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LAW/RWH

§22 –  
C.18A:3B-34.1  
§23 –  
C.18A:72A-45.1  
§24 –  
C.18A:72A-64.1

P.L.2012, CHAPTER 42, *approved August 7, 2012*  
Senate, No. 2501 (*Second Reprint*)

1 AN ACT concerning construction of facilities at institutions of  
2 higher education <sup>1</sup>[and],<sup>1</sup> revising various parts of the statutory  
3 law <sup>1</sup>, and supplementing Title 18A of the New Jersey Statutes<sup>1</sup>.  
4

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

8 1. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to  
9 read as follows:

10 43 a. (1) A State college or county college may enter into a  
11 contract with a private entity, subject to subsection f. of this section,  
12 to be referred to as a public-private partnership agreement, that  
13 permits the private entity to assume full financial and administrative  
14 responsibility for the on-campus construction, reconstruction,  
15 repair, alteration, improvement [or], extension, management, or  
16 operation of a building, structure, or facility of, or for the benefit of,  
17 the institution, provided that the project is financed in whole by the  
18 private entity and that the State or institution of higher education, as  
19 applicable, retains full ownership of the land upon which the project  
20 is completed.

21 (2) A public-private partnership agreement may include an  
22 agreement under which a State or county college leases to a private  
23 entity the operation of a dormitory or other revenue-producing  
24 facility to which the college holds title, in exchange for up-front or  
25 structured financing by the private entity for the construction of  
26 classrooms, laboratories, or other academic buildings. Under the  
27 lease agreement, the college shall continue to hold title to the  
28 facility, and the private entity shall be responsible for the  
29 management, operation, and maintenance of the facility. The  
30 private entity shall receive some or all, as per the agreement, of the  
31 revenue generated by the facility and shall operate the facility in  
32 accordance with college standards. A lease agreement shall not  
33 affect the status or employment rights of college employees who are  
34 assigned to, or provide services to, the leased facility. At the end of

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted June 18, 2012.

<sup>2</sup>Assembly ABU committee amendments adopted June 21, 2012.

1 the lease term, subsequent revenue generated by the facility, along  
2 with management, operation, and maintenance responsibility, shall  
3 revert to the college.

4 b. (1) A private entity that assumes financial and administrative  
5 responsibility for a project pursuant to subsection a. of this section  
6 shall not be subject to the procurement and contracting  
7 requirements of all statutes applicable to the institution of higher  
8 education at which the project is completed, including, but not  
9 limited to, the "State College Contracts Law," P.L.1986, c.43  
10 (C.18A:64-52 et seq.), and the "County College Contracts Law,"  
11 P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of  
12 facilitating the financing of a project pursuant to subsection a. of  
13 this section, a public entity may become the owner or lessee of the  
14 project or the lessee of the land, or both, may become the lessee of a  
15 dormitory or other revenue-producing facility to which the college  
16 holds title, may issue indebtedness in accordance with the public  
17 entity's enabling legislation and, notwithstanding any provision of  
18 law to the contrary, shall be empowered to enter into contracts with  
19 a private entity and its affiliates without being subject to the  
20 procurement and contracting requirements of any statute applicable  
21 to the public entity provided that the private entity has been selected  
22 by the institution of higher education pursuant to a solicitation of  
23 proposals or qualifications. For the purposes of this section, a  
24 public entity shall include the New Jersey Economic Development  
25 Authority, and any project undertaken pursuant to subsection a. of  
26 this section of which the authority becomes the owner or lessee, or  
27 which is situated on land of which the authority becomes the lessee,  
28 shall be deemed a "project" under the "New Jersey Economic  
29 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

