

SENATE, No. 1063

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Senators EWING, PALAIA, Martin, Lipman, Codey,
Bryant, McGreevey, Lynch, Kenny, O'Conner, Lesniak and
Adler

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 Act 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

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 authority pursuant to the provisions of this act;
- 2 "Commissioner" means the Commissioner of the Department of
3 Education;
- 4 "Consolidated school district" means a school district established
5 pursuant to N.J.S.18A:8-25 et seq.;
- 6 "Contract" means the contract between the Treasurer and the
7 authority authorized by section 5 of this act;
- 8 "Cost or costs" means the expenses incurred in connection with:
9 the renovation, repair, alteration, construction, or conversion of any
10 school building or any other project; the acquisition and development
11 of any real or personal property for use in connection with any project,
12 including any rights or interest therein; the procurement of
13 engineering, inspection, planning, legal, financial or other professional
14 services; the costs of issuance of bonds issued for the project; the
15 administrative, organizational, operating or other expenses incident to
16 the financing, completion and placing into service of projects;
17 capitalized interest on the bonds for the project; and reimbursement to
18 any fund of the State of moneys which may have been transferred or
19 advanced therefrom to any fund created by this act, or of any moneys
20 which may have been expended therefrom for or in connection with
21 any project;
- 22 "Department" means the Department of Education;
- 23 "Loan and grant fund" means the fund established by the authority
24 from which costs of the projects are to be paid, which shall be
25 designated the Educational Facilities Public School Loan and Grant
26 Fund;
- 27 "Project" means any work which is necessary for the construction,
28 renovation, repair, alteration or conversion of a public school building
29 by the school district;
- 30 "Public school" means a school under collegiate grade, which is
31 operated by a school district;
- 32 "School building" means any structure, building, or facility used
33 wholly or in part for academic purposes by a school district;
- 34 "School district" means any local or regional school district
35 established pursuant to chapter 8 or chapter 13 of Title 18A of the
36 New Jersey Statutes and any county special services or county
37 vocational school districts established pursuant to chapter 46 or
38 chapter 54 of Title 18 of the New Jersey Statutes;
- 39 "Special needs district" means a school district as defined pursuant
40 to section 3 of P.L.1990, c.52 (C.18A:7D-3);
- 41 "Treasurer" means the Treasurer of the State of New Jersey;
- 42 "Trust fund" means the fund established by the authority from
43 which the payment of bonds is to be made, which shall be designated
44 the Educational Facilities Public School Trust Fund.
- 45
- 46 4. (New section) a. The authority shall establish and maintain the

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

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

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

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

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

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

6 f. The balance of the moneys needed for a project for which an
7 application for a loan and grant is made pursuant to this section may
8 be funded by the school district by: (1) the issuance of bonds, or other
9 borrowing, excluding lease-purchase agreements, pursuant to the
10 provisions of subsection (d) of N.J.S.18A:20-4.2, N.J.S.18A:24-5 et
11 seq., or P.L.1991, c.139 (C.18A:7A-46.1 et seq.), as appropriate;
12 except that the commissioner shall waive the holding of a referendum
13 or the requirement for approval by a board of school estimate pursuant
14 to subsection (d) of N.J.S.18A:20-4.2 or N.J.S.18A:24-5 et seq., as
15 the case may be, or the requirement for approval of the project by a
16 capital projects control board pursuant to P.L.1991, c.139 (C.18A:7A-
17 46.1 et seq.), as appropriate; and (2) any other lawful source.

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

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

26 (1) With respect to a special needs school district, the amount of
27 the approved financial assistance shall be apportioned ninety percent
28 (90%) as a grant and ten percent (10%) as a loan;

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

32 (3) With respect to any other school district, the amount of
33 approved financial assistance shall be apportioned twenty-five percent
34 (25%) as a grant and seventy-five percent (75%) as a loan.

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

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

45

46 5. (New section) The authority shall establish and maintain the

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

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

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

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

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

1 proceedings or the happening of any other conditions or things, other
2 than those consents, proceedings, conditions or things which are
3 specifically required by this act.

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

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

29

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

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

46 c. The amount paid over to the authority shall be deducted from

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

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

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

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

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

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

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

12

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

14 18A:72A-5. The authority shall have power:

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

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

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

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

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

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

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

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

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

1 and from time to time to modify such plans, specifications, designs or
2 estimates;

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

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

12 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

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

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

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

45 (m) Generally to fix and revise from time to time and to charge and
46 collect rates, rents, fees and other charges for the use of and for the

1 services furnished or to be furnished by a project or any portion
2 thereof and to contract with holders of its bonds and with any other
3 person, party, association, corporation or other body, public or
4 private, in respect thereof;

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

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

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

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

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

21

22 12. This act shall take effect immediately.

23

24

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STATEMENT

26

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

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

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

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

11 (1) With respect to a special needs school district, the amount of
12 the approved financial assistance would be apportioned ninety percent
13 (90%) as a grant and ten percent (10%) as a loan;

14 (2) With respect to a consolidated school district, the amount of
15 approved financial assistance would be apportioned sixty percent
16 (60%) as a grant and forty percent (40%) as a loan; and

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

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

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

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

37

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40

41 Establishes the Educational Facilities Loan and Grant Program.