

SENATE, No. 4020

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 8, 2021

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Senator SANDRA B. CUNNINGHAM

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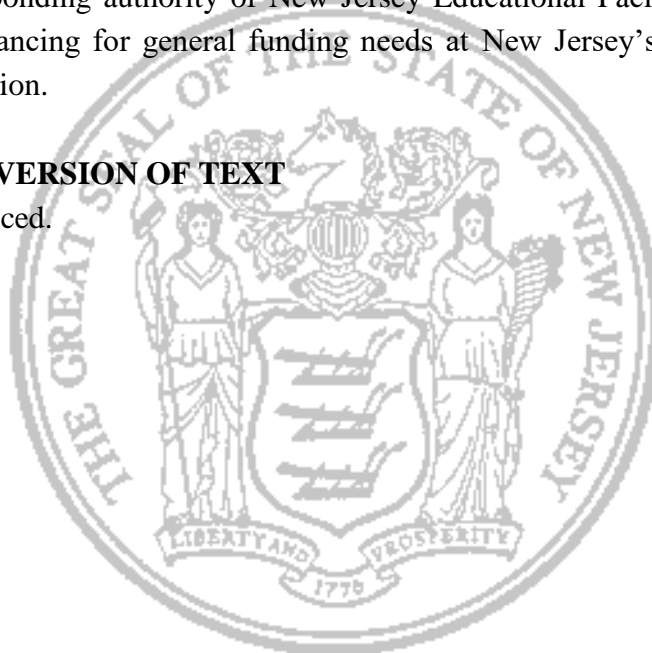
Assemblyman Tully and Assemblywoman Swain

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

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

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

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

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

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

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

1 and upon his approval shall be filed in the Office of the Secretary of
2 State prior to the issuance of any bonds by the authority. At all
3 times after the issuance of any bonds by the authority the officer of
4 the authority and each member charged with the handling of the
5 authority's moneys shall maintain such surety bonds in full force
6 and effect. All costs of such surety bonds shall be borne by the
7 authority.

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

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

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

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

42

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

44 18A:72A-5. The authority shall have power:

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

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

1 of a project for any public **【college project】** institution of higher
2 education where the cost of such work will exceed \$25,000, the
3 contracting agent shall advertise for and receive in the manner
4 provided by law:

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

7 (a) the plumbing and gas fitting work;

8 (b) the refrigeration, heating and ventilating systems and
9 equipment;

10 (c) the electrical work, including any electrical power plants,
11 tele-data, fire alarm, or security system;

12 (d) the structural steel and ornamental iron work;

13 (e) general construction, which shall include all other work and
14 materials required for the completion of the project, or

15 (2) bids for all work and materials required to complete the
16 entire project if awarded as a single contract; or

17 (3) both (1) and (2) above.

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

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

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

1 construct, reconstruct, maintain, repair, operate, lease, as lessee or
2 lessor, and regulate the same, and, as agent of the authority, to enter
3 into contracts for any and all such purposes including contracts for
4 the management and operation of such project;

5 (l) To establish rules and regulations for the use of a project or
6 any portion thereof and to designate a participating **[college]**
7 institution as its agent to establish rules and regulations for the use
8 of a project undertaken by such participating **[college]** institution;

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

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

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

24 (p) To enter into any lease relating to higher education
25 equipment with a public or private institution of higher education
26 pursuant to the provisions of P.L.1993, c.136 (C.18A:72A-
27 40 et al.);

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

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

37 (s) To consider and review public-private partnership
38 agreements for certain building projects entered into by a private
39 entity and the New Jersey Institute of Technology pursuant to
40 section 4 of P.L.2018, c.90 (C.18A:64E-33) or by a private entity
41 and a State or county college pursuant to section 43 of P.L. 2009, c.
42 90 (C.18A:64-85), for the purposes set forth therein and to provide
43 to a private entity that is a party to an agreement any tax exempt
44 private activity bond financing, including but not limited to a loan
45 of funds under terms and conditions established by the authority in
46 consultation with the State Treasurer and as otherwise authorized
47 under State or federal law;

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

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

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

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

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

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

1 authority may issue interim receipts or certificates which shall be
2 exchanged for such definitive bonds.