30 (2) As the carrying out of any project described pursuant to this  
31 section constitutes the performance of an essential public function,  
32 all projects predominantly used in furtherance of the educational  
33 purposes of the institution undertaken pursuant to this section,  
34 provided it is owned by or leased to a public entity, non-profit  
35 business entity, foreign or domestic, or a business entity wholly  
36 owned by such non-profit business entity, shall at all times be  
37 exempt from property taxation and special assessments of the State,  
38 or any municipality, or other political subdivision of the State and,  
39 notwithstanding the provisions of section 15 of P.L.1974, c.80  
40 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or any  
41 other section of law to the contrary, shall not be required to make  
42 payments in lieu of taxes. The land upon which the project is  
43 located shall also at all times be exempt from property taxation.  
44 Further, the project and land upon which the project is located shall  
45 not be subject to the provisions of section 1 of P.L.1984, c.176  
46 (C.54:4-1.10) regarding the tax liability of private parties  
47 conducting for profit activities on tax exempt land, or section 1 of

1 P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold  
2 interests in exempt property that are held by nonexempt parties.

3 c. Each worker employed in the construction, rehabilitation, or  
4 building maintenance services of facilities by a private entity that  
5 has entered into a public-private partnership agreement with a State  
6 or county college pursuant to subsection a. of this section shall be  
7 paid not less than the prevailing wage rate for the worker's craft or  
8 trade as determined by the Commissioner of Labor and Workforce  
9 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
10 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

11 d. (1) All construction projects under a public-private  
12 partnership agreement entered into pursuant to this section shall  
13 contain a project labor agreement. The project labor agreement  
14 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et  
15 seq.), and shall be in a manner that to the greatest extent possible  
16 enhances employment opportunities for individuals residing in the  
17 county of the project's location. Further, the general contractor,  
18 construction manager, design-build team, or subcontractor for a  
19 construction project proposed in accordance with this paragraph  
20 shall be registered pursuant to the provisions of P.L.1999, c.238  
21 (C.34:11-56.48 et seq.), and shall be classified by the Division  
22 of Property Management and Construction to perform work  
23 on a public-private partnership higher education project. All  
24 construction projects proposed in accordance with this paragraph  
25 shall be submitted to the New Jersey Economic Development  
26 Authority for its review and approval and, when practicable, are  
27 encouraged to adhere to the Leadership in Energy and  
28 Environmental Design Green Building Rating System as adopted by  
29 the United States Green Building Council.

30 (2) Where no public fund has been established for the financing  
31 of a public improvement, the chief financial officer of the public  
32 owner shall require the private entity for whom the public  
33 improvement is being made to post, or cause to be posted, a bond  
34 guaranteeing prompt payment of moneys due to the contractor, his  
35 or her subcontractors and to all persons furnishing labor or  
36 materials to the contractor or his or her subcontractors in the  
37 prosecution of the work on the public improvement.

38 e. A general contractor, construction manager, design-build  
39 team, or subcontractor shall be registered pursuant to the provisions  
40 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified  
41 by the Division of Property Management and Construction to  
42 perform work on a public-private partnership higher education  
43 project.

44 f. (1) On or before August 1, 2013, all projects proposed in  
45 accordance with this section shall be submitted to the New Jersey  
46 Economic Development Authority for its review and approval;  
47 except that in the case of projects proposed in accordance with  
48 paragraph (2) of subsection a. of this section, all projects shall be

1 submitted on or before August 1, 2014. The projects are  
2 encouraged, when practicable, to adhere to the green building  
3 manual prepared by the Commissioner of Community Affairs  
4 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any  
5 application that is deemed to be incomplete on August 2, 2013, or  
6 on August 2, 2014 in the case of an application submitted pursuant  
7 to paragraph (2) of subsection a. of this section, shall not be eligible  
8 for consideration.

9 (2) (a) In order for an application to be complete and considered  
10 by the authority it shall include, but not be limited to: (i) a public-  
11 private partnership agreement between the State or county college  
12 and the private developer; (ii) a full description of the project,  
13 including a description of any agreement for the lease of a revenue-  
14 producing facility related to the project; (iii) the estimated costs and  
15 financial documentation for the project; (iv) a timetable for  
16 completion of the project extending no more than five years after  
17 consideration and approval; and (v) any other requirements that the  
18 authority deems appropriate or necessary.

