ex officio, or when
48 so designated by them, their deputies and five citizens of the State

1 to be appointed by the Governor with the advice and consent of the
2 Senate for terms of five years; provided that the terms of the
3 members first appointed shall be arranged by the Governor so that
4 one of such terms shall expire on April 30 in each successive year
5 ensuing after such appointments. ~~【Each member】~~ Members shall
6 hold office for the term of ~~【his appointment】~~ their appointments
7 and shall continue to serve during the term of ~~【his successor】~~ their
8 successors unless and until his successor shall have been appointed
9 and qualified. Any vacancy among the members appointed by the
10 Governor shall be filled by appointment for the unexpired term
11 only. A member of the authority shall be eligible for reappointment.

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

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

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

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

39 (g) Before the issuance of any bonds under the provisions of this
40 chapter, the members and the officer of the authority charged with
41 the handling of the authority's moneys shall be covered by a surety
42 bond or bonds in a penal sum of not less than \$25,000.00 per person
43 conditioned upon the faithful performance of the duties of their
44 respective offices, and executed by a surety company authorized to
45 transact business in the State of New Jersey as surety. Each such
46 bond shall be submitted to the Attorney General for his approval
47 and upon his approval shall be filed in the Office of the Secretary of
48 State prior to the issuance of any bonds by the authority. At all

1 times after the issuance of any bonds by the authority the officer of
2 the authority and each member charged with the handling of the
3 authority's moneys shall maintain such surety bonds in full force
4 and effect. All costs of such surety bonds shall be borne by the
5 authority.

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

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

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

39 (cf: P.L.2009, c.308, s.30)

40

41 4. N.J.S.18A:72A-5 is amended to read as follows:

42 18A:72A-5. The authority shall have power:

43 (a) To adopt bylaws for the regulation of its affairs and the
44 conduct of its business;

45 (b) To adopt and have an official common seal and alter the
46 same at pleasure;

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

- 1 (d) To sue and be sued in its own name, and plead and be
2 impleaded;
- 3 (e) To borrow money and to issue bonds and notes and other
4 obligations of the authority and to provide for the rights of the
5 holders thereof as provided in this chapter;
- 6 (f) To acquire, lease as lessee, hold and dispose of real and
7 personal property or any interest therein, in the exercise of its
8 powers and the performance of its duties under this chapter;
- 9 (g) To acquire in the name of the authority by purchase or
10 otherwise, on such terms and conditions and in such manner as it
11 may deem proper, or by the exercise of the power of eminent
12 domain, any land or interest therein and other property which it may
13 determine is reasonably necessary for any project, including any
14 lands held by any county, municipality or other governmental
15 subdivision of the State; and to hold and use the same and to sell,
16 convey, lease or otherwise dispose of property so acquired, no
17 longer necessary for the authority's purposes; and when the term of
18 a lease agreement with a participating institution has expired or the
19 property acquired is no longer subject to any lease agreement and
20 no bond proceeds remain outstanding with respect to the property,
21 and the participating institution shall have complied with all
22 applicable terms of the lease agreement and any other agreement for
23 any other authority bonds with respect to the property, the authority
24 or its designee may transfer all of its rights, title and interest in and
25 to the property to the participating institution who entered into the
26 lease agreement with the authority;
- 27 (h) To receive and accept, from any federal or other public
28 agency or governmental entity, grants or loans for or in aid of the
29 acquisition or construction of any project, and to receive and accept
30 aid or contributions from any other source, of either money,
31 property, labor or other things of value, to be held, used and applied
32 only for the purposes for which such grants, loans and contributions
33 may be made;
- 34 (i) To prepare or cause to be prepared plans, specifications,
35 designs and estimates of costs for the construction and equipment of
36 projects for participating **【colleges】** institutions under the
37 provisions of this chapter, and from time to time to modify such
38 plans, specifications, designs or estimates;
- 39 (j) By contract or contracts or by its own employees to
40 construct, acquire, reconstruct, rehabilitate and improve, and
41 furnish and equip, projects for participating **【colleges】** institutions;
42 however, in any contract or contracts undertaken by the authority
43 for the construction, reconstruction, rehabilitation or improvement
44 of a project for any public 【college project】 institution of higher
45 education where the cost of such work will exceed \$25,000, the
46 contracting agent shall advertise for and receive in the manner
47 provided by law:

