

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1063

STATE OF NEW JERSEY

ADOPTED JANUARY 14, 1997

Sponsored by Senators EWING, PALAIA, Martin, Lipman, Codey, Bryant,
McGreevey, Lynch, Kenny, O'Connor, Lesniak and Adler

1 AN ACT establishing the Educational Facilities and Technology Loan
2 and Grant Program, supplementing Title 18A of the New Jersey
3 Statutes and 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 and Technology Loan and Grant Program Act
10 of 1997."

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

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

2 "Abbott District" means one of the 28 urban districts in district
3 factor groups A and B specifically identified in the appendix to
4 Raymond Abbott, et al. v. Fred G. Burke, et al. decided by the New
5 Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394);

6 "Area cost allowance" means, commencing annually with January
7 1997, an average determined by multiplying the average estimated
8 five-city historical cost index for construction in New Jersey reported
9 by the R. S. Means Company, Inc. (Means Index) for January of each
10 year by \$ 88 and dividing by 121.5;

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

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

15 "Commissioner" means the Commissioner of the Department of
16 Education;

17 "Comprehensive school district" means a school district operating
18 programs for children in grades K-12, a county special services school
19 district, a county vocational school district or an all purpose regional
20 school district.;

21 "Cost or costs" means the expenses incurred in connection with
22 the construction, renovation, repair, alteration or conversion of any
23 school building; the acquisition of reasonable furnishings and
24 equipment for use in connection with any project; the procurement of
25 reasonable engineering, inspection, planning, legal, financial or other
26 professional services; the costs of issuance of bonds issued for the
27 project; the administrative, organizational, operating or other expenses
28 incident to the financing, completion and placing into service of
29 projects; capitalized interest on the bonds for the project; and
30 reimbursement to any fund of the State of moneys which may have
31 been transferred or advanced therefrom to any fund created by this act,
32 or of any moneys which may have been expended therefrom for or in
33 connection with any project;

34 "Department" means the Department of Education;

35 "Project" means any work which is necessary for the construction,
36 renovation, repair, alteration or conversion of a public school building
37 or the acquisition of educational technology and facility modification
38 to meet the needs for educational technology;

39 "Public school" means a school under collegiate grade, which is
40 operated by a school district;

41 "School building" means any structure, building, or facility used
42 to implement the requirements of core curriculum content standards
43 as established by the State Board of Education;

44 "School district" means any local or regional school district
45 established pursuant to chapter 8 or chapter 13 of Title 18A of the

1 New Jersey Statutes and any county special services or county
2 vocational school district established pursuant to chapter 46 or chapter
3 54 of Title 18A of the New Jersey Statutes;

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

5 "Unhoused students" means the number of students who are
6 projected to be enrolled in five years in preschool handicapped,
7 preschool, kindergarten, grades one through twelve, and special
8 education services pupil educational programs, located and currently
9 being provided in a school district or which will be located and
10 provided in a school district within five years, which are in excess of
11 the capacity of the school district's current school facilities or the
12 capacity of the school facilities which will be available within five
13 years other than the school facilities for which the approved cost is
14 determined, based upon a long range facilities plan as prescribed by the
15 commissioner.

16

17 4. (New section) a. The authority shall establish and maintain the
18 facilities loan and grant fund into which shall be deposited: (1)
19 amounts received from the proceeds of the bonds, not to exceed \$500
20 million; (2) any moneys that shall be received by the authority from
21 the repayment of principal on loans made from the loan and grant
22 fund; (3) any moneys appropriated by the State for the purposes of the
23 loan and grant fund; (4) all interest and investment earnings on moneys
24 in the loan and grant fund; and (5) any other moneys which the
25 authority determines to deposit therein.

26 b. The authority shall use the moneys in the facilities loan and
27 grant fund to finance the approved costs of any project in accordance
28 with the criteria set forth in this section. The approved costs shall be
29 based upon the area required for unhoused students and an area cost
30 allowance.

31 c. Upon application by a school district for a facilities loan and
32 grant, the application shall be forwarded to the commissioner, and the
33 commissioner is authorized and empowered to determine whether the
34 project is necessary to provide a thorough and efficient system of
35 education. In determining whether to grant approval of a loan and
36 grant application, the commissioner shall evaluate, in consultation
37 with the Bureau of Facility Planning Services, whether the project can
38 be completed with the amount of the funding requested. The
39 commissioner shall also take into consideration the ability of the
40 school district to begin and complete the project in an expeditious
41 manner and the extent to which the approval of the project contributes
42 to the equitable distribution of monies in the loan and grant fund. If the
43 commissioner determines that the project is necessary and the costs are
44 approved, the commissioner shall certify that the school district is
45 eligible for a loan and grant pursuant to this section. The

1 commissioner shall specify the total amount which is approved and
2 shall notify the authority of the approval and the amount.