19 (b) As part of the estimated costs and financial documentation  
20 for the project the application shall contain a long-range  
21 maintenance plan and shall specify the expenditures that qualify as  
22 an appropriate investment in maintenance. This long-range  
23 maintenance plan shall be approved by the authority pursuant to  
24 regulations promulgated by the authority that reflect national  
25 building maintenance standards and other appropriate building  
26 maintenance benchmarks. All contracts to implement a long-range  
27 maintenance plan pursuant to this paragraph shall contain a project  
28 labor agreement. The project labor agreement shall be subject to  
29 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in  
30 a manner that to the greatest extent possible enhances employment  
31 opportunities for individuals residing in the county of the project's  
32 location.

33 (3) The authority shall review all completed applications, and  
34 request additional information as is needed to make a complete  
35 assessment of the project. No project shall be undertaken until final  
36 approval has been granted by the authority; provided, however, that  
37 the authority shall retain the right to revoke approval if it  
38 determines that the project has deviated from the plan submitted  
39 pursuant to paragraph (2) of this subsection.

40 (4) The authority may promulgate any rules and regulations  
41 necessary to implement this subsection, including provisions for  
42 fees to cover administrative costs.

43 Where no public fund has been established for the financing of a  
44 public improvement, the chief financial officer of the public owner  
45 shall require the private entity for whom the public improvement is  
46 being made to post, or cause to be posted, a bond guaranteeing  
47 prompt payment of moneys due to the contractor, his or her  
48 subcontractors and to all persons furnishing labor or materials to the

1 contractor or his or her subcontractors in the prosecution of the  
2 work on the public improvement.

3 g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall  
4 not apply to any project carried out pursuant to this section.  
5 (cf: P.L.2012, c.10, s.1)

6  
7 2. Section 2 of P.L.1993, c.136 (C.18A:72A-41) is amended to  
8 read as follows:

9 2. The Legislature finds and declares that:

10 a. Higher education plays a vital role in the economic  
11 development of the nation and the State by providing the education  
12 and training of the work force of the future and by advancing  
13 science and technology through research;

14 b. The rapid technological changes occurring throughout the  
15 world have a considerable impact on the quality of teaching,  
16 learning, and research at colleges and universities;

17 c. The current inventory of instructional and research  
18 equipment at the colleges and universities within the State is aging,  
19 both chronologically and technologically, and much of it has been  
20 rendered obsolete; and

21 d. The **【Commission on】** Secretary of Higher Education, which  
22 is statutorily responsible for the coordination and planning of higher  
23 education in New Jersey, has identified a crucial need to establish a  
24 regular financing mechanism for scientific, engineering, technical,  
25 computer, communications, and instructional equipment at New  
26 Jersey's public and private institutions of higher education.  
27 (cf: P.L.2009, c.308, s.32)

28  
29 3. Section 6 of P.L.1993, c.136 (C.18A:72A-43) is amended to  
30 read as follows:

31 6. The moneys deposited into the fund created pursuant to  
32 section 5 of P.L.1993, c.136 (C.18A:72A-42) shall be allocated in  
33 the following manner:

34 a. A minimum of \$24,000,000 for the leasing of higher  
35 education equipment at the State colleges;

36 b. A minimum of \$19,440,000 for the leasing of higher  
37 education equipment at Rutgers, The State University;

38 c. A minimum of \$10,080,000 for the leasing of higher  
39 education equipment at the University of Medicine and Dentistry of  
40 New Jersey;

41 d. A minimum of \$6,480,000 for the leasing of higher  
42 education equipment at the New Jersey Institute of Technology;

43 e. A minimum of \$22,000,000 for the leasing of higher  
44 education equipment at the county colleges;

45 f. A minimum of \$10,500,000 for the leasing of higher  
46 education equipment at private institutions of higher education; and

1 g. A minimum of \$7,500,000 for the leasing of higher  
2 education equipment for emerging needs programs at public and  
3 private institutions of higher education.

