

ASSEMBLY, No. 2581

STATE OF NEW JERSEY

INTRODUCED DECEMBER 16, 1996

By Assemblymen DORIA, ROBERTS, and
Assemblywoman Cruz-Perez

1 AN ACT establishing the Educational Facilities Loan and Grant
2 Program, supplementing Title 18A of the New Jersey Statutes and
3 amending N.J.S.18A:72A-1 and N.J.S.18A:72A-5.
4

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

8 1. (New section) This act shall be known and may be cited as the
9 "Educational Facilities Loan and Grant Program of 1996."
10

11 2. (New section) The Legislature finds and declares that in order
12 to provide a thorough and efficient system of education to the school
13 age residents of the State of New Jersey, it is necessary to construct
14 and maintain adequate capital facilities; that it is necessary to provide
15 for the renovation, repair, conversion, alteration and construction of
16 school buildings in the State in order to provide safe and adequate
17 public school buildings and other capital facilities; that the limitations
18 on the availability of school districts to borrow the necessary amounts
19 and to borrow at reasonable rates has impaired the ability of school
20 districts to go forward with financing necessary to complete repairs,
21 renovations, alterations, conversions and construction of school
22 buildings and other capital facilities; that the lack of adequate buildings
23 and facilities has seriously impeded the ability of school districts to
24 provide a thorough and efficient system of education to all pupils as
25 required by the State constitution; and that the State cannot ignore its
26 obligation to remedy conditions which jeopardize the health, safety
27 and general welfare of our school age children.
28

29 3. (New section) As used in this act:

30 "Authority" means the New Jersey Educational Facilities Authority
31 established pursuant to N.J.S.18A:72A-1 et seq.;

32 "Bonds" means bonds, notes or other obligations issued by the
33 authority pursuant to the provisions of this act;

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

Matter underlined thus is new matter.

1 "Commissioner" means the Commissioner of the Department of
2 Education;

3 "Consolidated school district" means a school district established
4 pursuant to N.J.S.18A:8-25 et seq.;

5 "Contract" means the contract between the Treasurer and the
6 authority authorized by Section 5 of this act;

7 "Cost or costs" means the expenses incurred in connection with: the
8 renovation, repair, alteration, construction, or conversion of any
9 school building or any other project; the acquisition and development
10 of any real or personal property for use in connection with any project,
11 including any rights or interest therein; the procurement of
12 engineering, inspection, planning, legal, financial or other professional
13 services; the costs of issuance of bonds issued for the project; the
14 administrative, organizational, operating or other expenses incident to
15 the financing, completion and placing into service of projects;
16 capitalized interest on the bonds for the project; and reimbursement to
17 any fund of the State of moneys which may have been transferred or
18 advanced therefrom to any fund created by this act, or of any moneys
19 which may have been expended therefrom for or in connection with
20 any project;

21 "Department" means the Department of Education;

22 "Loan and grant fund" means the fund established by the authority
23 from which costs of the projects are to be paid, which shall be
24 designated the Educational Facilities Public School Loan and Grant
25 Fund;

26 "Project" means any work which is necessary for the construction,
27 renovation, repair, alteration or conversion of a public school building
28 by the school district;

29 "Public school" means a school under collegiate grade, which is
30 operated by a school district;

31 "School building" means any structure, building, or facility used
32 wholly or in part for academic purposes by a school district;

33 "School district" means any local or regional school district
34 established pursuant to chapter 8 or chapter 13 of Title 18A of the
35 New Jersey Statutes and any county special services or county
36 vocational school districts established pursuant to chapter 46 or
37 chapter 54 of Title 18 of the New Jersey Statutes;

38 "Special needs school district" means a school district as defined
39 pursuant to section 3 of P.L.1990, c.52 (C.18A:7D-3);

40 "Treasurer" means the Treasurer of the State of New Jersey;

41 "Trust fund" means the fund established by the authority from
42 which the payment of bonds is to be made, which shall be designated
43 the Educational Facilities Public School Trust Fund.

44

45 4. (New Section) a. The authority shall establish and maintain the
46 loan and grant fund into which shall be deposited: (1) amounts

1 payable from the proceeds of the bonds; (2) any moneys that shall be
2 received by the authority from the prepayment of principal on loans
3 made from the loan and grant fund; and (3) any other moneys which
4 the authority determines to deposit therein.

5 b. The authority may use the moneys in the loan and grant fund to
6 finance the total costs of any project, in accordance with the criteria
7 set forth in this section, for the purpose of providing loans and grants
8 to school districts, to finance the renovation, repair or other alteration
9 of existing school buildings, the construction of new school buildings
10 or the conversion of existing school buildings to other instructional
11 purposes.