1 (1) separate bids for branches of work in the following
2 categories:

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

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

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

35 (k) To determine the location and character of any project to be
36 undertaken pursuant to the provisions of this chapter, and to
37 construct, reconstruct, maintain, repair, operate, lease, as lessee or
38 lessor, and regulate the same; to enter into contracts for any or all
39 such purposes; to enter into contracts for the management and
40 operation of a project, and to designate a participating **[college]**
41 institution as its agent to determine the location and character of a
42 project undertaken by such participating **[college]** institution under
43 the provisions of this chapter and, as the agent of the authority, to
44 construct, reconstruct, maintain, repair, operate, lease, as lessee or
45 lessor, and regulate the same, and, as agent of the authority, to enter
46 into contracts for any and all such purposes including contracts for
47 the management and operation of such project;

- 1 (l) To establish rules and regulations for the use of a project or
2 any portion thereof and to designate a participating **【college】**
3 institution as its agent to establish rules and regulations for the use
4 of a project undertaken by such participating **【college】** institution;
- 5 (m) Generally to fix and revise from time to time and to charge
6 and collect rates, rents, fees and other charges for the use of and for
7 the services furnished or to be furnished by a project or any portion
8 thereof and to contract with holders of its bonds and with any other
9 person, party, association, corporation or other body, public or
10 private, in respect thereof;
- 11 (n) To enter into any and all agreements or contracts, execute
12 any and all instruments, and do and perform any and all acts or
13 things necessary, convenient or desirable for the purposes of the
14 authority or to carry out any power expressly given in this chapter;
- 15 (o) To invest any moneys held in reserve or sinking funds, or
16 any moneys not required for immediate use or disbursement, at the
17 discretion of the authority, in such obligations as are authorized by
18 law for the investment of trust funds in the custody of the State
19 Treasurer;
- 20 (p) To enter into any lease relating to higher education
21 equipment with a public or private institution of higher education
22 pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-40 et
23 al.);
- 24 (q) To enter into loan agreements with any county, to hold
25 bonds or notes of the county evidencing those loans, and to issue
26 bonds or notes of the authority to finance county college capital
27 projects pursuant to the provisions of the "County College Capital
28 Projects Fund Act," P.L.1997, c.360 (C.18A:72A-12.2 et seq.);
- 29 (r) To issue bonds and notes and other obligations of the
30 authority under the direction of law for the purpose of providing
31 financial assistance for the installation of fire prevention and safety
32 systems in dormitories;
- 33 (s) To consider and review public-private partnership
34 agreements for certain building projects entered into by a private
35 entity and the New Jersey Institute of Technology pursuant to
36 section 4 of P.L.2018, c.90 (C.18A:64E-33) or by a private entity
37 and a State or county college pursuant to section 43 of P.L. 2009, c.
38 90 (C.18A:64-85), for the purposes set forth therein and to provide
39 to a private entity that is a party to an agreement any tax exempt
40 private activity bond financing, including but not limited to a loan
41 of funds under terms and conditions established by the authority in
42 consultation with the State Treasurer and as otherwise authorized
43 under State or federal law;
- 44 (t) To enter into loan agreements with any public institution of
45 higher education or any affiliate of a public institution of higher
46 education, to hold bonds or notes of the public institution of higher
47 education evidencing these loans, and to issue bonds or notes of the

1 authority in connection with the financing or refinancing of a
2 project.