3

4 5. (New section) a. The authority shall establish and maintain the
5 educational technology loan and grant fund into which shall be
6 deposited: (1) amounts received from the proceeds of the bonds, not
7 to exceed \$50 million; (2) any moneys that shall be received by the
8 authority from the repayment of principal on loans made from the loan
9 and grant fund; (3) any moneys appropriated by the State for the
10 purposes of the loan and grant fund; (4) all interest and investment
11 earnings on moneys in the loan and grant fund; and (5) any other
12 moneys which the authority determines to deposit therein.

13 b. The authority shall use the moneys in the educational
14 technology loan and grant fund to finance the approved costs of
15 educational technology equipment and facility modification to meet the
16 needs for educational technology.

17 c. Upon application by a school district for an educational
18 technology loan and grant, the application shall be forwarded to the
19 commissioner, and the commissioner is authorized and empowered to
20 determine whether the project is necessary to provide a thorough and
21 efficient system of education. If the commissioner determines that the
22 project is necessary and the costs are approved, the commissioner
23 shall certify that the school district is eligible for a loan and grant
24 pursuant to this section. The commissioner shall specify the total
25 amount which is approved and shall notify the authority of the
26 approval and the amount.

27

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

1 b. Any school district shall be eligible to receive additional loans
2 and grants even if the district has received a previous loan and grant;
3 provided that the additional loans and grants are in conformity with
4 the selection criteria established.

5 c. In determining the allocation of the loan and the grant to be
6 provided in connection with an application by a school district, the
7 following criteria shall apply:

8 (1) With respect to an Abbott district, the amount of the
9 approved financial assistance to pay the costs of the project shall be
10 apportioned ninety percent (90%) as a grant and ten percent (10%) as
11 a loan;

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

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

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

27
28 7. (New section) Any additional moneys requested by a school
29 district for a project may be provided by a loan to the school district
30 from the authority. The loan shall be subject to the terms and
31 conditions as the authority shall determine to be consistent with the
32 purpose thereof. Each loan by the authority shall be evidenced by
33 notes, bonds or other obligations of the school board issued to the
34 authority. The notes, bonds or other obligations shall be issued by the
35 school board and notwithstanding any other law to the contrary, may
36 be sold at private sale to the authority at any price, whether or not less
37 than par value, and shall be subject to redemption prior to maturity at
38 any times and at any prices as the authority and the school board may
39 agree. Each loan to a school district and the notes, bonds or other
40 obligations thereby issued shall bear interest at a rate or rates as the
41 authority and the school board shall agree.

42
43 8. (New section) The authority shall establish and maintain the
44 trust fund in which shall be deposited the amounts appropriated by the
45 Legislature from revenue dedicated by the State Constitution for the

1 purpose of financing public school facilities that are necessary to
2 maintain and support a thorough and efficient system of free public
3 schools or the amounts required by the authority to pay the principal
4 of and interest on the bonds issued pursuant to section 9 of this act.
5

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

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

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

42 d. Bonds of the authority may be issued under the provisions of
43 this act without obtaining the consent of any department, division,
44 board, bureau or agency of the State, and without any other
45 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 \$550
19 million. 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 or to
27 such date of maturity or redemption date for such bonds.

28

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

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

44 c. The amount paid over to the authority shall be deducted from
45 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 11. (New section) The commissioner or Director of the Division
6 of Local Government Services in the Department of Community
7 Affairs, as appropriate, is authorized, for those school districts issuing
8 bonds pursuant to this act, to waive the requirement imposed pursuant
9 to 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 12. (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 13. 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 school districts within the state be provided
42 with appropriate additional means to assist such youth in achieving the
43 required levels of learning and development of their intellectual and
44 mental capacities; that it is essential that all resources of the state be
45 employed in order to meet the tremendous demand for higher

1 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 school districts in the
8 state to provide the facilities which are sorely needed to accomplish
9 the purposes of this chapter, all to the public benefit and good, to the
10 extent and manner provided herein.

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

12

13 14. 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
16 conduct 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

1 projects for participating colleges under the provisions of this chapter,
2 and from time to time to modify such plans, specifications, designs or
3 estimates;

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

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

13 (a) the plumbing and gas fitting work;

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

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

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

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

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

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

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

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

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

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

1 (m) Generally to fix and revise from time to time and to charge
2 and collect rates, rents, fees and other charges for the use of and for
3 the services furnished or to be furnished by a project or any portion
4 thereof and to contract with holders of its bonds and with any other
5 person, party, association, corporation or other body, public or
6 private, in respect thereof;

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

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

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

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

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

23

24 15. This act shall take effect immediately.

25

26

27

28

29 Establishes the Educational Facilities and Technology Loan and Grant
30 Program.