12 c. Upon application by a school district for a loan and grant, the
13 application shall be forwarded to the commissioner and the
14 commissioner is authorized and empowered to determine whether the
15 renovations, repairs, alterations, conversion or construction are for
16 purposes necessary to provide a thorough and efficient system of
17 education in the State. If the commissioner determines that such work
18 is necessary, the commissioner shall certify that the school district is
19 eligible for a loan and grant pursuant to this section to finance the
20 renovation, repair, alteration, conversion or construction described in
21 the application.

22 d. Upon certification, the commissioner shall waive the holding of
23 a referendum or the requirement for approval by a board of school
24 estimate pursuant to subsection (d) of N.J.S.18A:20-4.2 or
25 N.J.S.18A:24-5 et seq., as the case may be, or the requirement for
26 approval of the project by a capital projects control board pursuant to
27 P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as appropriate, and the
28 school district may, upon receiving the certification and waiver, apply
29 to the authority for a loan and grant pursuant to this section. The
30 terms of the loan and the repayment schedule shall be established by
31 the authority. The repayments in the amount of the loan to the
32 authority by the school district shall be treated as net debt service by
33 the school district for school aid purposes. In addition to the amount
34 of taxes determined by the legal voters of the school district at the
35 annual school election, the secretary of the board of education shall
36 certify the amount required for the repayment of the interest and
37 principal of the loan in the same manner required for interest and debt
38 redemption charges pursuant to N.J.S.18A:22-33, and the amount so
39 certified shall be included in the taxes assessed, levied and collected in
40 the municipality or municipalities comprising the school district for
41 such purposes.

42 e. The authority, in consultation with the commissioner shall, in
43 determining whether to grant approval of any loan and grant
44 application pursuant to this section, take into consideration the
45 severity of the need for the particular project, the ability of the school
46 district to begin and complete the project in an expeditious manner,

1 the ability of the school district to proceed with the funding of the
2 balance of the funds for the project, and the extent to which the
3 approval of the project contributes to the equitable distribution of
4 monies in the loan and grant fund.

5 f. The balance of the moneys needed for a project for which an
6 application for a loan and grant is made pursuant to this section may
7 be funded by the school district by: (1) the issuance of bonds, or other
8 borrowing, excluding lease-purchase agreements, pursuant to the
9 provisions of subsection (d) of N.J.S.18A:20-4.2, N.J.S.18A:24-5 et
10 seq., or P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as appropriate;
11 except that the commissioner shall waive the holding of a referendum
12 or the requirement for approval by a board of school estimate pursuant
13 to subsection (d) of N.J.S.18A:20-4.2 or N.J.S.18A:24-5 et seq., as
14 the case may be, or the requirement for approval of the project by a
15 capital projects control board pursuant to P.L.1991, c.139 (C.18A:7A-
16 46.1 et seq.), as appropriate; and (2) any other lawful source.

17 g. Any school district shall be eligible to receive additional loans
18 and grants pursuant to this section even if the district has received a
19 previous loan and grant; provided that the additional loans and grants
20 are in conformity with the selection criteria established pursuant to this
21 section.

22 h. In determining the amount of the loan and the amount of the
23 grant to be provided in connection with an application by a school
24 district, the authority shall apply the following criteria:

25 (1) With respect to a special needs school district, the amount of
26 the approved financial assistance shall be apportioned ninety percent
27 (90%) as a grant and ten percent (10%) as a loan;

28 (2) With respect to a consolidated school district, the amount of
29 approved financial assistance shall be apportioned sixty percent (60%)
30 as a grant and forty percent (40%) as a loan; and

31 (3) With respect to any other school district, the amount of
32 approved financial assistance shall be apportioned twenty-five percent
33 (25%) as a grant and seventy-five percent (75%) as a loan.

34 i. Of the total amount available in the loan and grant fund, not
35 more than fifteen percent (15%) of the funds shall be available for
36 school districts other than special needs school districts and
37 consolidated school districts. In addition, not less than fifty percent
38 (50%) of the total shall be available for special needs school districts
39 and not less than thirty-five percent (35%) shall be available for
40 consolidated school districts.

41 j. The repayment of the principal and interest on the loans, other
42 than prepayments of principal, shall be paid to the authority and shall
43 be deposited in accordance with the provisions of the contract.