3 (cf: P.L2018, c.90, s.6)

4

5 5. N.J.S.18A:72A-8 is amended to read as follows:

6 18A:72A-8. (a) The authority is authorized from time to time to
7 issue its negotiable bonds for any corporate purpose. In
8 anticipation of the sale of such bonds the authority may issue
9 negotiable bond anticipation notes and may renew the same from
10 time to time, but the maximum maturity of any such note, including
11 renewals thereof, shall not exceed five years from the date of issue
12 of the original note. Such notes shall be paid from any revenues or
13 other moneys of the authority available therefor and not otherwise
14 pledged, or from the proceeds of sale of the bonds of the authority
15 in anticipation of which they were issued. The notes shall be issued
16 in the same manner as the bonds. Such notes and the resolution or
17 resolutions authorizing the same may contain any provisions,
18 conditions or limitations which a bond resolution of the authority
19 may contain.

20 (b) Except as may otherwise be expressly provided by the
21 authority, every issue of its bonds or notes shall be general
22 obligations of the authority payable from any revenues or moneys
23 of the authority, subject only to any agreements with the holders of
24 particular bonds or notes pledging any particular revenues or
25 moneys. Notwithstanding that bonds and notes may be payable
26 from a special fund, they shall be fully negotiable within the
27 meaning of Title 12A, the Uniform Commercial Code, of the New
28 Jersey Statutes, subject only to the provisions of the bonds and
29 notes for registration.

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

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

- 1 (i) pledging all or any part of the revenues of a project or any
2 revenue producing contract or contracts made by the authority with
3 any individual, partnership, corporation or association or other
4 body, public or private, to secure the payment of the bonds or of
5 any particular issue of bonds, subject to such agreements with
6 bondholders as may then exist;
- 7 (ii) the rentals, fees and other charges to be charged, and the
8 amounts to be raised in each year thereby, and the use and
9 disposition of the revenues;
- 10 (iii) the setting aside of reserves or sinking funds, and the
11 regulation and disposition thereof;
- 12 (iv) limitations on the right of the authority or its agent to restrict
13 and regulate the use of a project;
- 14 (v) limitations on the purpose to which the proceeds of sale of
15 any issue of bonds then or thereafter to be issued may be applied
16 and pledging such proceeds to secure the payment of the bonds or
17 any issue of the bonds;
- 18 (vi) limitations on the issuance of additional bonds, the terms
19 upon which additional bonds may be issued and secured and the
20 refunding of outstanding bonds;
- 21 (vii) the procedure, if any, by which the terms of any contract
22 with bondholders may be amended or abrogated, the amount of
23 bonds the holders of which must consent thereto, and the manner in
24 which such consent may be given;
- 25 (viii) limitations on the amount of moneys derived from a
26 project to be expended for operating, administrative or other
27 expenses of the authority; and
- 28 (ix) defining the acts or omissions to act which shall constitute a
29 default in the duties of the authority to holders of its obligations and
30 providing the rights and remedies of such holders in the event of a
31 default.
- 32 (e) Neither the members of the authority nor any person
33 executing the bonds or notes shall be liable personally on the bonds
34 or notes or be subject to any personal liability or accountability by
35 reason of the issuance thereof.
- 36 (f) The authority shall have power out of any funds available
37 therefor to purchase its bonds or notes. The authority may hold,
38 pledge, cancel or resell such bonds, subject to and in accordance
39 with agreements with bondholders.
- 40 (g) In connection with any bonds or refunding bonds issued
41 pursuant to this section, the authority may also enter into any
42 revolving credit agreement; agreement establishing a line of credit
43 or letter of credit; reimbursement agreement; bank loan agreement;
44 interest rate exchange agreement; currency exchange agreement;
45 interest rate floor or cap, option, put or call to hedge payment,
46 currency, rate, spread or similar exposure, or similar agreement;
47 float agreement; forward agreement; insurance contract; surety
48 bond; commitment to purchase or sell bonds; purchase or sale

1 agreement; or commitment or other contract or agreement and other
2 security agreement approved by the authority.