4 The **【Commission on】** Secretary of Higher Education may  
5 apportion the amounts authorized in subsection g. among any other  
6 amounts authorized in subsections a. through f.

7 The **【Commission on】** Secretary of Higher Education may  
8 reallocate any balance in the amounts authorized in subsections a.  
9 through g. of this section which have not been fully committed  
10 within 18 months of the effective date of this act.

11 The **【Commission on】** Secretary of Higher Education shall  
12 determine the allocation of moneys deposited into the fund resulting  
13 from the issuance by the authority of new bonds because of the  
14 retirement of bonds previously issued by the authority.

15 (cf: P.L.2009, c.308, s.34)

16

17 4. Section 8 of P.L.1993, c.136 (C.18A:72A-45) is amended to  
18 read as follows:

19 8. The authority shall not enter into a lease agreement with an  
20 institution of higher education unless the **【Commission on】**  
21 Secretary of Higher Education has <sup>2</sup>**【adopted a resolution which**  
22 **approves】** approved<sup>2</sup> the purchase of the higher education  
23 equipment by the institution. The **【commission】** secretary shall  
24 <sup>2</sup>**【forward a copy of the resolution along with the amount of the**  
25 **approved purchase】** provide a written certification of such approval  
26 including the amount approved<sup>2</sup> to the authority.

27 (cf: P.L.2009, c.308, s.35)

28

29 5. Section 10 of P.L.1993, c.136 (C.18A:72A-47) is amended  
30 to read as follows:

31 10. The **【Commission on】** Secretary of Higher Education shall  
32 annually submit a report to the Governor and the Legislature on the  
33 higher education equipment purchases at public and private  
34 institutions of higher education which have been approved by the  
35 **【commission】** secretary and financed by the New Jersey  
36 Educational Facilities Authority pursuant to lease agreements with  
37 the institutions.

38 (cf: P.L.2009, c.308, s.36)

39

40 6. Section 11 of P.L.1993, c.136 (C.18A:72A-48) is amended  
41 to read as follows:

42 11. The **【Commission on】** Secretary of Higher Education, in  
43 consultation with the New Jersey Educational Facilities Authority,  
44 shall adopt, pursuant to the "Administrative Procedure Act,"  
45 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
46 necessary to carry out the provisions of this act.

47 (cf: P.L.2009, c.308, s.37)



1       7. Section 5 of P.L.1993, c.375 (C.18A:72A-53) is amended to  
2 read as follows:

3       5. The initial grants from the trust fund shall be allocated as  
4 follows:

5       a. \$48,000,000 for facilities at the State Colleges;

6       b. \$38,880,000 for facilities at Rutgers, The State University;

7       c. \$20,160,000 for facilities at the University of Medicine and  
8 Dentistry of New Jersey;

9       d. \$12,960,000 for facilities at the New Jersey Institute of  
10 Technology;

11       e. \$44,000,000 for facilities at the county colleges;

12       f. \$21,000,000 for facilities at the private institutions of higher  
13 education;

14       g. \$15,000,000 for South Jersey multi-institutional economic  
15 development facilities. As used in this section, "South Jersey multi-  
16 institutional economic development facilities" means facilities  
17 which would promote economic development in the eight  
18 southernmost counties of the State and which involve more than one  
19 public or private institution of higher education; and

20       h. \$20,000,000 for a new facility for Rutgers, The State  
21 University, School of Law, Newark.

22       The amount authorized in subsection g. may be apportioned  
23 among any other amounts authorized in subsections a. through f. of  
24 this section.

25       The **【Commission on】** Secretary of Higher Education may  
26 reallocate any balance in an amount authorized in subsections a.  
27 through h. of this section which has not been approved by the  
28 **【commission】** secretary for a grant within 18 months of the  
29 effective date of this act.