44

45 5. (New Section) The authority shall establish and maintain the
46 trust fund to which shall be credited the amount to be paid pursuant to

1 a contract between the treasurer and the authority, which contract
2 shall provide for the payment in each year of the principal of and
3 interest on the bonds; provided, that the payments shall be subject to
4 and dependent upon appropriations being made from time to time by
5 the Legislature.

6
7 6. (New Section) a. Except as may be otherwise expressly
8 provided in this act, the authority may from time to time issue its
9 bonds in any principal amounts as in the judgment of the authority
10 shall be necessary to provide sufficient funds to pay the costs of the
11 projects, including the payment, funding or refunding of the principal
12 of, or interest or redemption premiums on, any bonds, notes or other
13 obligations issued by it, whether the bonds or the interest or
14 redemption premiums thereon to be funded or refunded have or have
15 not become due, the establishment or increase of reserves or other
16 funds to secure or to pay the bonds or interest thereon and all other
17 costs or expenses of the authority incident to and necessary to carry
18 out its purposes and powers under this act.

19 b. Whether or not the bonds of the authority are of a form and
20 character as to be negotiable instruments under the terms of Title 12A
21 of the New Jersey Statutes, the bonds are made negotiable instruments
22 with the meaning of and for the purposes of Title 12A, subject only to
23 the provisions of the bonds for registration.

24 c. Bonds of the authority shall be authorized by a resolution or
25 resolutions of the authority and may be issued in one or more series
26 and shall bear any date or dates, mature at any time or times, bear
27 interest at any rate or rates of interest per annum, be in any
28 denomination or denominations, be in any form, either coupon,
29 registered or book entry, carry any conversion or registration
30 privileges, have any rank or priority, be executed in any manner, be
31 payable in any coin or currency of the United States which at the time
32 of payment is legal tender for the payment of public and private debts,
33 at any place or places within or without the State, and be subject to
34 any terms of redemption by the authority or the holders thereof, with
35 or without premium, as the resolution or resolutions may provide. A
36 resolution of the authority authorizing the issuance of bonds may
37 provide that the bonds be secured by a trust indenture between the
38 authority and a trustee, vesting in the trustee any property, rights,
39 powers and duties in trust consistent with the provisions of this act as
40 the authority may determine. All bonds of the authority shall be sold
41 at such price or prices and in such manner at the public or private sale
42 as the authority shall determine.

43 d. Bonds of the authority may be issued under the provisions of
44 this act without obtaining the consent of any department, division,
45 board, bureau or agency of the State, and without any other
46 proceedings or the happening of any other conditions or things, other

1 than those consents, proceedings, conditions or things which are
2 specifically required by this act.

3 e. Bonds of the authority issued under the provisions of this act
4 shall not be debt or liability of the State or of any political subdivision
5 thereof other than the authority and shall not create or constitute any
6 indebtedness, liability or obligation of the State or any political
7 subdivision, but all the bonds, unless funded or refunded by bonds,
8 shall be payable solely from revenues or funds pledged or available for
9 their payment as authorized in this act. Each bond shall contain on its
10 face a statement to the effect that the authority is obligated to pay the
11 principal thereof or the interest thereon only from its revenues,
12 receipts or funds pledged or available for their payment as authorized
13 in this act and that neither the State, nor any political subdivision
14 thereof, is obligated to pay the principal or interest and that neither the
15 faith and credit nor the taxing power of the State, or any political
16 subdivision thereof, is pledged to the payment of the principal of or the
17 interest on the bonds.

18 f. The aggregate principal amount of bonds shall not exceed
19 \$500,000,000. In computing the foregoing limitations, there shall be
20 excluded all the bonds for which there shall be deposited in an escrow
21 fund (1) the entire amount necessary to pay at maturity or upon
22 redemption the principal, premium, if any, and interest due or to
23 become due or to such date of maturity or redemption date for such
24 bonds or (2) an amount, the principal of and interest on which, when
25 invested, shall be sufficient to pay at maturity or upon redemption the
26 principal, premium, if any, and interest due or to become due to such
27 date of maturity or redemption date for such bonds.

28

29 7. (New section) a. To ensure the continued operation and
30 solvency of the authority, the authority may require that if a school
31 district fails or is unable to pay to the authority in full when due any
32 obligations of the school district to repay principal of and interest on
33 the loan to the authority, an amount sufficient to satisfy the deficiency
34 shall be paid by the treasurer to the authority from any State aid
35 payable to the school district.