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

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

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

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

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

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

23 (vi) limitations on the issuance of additional bonds, the terms
24 upon which additional bonds may be issued and secured and the
25 refunding of outstanding bonds;

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

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

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

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

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

45 (g) In connection with any bonds or refunding bonds issued
46 pursuant to this section, the authority may also enter into any
47 revolving credit agreement; agreement establishing a line of credit

1 or letter of credit; reimbursement agreement; bank loan agreement;
2 interest rate exchange agreement; currency exchange agreement;
3 interest rate floor or cap, option, put or call to hedge payment,
4 currency, rate, spread or similar exposure, or similar agreement;
5 float agreement; forward agreement; insurance contract; surety
6 bond; commitment to purchase or sell bonds; purchase or sale
7 agreement; or commitment or other contract or agreement and other
8 security agreement approved by the authority.

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

10

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

12 18A:72A-11. The authority is authorized to fix, revise, charge
13 and collect rates, rents, fees and charges for the use of and for the
14 services furnished or to be furnished by each project and to contract
15 with any person, partnership, association or corporation, or other
16 body, public or private, in respect thereof. Such rates, rents, fees
17 and charges shall be fixed and adjusted in respect of the aggregate
18 of rents, rates, fees and charges from such project so as to provide
19 funds sufficient with other revenues or moneys, if any:

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

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

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

30 Such rates, rents, fees and charges shall not be subject to
31 supervision or regulation by any department, commission, board,
32 body, bureau or agency of this state other than the authority. A
33 sufficient amount of the revenues derived in respect of a project,
34 except such part of such revenues as may be necessary to pay the
35 cost of maintenance, repair and operation and to provide reserves
36 for renewals, replacements, extensions, enlargements and
37 improvements as may be provided for in the resolution authorizing
38 the issuance of any bonds of the authority or in the trust agreement
39 securing the same, shall be set aside at such regular intervals as may
40 be provided in such resolution or trust agreement in a sinking or
41 other similar fund which is hereby pledged to, and charged with, the
42 payment of the principal of and the interest on such bonds as the
43 same shall become due, and the redemption price or the purchase
44 price of bonds retired by call or purchase as therein provided. Such
45 pledge shall be valid and binding from the time when the pledge is
46 made; the rates, rents, fees and charges and other revenues or other
47 moneys so pledged and thereafter received by the authority shall

1 immediately be subject to the lien of such pledge without any
2 physical delivery thereof or further act, and the lien of any such
3 pledge shall be valid and binding as against all parties having
4 claims of any kind in tort, contract or otherwise against the
5 authority, irrespective of whether such parties have notice thereof.
6 Neither the resolution nor any trust agreement by which a pledge is
7 created need be filed or recorded except in the records of the
8 authority. The use and disposition of moneys to the credit of such
9 sinking or other similar fund shall be subject to the provisions of
10 the resolution authorizing the issuance of such bonds or of such
11 trust agreement. Except as may otherwise be provided in such
12 resolution or such trust agreement, such sinking or other similar
13 fund shall be a fund for all such bonds issued to finance projects at
14 a participating **【college】** institution without distinction or priority
15 of one over another; provided the authority in any such resolution
16 or trust agreement may provide that such sinking or other similar
17 fund shall be the fund for a particular project at a participating
18 **【college】** institution and for the bonds issued to finance a particular
19 project and may, additionally, permit and provide for the issuance
20 of bonds having a subordinate lien in respect of the security herein
21 authorized to other bonds of the authority and, in such case, the
22 authority may create separate sinking or other similar funds in
23 respect of such subordinate lien bonds.

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

25

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

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

1 required in connection with a transaction under this section, be
2 taken with the same effect as if taken at that particular time.