30       The **【Commission on】** Secretary of Higher Education shall  
31 determine the allocation of moneys deposited into the trust fund  
32 resulting from the issuance by the authority of new bonds because  
33 of the retirement of bonds previously issued by the authority.

34       The facilities funded by grants from the trust fund shall follow  
35 the principles of affirmative action and equal opportunity  
36 employment. In furtherance of these principles, the **【Commission**  
37 **on】** Secretary of Higher Education shall continue **【its】** the policy of  
38 encouraging institutions to solicit bids from, and award contracts to,  
39 minority and women-owned businesses.

40 (cf: P.L.2009, c.308, s.38)

41

42       8. Section 6 of P.L.1993, c.375 (C.18A:72A-54) is amended to  
43 read as follows:

44       6. a. The governing board of a public or private institution of  
45 higher education may determine, by resolution, to apply for a grant  
46 from the trust fund. Upon adoption of the resolution, the board shall  
47 file an application with the **【Commission on】** Secretary of Higher  
48 Education, which application shall include a complete description

1 of the project to be financed and an identification of any additional  
2 sources of revenue to be used.

3 b. The **【Commission on】** Secretary of Higher Education shall  
4 review the application and <sup>2</sup>**【, by resolution,】**<sup>2</sup> approve or  
5 disapprove the grant. For each grant which is approved, the  
6 **【commission】** secretary shall establish the amount and shall  
7 <sup>2</sup>**【forward a copy of the resolution along with the amount of the**  
8 **grant】** send a written certification of such approval including the  
9 amount approved<sup>2</sup> to the authority.

10 c. The **【Commission on】** Secretary of Higher Education shall  
11 submit to the Legislature a copy of the <sup>2</sup>**【resolution approving the**  
12 **grant along with the amount of the grant】** written certification of  
13 the approval of the grant and the amount thereof<sup>2</sup>. If the Legislature  
14 does not disapprove the grant by the adoption of a concurrent  
15 resolution within 60 days, the grant shall be deemed to be  
16 authorized. In addition, the resolution approving the grant for the  
17 new instructional and research facility for Rutgers, The State  
18 University, School of Law, Newark, shall be submitted by the  
19 **【commission】** secretary to the Joint Budget Oversight Committee  
20 for its approval prior to the commission's submission of the  
21 resolution to the Legislature. The **【commission】** secretary shall  
22 provide to the committee such information concerning the grant as  
23 the committee may require for its consideration.

24 d. Each grant awarded under this act shall be contingent upon  
25 the recipient governing board entering into a contract or contracts  
26 for the commencement of the construction, reconstruction,  
27 development, extension, or improvement of the facility within one  
28 year of the date on which the funds of the grant are made available.  
29 (cf: P.L.2009, c.308, s.39)

30

31 9. Section 7 of P.L.1993, c.375 (C.18A:72A-55) is amended to  
32 read as follows:

33 7. In order to ensure the most effective utilization of the  
34 moneys in the trust fund and to guide governing boards which elect  
35 to apply for a grant, the **【Commission on】** Secretary of Higher  
36 Education shall establish a list of selection criteria and shall specify  
37 the information to be included in a grant application.

38 (cf: P.L.2009, c.308, s.40)

39

40 10. Section 8 of P.L.1993, c.375 (C.18A:72A-56) is amended to  
41 read as follows:

42 8. In order to ensure proper oversight and review, there is  
43 created the "Higher Education Facilities Trust Fund Board" which  
44 shall consist of **【five】** four members as follows: the **【Chair and**  
45 **Vice Chair of the Commission on】** Secretary of Higher Education;  
46 the State Treasurer or a designee; the President of the Senate or a  
47 designee; and the Speaker of the General Assembly or a designee.