36 b. If the authority requires, and there has been a failure or inability
37 by a school district to pay its obligations to the authority remaining
38 uncured for a period of 30 days, the chairman of the authority shall
39 certify to the treasurer, with written notice to the fiscal officer of the
40 school district and to the Legislature, the amount remaining unpaid,
41 and the treasurer shall pay that amount to the authority, or if the right
42 to receive those payments has been pledged or assigned to a trustee
43 for benefit of the holders of bonds, to that trustee, out of the State aid
44 payable to the school district, until the amount so certified is paid.

45 c. The amount paid over to the authority shall be deducted from
46 the corresponding appropriation or apportionment of State aid

1 payable to the school district and shall not obligate the State or make,
2 nor entitle the school district to receive, any additional appropriation
3 or apportionment.

4
5 8. (New section) The commissioner or director of the Division of
6 Local Government Services, in the Department of Community Affairs,
7 as appropriate, is authorized, for those school districts issuing bonds
8 pursuant to this act, to waive the requirement imposed pursuant to
9 N.J.S.18A:24-46 or N.J.S.40A:2-29, as the case may be, that school
10 districts issue bonds at not less than par value.

11
12 9. (New section) The authority, in consultation with the
13 commissioner, shall establish the rules and regulations governing the
14 making of loans and grants and their use including, but not limited to,
15 procedures for the submission of loan and grant requests, standards for
16 the evaluation of application requests, provisions implementing
17 priority systems for projects, reporting requirements of the recipient
18 of any loans or grant concerning the progress and the expenditure of
19 funds, and limitations, restrictions or requirements concerning the use
20 of loan or grant funds as the authority shall prescribe; provided that
21 the rules and regulations shall be in compliance with the terms and
22 provisions of this act relating to the making of or eligibility for loans
23 or grants for projects generally or for any particular type or class of
24 projects. Any rules or regulations so adopted shall not be subject to
25 the provisions or requirements of the "Administrative Procedure Act,"
26 P.L.1968, c.410 (C.52:14B-1 et seq.), except that any rules and
27 regulations so adopted shall be filed with the Secretary of State and
28 shall provide for the prompt publication of the rules and regulations
29 after the filing of same.

30
31 10. N.J.S.18A:72A-1 is amended to read as follows:

32 18A:72A-1. It is hereby declared that a serious public emergency
33 exists affecting and threatening the welfare, comfort, health, safety and
34 prosperity of the people of the state and resulting from the fact that
35 financial resources are lacking with which to construct required
36 dormitory and other educational facilities at public and private
37 institutions of higher education and to provide for public school
38 facility projects; that it is essential that this and future generations of
39 youth be given the fullest opportunity to learn and to develop their
40 intellectual and mental capacities; that it is essential that institutions
41 for higher education and local boards of education within the state be
42 provided with appropriate additional means to assist such youth in
43 achieving the required levels of learning and development of their
44 intellectual and mental capacities; that it is essential that all resources
45 of the state be employed in order to meet the tremendous demand for
46 higher educational opportunities and public school facilities; that all

1 institutions of higher education in the state, both public and private,
2 and all public school facilities are an integral part of the total
3 educational effort in the state for providing prekindergarten through
4 higher educational opportunities, and that it is the purpose of this
5 chapter to provide a measure of assistance and an alternative method
6 to enable institutions of higher education and local boards of education
7 in the state to provide the facilities which are sorely needed to
8 accomplish the purposes of this chapter, all to the public benefit and
9 good, to the extent and manner provided herein.

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

11

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

13 18A:72A-5. The authority shall have power:

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

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

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

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

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

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

28 (g) To acquire in the name of the authority by purchase or
29 otherwise, on such terms and conditions and in such manner as it may
30 deem proper, or by the exercise of the power of eminent domain, any
31 land or interest therein and other property which it may determine is
32 reasonably necessary for any project, including any lands held by any
33 county, municipality or other governmental subdivision of the State;
34 and to hold and use the same and to sell, convey, lease or otherwise
35 dispose of property so acquired, no longer necessary for the authority's
36 purposes;

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

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

1 estimates;

2 (j) By contract or contracts or by its own employees to construct,
3 acquire, reconstruct, rehabilitate and improve, and furnish and equip,
4 projects for participating colleges; however, in any contract or
5 contracts undertaken by the authority for the construction,
6 reconstruction, rehabilitation or improvement of any public college
7 project where the cost of such work will exceed \$25,000, the
8 contracting agent shall advertise for and receive in the manner
9 provided by law:

10 (1) separate bids for the following categories of work;

11 (a) the plumbing and gas fitting work;

12 (b) the heating and ventilating systems and equipment;

13 (c) the electrical work, including any electrical power plants;

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

15 (e) all other work and materials required for the completion of the
16 project, or

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

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

20 All bids submitted shall set forth the names and license numbers of,
21 and evidence of performance security from, all subcontractors to
22 whom the bidder will subcontract the work described in the foregoing
23 categories (1)(a) through (1)(e).