3 (cf: P.L.1999, c.217, s.12)

4

5 6. N.J.S.18A:72A-11 is amended to read as follows:

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

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

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

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

24 Such rates, rents, fees and charges shall not be subject to
25 supervision or regulation by any department, commission, board,
26 body, bureau or agency of this state other than the authority. A
27 sufficient amount of the revenues derived in respect of a project,
28 except such part of such revenues as may be necessary to pay the
29 cost of maintenance, repair and operation and to provide reserves
30 for renewals, replacements, extensions, enlargements and
31 improvements as may be provided for in the resolution authorizing
32 the issuance of any bonds of the authority or in the trust agreement
33 securing the same, shall be set aside at such regular intervals as may
34 be provided in such resolution or trust agreement in a sinking or
35 other similar fund which is hereby pledged to, and charged with, the
36 payment of the principal of and the interest on such bonds as the
37 same shall become due, and the redemption price or the purchase
38 price of bonds retired by call or purchase as therein provided. Such
39 pledge shall be valid and binding from the time when the pledge is
40 made; the rates, rents, fees and charges and other revenues or other
41 moneys so pledged and thereafter received by the authority shall
42 immediately be subject to the lien of such pledge without any
43 physical delivery thereof or further act, and the lien of any such
44 pledge shall be valid and binding as against all parties having
45 claims of any kind in tort, contract or otherwise against the
46 authority, irrespective of whether such parties have notice thereof.
47 Neither the resolution nor any trust agreement by which a pledge is
48 created need be filed or recorded except in the records of the

1 authority. The use and disposition of moneys to the credit of such
2 sinking or other similar fund shall be subject to the provisions of
3 the resolution authorizing the issuance of such bonds or of such
4 trust agreement. Except as may otherwise be provided in such
5 resolution or such trust agreement, such sinking or other similar
6 fund shall be a fund for all such bonds issued to finance projects at
7 a participating **[college]** institution without distinction or priority
8 of one over another; provided the authority in any such resolution
9 or trust agreement may provide that such sinking or other similar
10 fund shall be the fund for a particular project at a participating
11 **[college]** institution and for the bonds issued to finance a particular
12 project and may, additionally, permit and provide for the issuance
13 of bonds having a subordinate lien in respect of the security herein
14 authorized to other bonds of the authority and, in such case, the
15 authority may create separate sinking or other similar funds in
16 respect of such subordinate lien bonds.

17 (cf: N.J.S.18A:72A-11)

18

19 7. Section 1 of P.L.1980, c.31 (C.18A:72A-11.1) is amended to
20 read as follows:

21 1. In addition to other powers and duties which have been
22 granted to the authority, whenever any **[public or private college]**
23 participating institution has constructed or acquired any work or
24 improvement or other project which would otherwise qualify under
25 this act except for the fact that such construction **[or]**, acquisition,
26 or project was undertaken and financed without assistance from the
27 authority, the authority may purchase such work or improvement,
28 and lease the same to such **[college]** participating institution, or
29 may lend funds to such **[college]** participating institution for the
30 purpose of enabling the latter to retire obligations incurred for such
31 construction or acquisition; except that the amount of any such
32 price or loan shall not exceed the original project cost and
33 administrative costs, reserves, and other costs associated with the
34 retirement of such obligations. All powers, rights, obligations and
35 duties granted to or imposed upon the authority, **[colleges]**
36 participating institutions, State departments and agencies or others
37 by this chapter in respect to projects shall apply to the same extent
38 with respect to transactions pursuant to this section; except that any
39 action otherwise required to be taken at a particular time in the
40 progression of a project may, where the circumstances are so
41 required in connection with a transaction under this section, be
42 taken with the same effect as if taken at that particular time.