1 The board shall ensure that the revenue provided to the trust fund is  
2 adequate to support the grants approved by the **【Commission on】**  
3 Secretary of Higher Education. At the end of each three-year period  
4 following the approval of this act, the board shall review, in  
5 consultation with the **【Commission on】** Secretary of Higher  
6 Education, the physical plant needs of public and private  
7 institutions of higher education in the State and shall recommend to  
8 the Governor and the Legislature a plan to increase, as necessary,  
9 the availability and uses of grants made from the trust fund.  
10 (cf: P.L.2009, c.308, s.41)

11  
12 11. Section 11 of P.L.1993, c.375 (C.18A:72A-58) is amended  
13 to read as follows:

14 11. The **【Commission on】** Secretary of Higher Education, in  
15 consultation with the New Jersey Educational Facilities Authority,  
16 shall adopt, pursuant to the "Administrative Procedure Act,"  
17 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
18 necessary to carry out the provisions of this act.  
19 (cf: P.L.2009, c.308, s.43)

20  
21 12. Section 5 of P.L.1997, c.238 (C.18A:72A-63) is amended to  
22 read as follows:

23 5. The use of a grant from the technology fund shall require a  
24 matching amount from an institution equal to the amount of the  
25 grant provided. The initial grants from the technology fund shall be  
26 allocated as follows:

27 a. a minimum of \$12,600,000 for the acquisition of higher  
28 education technology infrastructure at the State colleges;

29 b. a minimum of \$7,722,000 for the acquisition of higher  
30 education technology infrastructure at Rutgers, The State  
31 University;

32 c. a minimum of \$4,306,500 for the acquisition of higher  
33 education technology infrastructure at the University of Medicine  
34 and Dentistry of New Jersey;

35 d. a minimum of \$2,821,500 for the acquisition of higher  
36 education technology infrastructure at the New Jersey Institute of  
37 Technology;

38 e. a minimum of \$12,600,000 for the acquisition of higher  
39 education technology infrastructure at the county colleges;

40 f. a minimum of \$4,950,000 for the acquisition of higher  
41 education technology infrastructure at private institutions of higher  
42 education;

43 g. a maximum of \$5,000,000 for interconnectivity among the  
44 higher education institutions. Expenditures shall be based on an  
45 inter-institutional needs assessment. If, as a result of the needs  
46 assessment, less than \$5,000,000 is expended from the funds  
47 allocated in this subsection, the remaining funds shall be allocated  
48 among the institutions designated in subsections a. through f. of this

1 section based on the percentage of the total funds allocated in each  
2 of the subsections a. through f.; and

3 h. a minimum of \$5,000,000 for non-matching public library  
4 grants or for Statewide library technology initiatives through the  
5 New Jersey State Library.

6 The **[Commission on]** Secretary of Higher Education may  
7 reallocate any balance in the amount authorized in subsections a.  
8 through g. of this section, which has not been approved by the  
9 **[commission]** secretary for a grant within 18 months of the  
10 effective date of P.L.1997, c.238 (C.18A:72A-59 et seq.).

11 The **[commission]** secretary shall determine the allocation of  
12 moneys deposited into the technology fund resulting from the  
13 issuance by the authority of new bonds because of the retirement of  
14 bonds previously issued by the authority.

15 Acquisition of technology infrastructure funded by grants from  
16 the technology fund shall follow the principles of affirmative action  
17 and equal opportunity employment. In furtherance of these  
18 principles, the **[commission]** secretary shall continue its policy of  
19 encouraging institutions to solicit bids from, and award contracts to,  
20 minority and women-owned businesses.

21 (cf: P.L.1997, c.238, s.5)

22

23 13. Section 6 of P.L.1997, c.238 (C.18A:72A-64) is amended to  
24 read as follows:

25 6. a. The governing board of a public or private institution of  
26 higher education may determine, by resolution, to apply for a grant  
27 from the technology fund. Upon adoption of the resolution, the  
28 board shall file an application with the **[Commission on]** Secretary  
29 of Higher Education, which application shall include a complete  
30 description of the technology infrastructure to be acquired and an  
31 identification of the sources of revenue to be used for the required  
32 institutional match.