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

4

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

6 18A:72A-19. The state of New Jersey does pledge to and agree
7 with the holders of the bonds, notes and other obligations issued
8 pursuant to authority contained in this chapter, and with those
9 parties who may enter into contracts with the authority pursuant to
10 the provisions of this chapter, that the state will not limit, alter or
11 restrict the rights hereby vested in the authority and the
12 participating **【colleges】** institutions to maintain, construct,
13 reconstruct and operate any project as defined in this chapter or to
14 establish and collect such rents, fees, receipts or other charges as
15 may be convenient or necessary to produce sufficient revenues to
16 meet the expenses of maintenance and operation thereof and to
17 fulfill the terms of any agreements made with the holders of bonds
18 authorized by this chapter, and with the parties who may enter into
19 contracts with the authority pursuant to the provisions of this
20 chapter, or in any way impair the rights or remedies of the holders
21 of such bonds or such parties until the bonds, together with interest
22 thereon, are fully paid and discharged and such contracts are fully
23 performed on the part of the authority. The authority as a public
24 body corporate and politic shall have the right to include the pledge
25 herein made in its bonds and contracts.

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

27

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

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

1 a. The power to sell and to convey to the authority title in fee
2 simple in any such land and any existing dormitories thereon owned
3 by the State or owned by the board of trustees of a county college or
4 the power to sell and to convey to the authority such title as the
5 university or the college respectively may have in any such land and
6 any existing dormitories thereon.

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

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

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

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

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

32

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

34 18A:72A-27.1. In addition to the powers and duties with
35 respect to dormitories given under N.J.S.18A:72A-26 and
36 **【18A:72A-27】** N.J.S.18A:72A-27 the treasurer, the board of
37 governors of the university, the board of trustees of the New Jersey
38 Institute of Technology, the board of trustees of a State college, the
39 board of trustees of Rowan University, the board of trustees of
40 Montclair State University, **【and】** the board of trustees of a county
41 college, and the governing body of an affiliate of a public
42 institution of higher education shall also have the same power and
43 be subject to the same duties in relation to any conveyance, lease or
44 sublease made under subsection a., b., or c. of **【section 18A:72A-**
45 **26】** N.J.S.18A:72A-26 or loan agreement under subsection e. of
46 N.J.S.18A:72A-26, with respect to revenue producing facilities; that
47 is to say, structures or facilities which produce revenues sufficient

1 to pay the rentals due and to become due under any lease or
2 sublease made under subsection c. of **section 18A:72A-26**
3 N.J.S.18A:72A-26 or loan payments due and to become due under
4 any loan agreement made under subsection e. of N.J.S.18A:72A-26
5 including, without limitation, student unions and parking facilities.
6 (cf: P.L.2017, c.178, s.62)

7
8 11. Section 1 of P.L.1988, c.159 (C.18A:72A-27.2) is amended
9 to read as follows:

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

15 a. To enter into any conveyance, lease **or**, sublease, or loan
16 agreement of the type provided for in N.J.S. 18A:72A-26,
17 **18A:72A-27 and 18A:72A-27.1** N.J.S.18A:72A-27, and
18 N.J.S.18A:72A-27.1 with the authority, with respect to the
19 acquisition, construction and financing of any educational facility;

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

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

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

35
36 12. Section 2 of P.L.1988, c.159 (C.18A:72A-27.3) is amended
37 to read as follows:

38 2. The board of trustees of the public institution of higher
39 education shall submit a copy of a resolution approving any non-
40 revenue producing facility project to the President of the Senate and
41 the Speaker of the General Assembly and shall submit
42 informational copies of the proposal to the members of the Senate
43 Budget and Appropriations Committee and the Assembly
44 Appropriations Committee and to the **Commission on** Secretary
45 of Higher Education. The submission shall include all appropriate
46 supporting information including, but not limited to, a description
47 of the project, its impact, cost and construction schedule, and a

1 detailed explanation of the sources of revenue which will be
2 dedicated to the financing of the project. If the Legislature does not
3 disapprove the proposal by the adoption of a concurrent resolution
4 within 45 days, the proposal shall be deemed to be approved.
5 (cf: P.L.1999, c.217, s.14)

6

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

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

16 To the extent not otherwise expressly provided under existing
17 law, all powers and duties conferred upon the university or an
18 affiliate pursuant to this chapter shall be exercised and performed
19 by resolution of its governing board **[of governors]** and all powers
20 and duties conferred upon any of said colleges pursuant to this
21 chapter shall be exercised and performed by resolution of its board
22 of trustees.