43 (cf: P.L.2009, c.308, s.31)

44

45 8. N.J.S.18A:72A-19 is amended to read as follows:

46 18A:72A-19. The state of New Jersey does pledge to and agree
47 with the holders of the bonds, notes and other obligations issued

1 pursuant to authority contained in this chapter, and with those
2 parties who may enter into contracts with the authority pursuant to
3 the provisions of this chapter, that the state will not limit, alter or
4 restrict the rights hereby vested in the authority and the
5 participating **【colleges】** institutions to maintain, construct,
6 reconstruct and operate any project as defined in this chapter or to
7 establish and collect such rents, fees, receipts or other charges as
8 may be convenient or necessary to produce sufficient revenues to
9 meet the expenses of maintenance and operation thereof and to
10 fulfill the terms of any agreements made with the holders of bonds
11 authorized by this chapter, and with the parties who may enter into
12 contracts with the authority pursuant to the provisions of this
13 chapter, or in any way impair the rights or remedies of the holders
14 of such bonds or such parties until the bonds, together with interest
15 thereon, are fully paid and discharged and such contracts are fully
16 performed on the part of the authority. The authority as a public
17 body corporate and politic shall have the right to include the pledge
18 herein made in its bonds and contracts.

19 (cf: N.J.S.18A:72A-19)

20

21 9. N.J.S.18A:72A-26 is amended to read as follows:

22 18A:72A-26. In order to provide new dormitories and to enable
23 the construction and financing thereof, to refinance indebtedness
24 hereafter created by the authority for the purpose of providing a
25 dormitory or dormitories or additions or improvements thereto, or
26 for any one or more of said purposes, but for no other purpose
27 unless authorized by law, each of the following bodies shall have
28 the powers hereafter enumerated to be exercised upon such terms
29 and conditions, including the fixing of any consideration or rental to
30 be paid or received, as it shall determine by resolution as to such
31 property and each shall be subject to the performance of the duties
32 hereafter enumerated, that is to say, the treasurer as to such as are
33 located on land owned by the State or by the authority, the board of
34 governors of the university, the board of trustees of the New Jersey
35 Institute of Technology, Rowan University, or Montclair State
36 University, the board of trustees of a State college **【or】**, the board
37 of trustees of a county college, or the governing body of an affiliate
38 of a public institution of higher education as to such as are located
39 on land owned by the university or by the particular **【college】**
40 public institution of higher education respectively, namely:

41 a. The power to sell and to convey to the authority title in fee
42 simple in any such land and any existing dormitories thereon owned
43 by the State or owned by the board of trustees of a county college or
44 the power to sell and to convey to the authority such title as the
45 university or the college respectively may have in any such land and
46 any existing dormitories thereon.

1 b. The power to lease to the authority or any other entity which
2 is a participating institution any land and any existing dormitories
3 thereon so owned for a term or terms not exceeding 50 years each.

4 c. The power to lease or sublease from the authority or any
5 other entity which is a participating institution, and to make
6 available, any such land and existing dormitories conveyed or
7 leased to the authority or entity under subsections a. and b. of this
8 section, and any new dormitories erected upon such land or upon
9 any other land owned by the authority or entity, any rentals to be
10 payable, as to the university or as to any such college from
11 available funds other than moneys appropriated to it by the State.

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

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

25 (cf: P.L.2017, c.178, s.61)

26
27 10. N.J.S.18A:72A-27.1 is amended to read as follows:

28 18A:72A-27.1. In addition to the powers and duties with respect
29 to dormitories given under N.J.S.18A:72A-26 and **【18A:72A-27】**
30 N.J.S.18A:72A-27 the treasurer, the board of governors of the
31 university, the board of trustees of the New Jersey Institute of
32 Technology, the board of trustees of a State college, the board of
33 trustees of Rowan University, the board of trustees of Montclair
34 State University, **【and】** the board of trustees of a county college,
35 and the governing body of an affiliate of a public institution of
36 higher education shall also have the same power and be subject to
37 the same duties in relation to any conveyance, lease or sublease
38 made under subsection a., b., or c. of **【section 18A:72A-26】**
39 N.J.S.18A:72A-26 or loan agreement under subsection e. of
40 N.J.S.18A:72A-26, with respect to revenue producing facilities; that
41 is to say, structures or facilities which produce revenues sufficient
42 to pay the rentals due and to become due under any lease or
43 sublease made under subsection c. of **【section 18A:72A-26】**
44 N.J.S.18A:72A-26 or loan payments due and to become due under
45 any loan agreement made under subsection e. of N.J.S.18A:72A-26
46 including, without limitation, student unions and parking facilities.