33 b. The **[commission]** secretary shall review the application  
34 and<sup>2</sup>**[, by resolution,]**<sup>2</sup> approve or disapprove the grant. For each  
35 grant which is approved, the **[commission]** secretary shall  
36 establish the amount and shall <sup>2</sup>**[forward a copy of the resolution**  
37 **along with the amount of the grant]** send written certification of the  
38 approval of the grant including the approved amount<sup>2</sup> to the  
39 authority.

40 c. Each grant awarded under this act shall be contingent upon  
41 the recipient governing board entering into a contract or contracts  
42 for the acquisition of technology infrastructure within one year of  
43 the date on which the funds of the grant are made available to the  
44 institution.

45 (cf: P.L.1997, c.238, s.6)

1       14. Section 9 of P.L.1997, c.238 (C.18A:72A-67) is amended to  
2 read as follows:

3       9. The authority shall not enter into an agreement with an  
4 institution of higher education unless the **【Commission on】**  
5 Secretary of Higher Education has <sup>2</sup>**【adopted a resolution which**  
6 **approves】** approved<sup>2</sup> the acquisition of the higher education  
7 technology infrastructure by the institution.

8 (cf: P.L.1997, c.238, s.9)

9

10       15. Section 11 of P.L.1997, c.238 (C.18A:72A-69) is amended  
11 to read as follows:

12       11. In order to ensure the most effective utilization of the  
13 moneys in the technology fund and to guide governing boards  
14 which elect to apply for a grant, the **【Commission on】** Secretary of  
15 Higher Education shall establish criteria for approval and shall  
16 specify the information to be included in a grant application.

17 (cf: P.L.1997, c.238, s.11)

18

19       16. Section 12 of P.L.1997, c.238 (C.18A:72A-70) is amended  
20 to read as follows:

21       12. The **【Commission on】** Secretary of Higher Education, in  
22 consultation with the New Jersey Educational Facilities Authority,  
23 shall adopt, pursuant to the "Administrative Procedure Act,"  
24 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
25 necessary to carry out the provisions of this act.

26 (cf: P.L.1997, c.238, s.12)

27

28       17. Section 13 of P.L.1997, c.238 (C.18A:72A-71) is amended  
29 to read as follows:

30       13. The **【Commission on】** Secretary of Higher Education shall  
31 annually submit a report to the Governor and the Legislature on the  
32 higher education technology infrastructure purchases at public and  
33 private institutions of higher education, which have been approved  
34 by the **【commission】** secretary and financed by the New Jersey  
35 Educational Facilities Authority pursuant to this act.

36 (cf: P.L.1997, c.238, s.13)

37

38       18. Section 4 of P.L.1999, c.217 (C.18A:72A-75) is amended to  
39 read as follows:

40       4. The capital improvement fund shall be used to provide  
41 grants to New Jersey's four-year public and private institutions of  
42 higher education for the cost, or a portion of the cost, of the  
43 renewal, renovation, improvement, expansion, construction, and  
44 reconstruction of facilities and technology infrastructure. Each  
45 institution shall use the grants for existing renewal and renovations  
46 needs at instructional, laboratory, communication, research, and  
47 administrative facilities. An institution may use up to 20% of a

1 grant within student-support facilities for renewal and renovation or  
2 improvement, expansion, construction, and reconstruction. If all  
3 renewal and renovation is completed at instructional, laboratory,  
4 communication, research, and administrative facilities or is  
5 accounted for through other funding sources, or if an institution is  
6 granted an exemption by the **[Commission on]** Secretary of Higher  
7 Education for the purpose of maximizing federal grant fund  
8 recoveries or for the purpose of replacing a building when projected  
9 renewal and renovation costs exceed the projected cost of  
10 replacement, then grant funds may be used for the improvement,  
11 expansion, construction, and reconstruction of instructional,  
12 laboratory, communication, and research facilities, or technology  
13 infrastructure.