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

27 (k) To determine the location and character of any project to be
28 undertaken pursuant to the provisions of this chapter, and to
29 construct, reconstruct, maintain, repair, operate, lease, as lessee or
30 lessor, and regulate the same; to enter into contracts for any or all
31 such purposes; to enter into contracts for the management and
32 operation of a project, and to designate a participating college as its
33 agent to determine the location and character of a project undertaken
34 by such participating college under the provisions of this chapter and,
35 as the agent of the authority, to construct, reconstruct, maintain,
36 repair, operate, lease, as lessee or lessor, and regulate the same, and,
37 as agent of the authority, to enter into contracts for any and all such
38 purposes including contracts for the management and operation of
39 such project;

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

44 (m) Generally to fix and revise from time to time and to charge and
45 collect rates, rents, fees and other charges for the use of and for the
46 services furnished or to be furnished by a project or any portion

1 thereof and to contract with holders of its bonds and with any other
2 person, party, association, corporation or other body, public or
3 private, in respect thereof;

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

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

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

15 (q) To establish and maintain a loan and grant fund and a trust fund
16 in order to provide loans and grants to public school districts pursuant
17 to the provisions of P.L. , c. (C.)(now pending before the
18 Legislature as this bill).

19 (cf: P.L.1993, c.136, s.4)

20

21 12. This act shall take effect immediately.

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23

24

STATEMENT

25

26 This bill establishes the Educational Facilities Loan and Grant
27 Program in the Educational Facilities Authority. Under the program,
28 school districts would be eligible to receive loans and grants to finance
29 the renovation, repair or other alteration of existing school buildings,
30 the construction of new school buildings or the conversion of existing
31 school buildings to other instructional purposes.

32 Upon application by a school district for a loan and grant, the
33 application would be forwarded to the Commissioner of Education
34 who is authorized and empowered to determine whether the
35 renovations, repairs, alterations, conversion or construction are for
36 purposes necessary to provide a thorough and efficient system of
37 education in the State. If the commissioner determines that the work
38 is necessary, the commissioner would certify that the school district is
39 eligible for a loan and grant and would waive the holding of a
40 referendum or the requirement for approval by a board of school
41 estimate or for approval of the project by a capital projects control
42 board. The terms of the loan and the repayment schedule would be
43 established by the authority, and the repayments in the amount of the
44 loan would be treated as net debt service by the school district for
45 school aid purposes.

46 The authority, in consultation with the commissioner would, in

1 determining whether to approve any loan and grant application, take
2 into consideration the severity of the need for the particular project,
3 the ability of the school district to begin and complete the project in
4 an expeditious manner, the ability of the school district to proceed
5 with the funding of the balance of the funds for the project, and the
6 extent to which the approval of the project contributes to the equitable
7 distribution of monies in the loan and grant fund.

8 In determining the amount of the loan and grant to be provided, the
9 authority would apply the following criteria:

10 (1) With respect to a special needs school district, the amount of
11 the approved financial assistance would be apportioned ninety percent
12 (90%) as a grant and ten percent (10%) as a loan;

13 (2) With respect to a consolidated school district, the amount of
14 approved financial assistance would be apportioned sixty percent
15 (60%) as a grant and forty percent (40%) as a loan; and

16 (3) With respect to any other school district, the amount of
17 approved financial assistance would be apportioned twenty-five
18 percent (25%) as a grant and seventy-five percent (75%) as a loan.

19 Of the total amount available in the loan and grant fund, not more
20 than fifteen percent (15%) of the funds would be available for school
21 districts other than special needs school districts and consolidated
22 school districts. In addition, not less than fifty percent (50%) of the
23 total would be available for special needs school districts and not less
24 than thirty-five percent (35%) would be available for consolidated
25 school districts.

26 The authority would also establish and maintain a trust fund to
27 which would be credited the amount to be paid pursuant to a contract
28 between the State treasurer and the authority, which contract would
29 provide for the payment in each year of the principal of and interest
30 on the bonds. Those payments would be subject to and dependent
31 upon appropriations being made from time to time by the Legislature.

32 Bonds of the authority issued could not exceed \$500,000,000 and
33 would not be the debt or liability of the State or of any political
34 subdivision thereof. The bonds would be payable solely from revenues
35 or funds pledged or available for their payment by the authority.

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39

40 Establishes the Educational Facilities Loan and Grant Program.