47 (cf: P.L.2017, c.178, s.62)

1 11. Section 1 of P.L.1988, c.159 (C.18A:72A-27.2) is amended
2 to read as follows:

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

8 a. To enter into any conveyance, lease **[or]**, sublease, or loan
9 agreement of the type provided for in N.J.S. 18A:72A-26,
10 **[18A:72A-27 and 18A:72A-27.1]** N.J.S.18A:72A-27, and
11 N.J.S.18A:72A-27.1 with the authority, with respect to the
12 acquisition, construction and financing of any educational facility;

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

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

27 (cf: P.L.1988, c. 159, s. 1)

28

29 12. Section 2 of P.L.1988, c.159 (C.18A:72A-27.3) is amended
30 to read as follows:

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

45 (cf: P.L.1999, c.217, s.14)

46

47 13. N.J.S.18A:72A-29 is amended to read as follows:

1 18A:72A-29. All lands and other assets real or personal
2 presently titled in the name of the State Board of Higher Education
3 or the State Department of Higher Education, which are occupied
4 by a public institution of higher education shall be titled in the
5 name of the State of New Jersey only. All conveyances, leases and
6 subleases, pursuant to this chapter shall be made, executed and
7 delivered in the name of the State and shall be signed by the State
8 Treasurer and sealed with the seal of the State.

9 To the extent not otherwise expressly provided under existing
10 law, all powers and duties conferred upon the university or an
11 affiliate pursuant to this chapter shall be exercised and performed
12 by resolution of its governing board **[of governors]** and all powers
13 and duties conferred upon any of said colleges pursuant to this
14 chapter shall be exercised and performed by resolution of its board
15 of trustees.

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

25 (cf: P.L.1999, c.46, s.50)

26

27 14. N.J.S.18A:72A-30 is amended to read as follows:

28 In addition to the foregoing powers, the authority with respect to
29 private colleges, shall have power:

30 (a) upon application of the **[participating]** private college to
31 construct, acquire or otherwise provide projects for the use and
32 benefit of the **[participating]** private college and the students,
33 faculty and staff of such **[participating]** private college. The
34 **[participating]** private college for which such a project is
35 undertaken by the authority shall, if applicable, approve the plans
36 and specifications and location of such project;

37 (b) to operate and manage any project provided pursuant to this
38 section, or the authority may lease any such project to the
39 **[participating]** private college for which such project is provided.
40 At such time as the liabilities of the authority incurred for any such
41 project have been met and the bonds of the authority issued therefor
42 have been paid, or such liabilities and bonds have otherwise been
43 discharged, the authority shall transfer title to all the real and
44 personal property of such project vested in the authority, to the
45 **[participating]** private college in connection with which such
46 project is then being operated, or to which such project is then
47 leased; provided, however, that if at any time prior thereto such

1 **【participating】** private college ceases to offer educational facilities,
2 then such title shall vest in the state of New Jersey.

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

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

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

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

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

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

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

29 (vii) defining the acts or omissions to act which shall constitute a
30 default in the obligations and duties of the lessee, and providing for
31 the rights and remedies of the authority and of its bondholders in
32 the event of such default;

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

36 (cf: N.J.S.18A:72A-30)

37

38 15. N.J.S.18A:72A-31 is amended to read as follows:

39 The authority also shall have power:

40 (a) to make loans to any **【private college】** participating
41 institution for the construction or acquisition of projects in
42 accordance with a loan agreement and plans and specifications, as
43 appropriate, approved by the authority. No such loan shall exceed
44 the total cost of such project and the equipment therefor as
45 determined by the authority. Each such loan shall be premised upon
46 an agreement between the authority and the **【private college】**
47 participating institution as to payment, security, maturity,
48 redemption, interest and other appropriate matters.