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

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

33

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

35 18A:72A-30. In addition to the foregoing powers, the authority
36 with respect to private colleges, shall have power:

37 (a) upon application of the **[participating]** private college to
38 construct, acquire or otherwise provide projects for the use and
39 benefit of the **[participating]** private college and the students,
40 faculty and staff of such **[participating]** private college. The
41 **[participating]** private college for which such a project is
42 undertaken by the authority shall, if applicable, approve the plans
43 and specifications and location of such project;

44 (b) to operate and manage any project provided pursuant to this
45 section, or the authority may lease any such project to the
46 **[participating]** private college for which such project is provided.
47 At such time as the liabilities of the authority incurred for any such

1 project have been met and the bonds of the authority issued therefor
2 have been paid, or such liabilities and bonds have otherwise been
3 discharged, the authority shall transfer title to all the real and
4 personal property of such project vested in the authority, to the
5 **【participating】 private** college in connection with which such
6 project is then being operated, or to which such project is then
7 leased; provided, however, that if at any time prior thereto such
8 **【participating】 private** college ceases to offer educational facilities,
9 then such title shall vest in the state of New Jersey.

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

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

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

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

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

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

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

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

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

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

44

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

46 18A:72A-31. The authority also shall have power:

1 (a) to make loans to any **【private college】** participating
2 institution for the construction or acquisition of projects in
3 accordance with a loan agreement and plans and specifications, as
4 appropriate, approved by the authority. No such loan shall exceed
5 the total cost of such project and the equipment therefor as
6 determined by the authority. Each such loan shall be premised upon
7 an agreement between the authority and the **【private college】**
8 participating institution as to payment, security, maturity,
9 redemption, interest and other appropriate matters.

10 (b) to make loans to any **【private college】** participating
11 institution to refund existing bonds, mortgages or advances given or
12 made by such **【private college】** participating institution for the
13 construction of projects to the extent that this will enable such
14 **【private college】** participating institution to offer greater security
15 for loans for new project construction or acquisition.

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

17

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

19 18A:72A-32. For the purpose of obtaining and securing loans
20 under **【section 18A:72A-31】** N.J.S.18A:72A-31 every **【private**
21 **college】** participating institution shall, notwithstanding the
22 provisions of any other law, have power to mortgage and pledge
23 any of its real or personal property, and to pledge any of its income
24 from whatever source to repay the principal of and interest on any
25 loan made to it by the authority or to pay the interest on and
26 principal and redemption premium, if any, of any note, bond or
27 other evidence of indebtedness evidencing the debt created by any
28 such loan; provided that the foregoing shall not be construed to
29 authorize actions in conflict with specific legislation, trusts,
30 endowment, or other agreements relating to specific properties or
31 funds.

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

33

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

46

47 18. This act shall take effect immediately.

STATEMENT

1
2
3 This bill revises chapter 72A of Title 18A of the New Jersey
4 Statutes concerning the New Jersey Educational Facilities
5 Authority. The bill makes several changes to the definitions in
6 chapter 72A, including:

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

31 The bill provides that, when the term of a lease agreement with a
32 participating institution has expired or the property acquired is no
33 longer subject to any lease agreement and no bond proceeds remain
34 outstanding with respect to the property, and the participating
35 institution has complied with all applicable terms of the lease
36 agreement and any other agreement for any other authority bonds
37 with respect to the property, the authority or its designee may
38 transfer all of its rights, title and interest in and to the property to
39 the participating institution who entered into the lease agreement
40 with the authority.

41 Under the bill, the authority has the power to enter into loan
42 agreements with any public institution of higher education or any
43 affiliate of a public institution of higher education, to hold bonds or
44 notes of the public institution of higher education evidencing these
45 loans, and to issue bonds or notes of the authority in connection
46 with the financing or refinancing of a project.

1 The bill also provides that the board of governors of Rutgers
2 University, the board of trustees of the New Jersey Institute of
3 Technology, Rowan University, or Montclair State University, the
4 board of trustees of a State college, the board of trustees of a county
5 college, or the governing body of an affiliate of a public institution
6 of higher education is authorized to enter into loan agreements with
7 the authority in connection with the financing or refinancing of a
8 project upon terms and conditions deemed necessary to effect the
9 financing by the authority and the participating public institution of
10 higher education or affiliate thereof.