1 (b) to make loans to any **【private college】** participating
2 institution to refund existing bonds, mortgages or advances given or
3 made by such **【private college】** participating institution for the
4 construction of projects to the extent that this will enable such
5 **【private college】** participating institution to offer greater security
6 for loans for new project construction or acquisition.

7 (cf: N.J.S.18A:72A-31)

8

9 16. N.J.S.18A:72A-32 is amended to read as follows:

10 For the purpose of obtaining and securing loans under **【section**
11 **18A:72A-31】** N.J.S.18A:72A-31 every **【private college】**
12 participating institution shall, notwithstanding the provisions of any
13 other law, have power to mortgage and pledge any of its real or
14 personal property, and to pledge any of its income from whatever
15 source to repay the principal of and interest on any loan made to it
16 by the authority or to pay the interest on and principal and
17 redemption premium, if any, of any note, bond or other evidence of
18 indebtedness evidencing the debt created by any such loan;
19 provided that the foregoing shall not be construed to authorize
20 actions in conflict with specific legislation, trusts, endowment, or
21 other agreements relating to specific properties or funds.

22 (cf: N.J.S.18A:72A-32)

23

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

36

37 18. This act shall take effect immediately.

38

39

40 STATEMENT

41

42 This bill revises chapter 72A of Title 18A of the New Jersey
43 Statutes concerning the New Jersey Educational Facilities
44 Authority. The bill makes several changes to the definitions in
45 chapter 72A, including:

46

- Providing that “affiliate” means a person that is directly, or
47 indirectly through one or more intermediaries, controls, or is

- 1 controlled by, or is under common control with, a private
2 college, a private institution of higher education, a public
3 institution of higher education, a school, or a university, or a
4 nonprofit organization exempt from federal tax under section
5 501(c)(3) of the Internal Revenue Code designated for the
6 purpose of supporting an institution of higher education;
- 7 • Providing that “control” means the power of the authority to
8 manage, direct, superintend, restrict, regulate, govern,
9 administer, or oversee;
 - 10 • Changing the definition of a participating institution to mean
11 a private college, a private institution of higher education, a
12 public institution of higher education, a school, a university,
13 or an affiliate, which, pursuant to the provisions of this
14 chapter, participates with the authority in undertaking the
15 financing and construction or acquisition of a project;
 - 16 • Providing that “project” means (1) a dormitory or an
17 educational facility or any combination thereof; (2) a county
18 college capital project; or (3) the provision of working
19 capital; and
 - 20 • Adding a definition of “working capital” to mean, with
21 respect to any participating institution, funds to be used in,
22 or reserved for, the operation of the participating institution.

23 The bill provides that, when the term of a lease agreement with a
24 participating institution has expired or the property acquired is no
25 longer subject to any lease agreement and no bond proceeds remain
26 outstanding with respect to the property, and the participating
27 institution has complied with all applicable terms of the lease
28 agreement and any other agreement for any other authority bonds
29 with respect to the property, the authority or its designee may
30 transfer all of its rights, title and interest in and to the property to
31 the participating institution who entered into the lease agreement
32 with the authority.

33 Under the bill, the authority has the power to enter into loan
34 agreements with any public institution of higher education or any
35 affiliate of a public institution of higher education, to hold bonds or
36 notes of the public institution of higher education evidencing these
37 loans, and to issue bonds or notes of the authority in connection
38 with the financing or refinancing of a project.

39 The bill also provides that the board of governors of Rutgers
40 University, the board of trustees of the New Jersey Institute of
41 Technology, Rowan University, or Montclair State University, the
42 board of trustees of a State college, the board of trustees of a county
43 college, or the governing body of an affiliate of a public institution
44 of higher education is authorized to enter into loan agreements with
45 the authority in connection with the financing or refinancing of a
46 project upon terms and conditions deemed necessary to effect the
47 financing by the authority and the participating public institution of
48 higher education or affiliate thereof.