14 As used in this act:

15 "renewal and renovation" means making the changes necessary  
16 to address deferred capital maintenance needs, to meet all State and  
17 federal health, safety, fire, and building code standards, or to  
18 provide a safe and appropriate educational or working environment;

19 "student-support facilities" mean student resident halls, student  
20 dining facilities, student activity centers, and student health centers;  
21 and

22 "technology infrastructure" means video, voice, and data  
23 telecommunications equipment and linkages with a life expectancy  
24 of at least 10 years.

25 (cf: P.L.2002, c.96)

26

27 19. Section 5 of P.L.1999, c.217 (C.18A:72A-76) is amended to  
28 read as follows:

29 5. a. An amount not to exceed \$550,000,000 in the capital  
30 improvement fund shall be allocated as follows:

31 \$169,000,000 for Rutgers, The State University;

32 \$95,062,500 for the University of Medicine and Dentistry of  
33 New Jersey;

34 \$60,937,500 for the New Jersey Institute of Technology;

35 \$175,000,000 for the State colleges and universities; and

36 \$50,000,000 for the private institutions of higher education.

37 b. The **[commission]** secretary may reallocate any balance in  
38 an amount authorized in subsection a. of this section which has not  
39 been approved by the **[commission]** secretary for grants within 24  
40 months of the adoption of regulations by the **[commission]**  
41 secretary. The **[commission]** secretary may allocate any additional  
42 moneys in the capital improvement fund to institutions for capital  
43 improvement projects as the **[commission]** secretary determines  
44 and shall determine the allocation of moneys deposited into the  
45 fund resulting from the issuance by the authority of new bonds  
46 because of the retirement of bonds previously issued by the  
47 authority.

1 c. The facilities and technology infrastructure funded by grants  
2 from the capital improvement fund shall follow the principles of  
3 affirmative action and equal opportunity employment. In  
4 furtherance of these principles, the **[commission]** secretary shall  
5 continue **[its]** the policy of encouraging institutions to solicit bids  
6 from, and award contracts to, minority and women-owned  
7 businesses.

8 (cf: P.L.1999, c.217, s.5)

9

10 20. Section 6 of P.L.1999, c.217 (C.18A:72A-77) is amended to  
11 read as follows:

12 6. a. The governing board of a four-year public or private  
13 institution of higher education may determine, by resolution, to  
14 apply for a grant from the capital improvement fund. Upon  
15 adoption of the resolution, the board shall file an application with  
16 the **[commission]** secretary, which application shall include a  
17 complete description of the project to be financed and an  
18 identification of any additional sources of revenue to be used.

19 b. In order to ensure the most effective utilization of the  
20 moneys in the capital improvement fund and to guide governing  
21 boards which elect to apply for a grant, the **[commission]** secretary  
22 shall establish a list of grant criteria and shall specify the  
23 information to be included in a grant application.

24 c. The **[commission]** secretary shall review the application and  
25 <sup>2</sup>**[, by resolution,]**<sup>2</sup> approve or disapprove the grant. When a grant  
26 is approved, the **[commission]** secretary shall establish the amount  
27 and shall <sup>2</sup>**[forward a copy of the resolution along with the amount**  
28 **of the grant]** send a written certification of the approval of the grant  
29 and the amount of the grant<sup>2</sup> to the authority.

30 d. The **[commission]** secretary shall submit to the Legislature  
31 a copy of the <sup>2</sup>**[resolution approving the grant along with the**  
32 **amount of the grant]** written certification of the grant and the  
33 amount thereof<sup>2</sup>. If the Legislature does not disapprove the grant  
34 by the adoption of a concurrent resolution within 45 days, the grant  
35 shall be deemed to be authorized.

36 e. When a grant is awarded pursuant to this act, it shall be  
37 contingent upon the governing board of the recipient institution  
38 entering into a contract or contracts for the commencement of the  
39 renewal, renovation, improvement, expansion, construction, and  
40 reconstruction of facilities and technology infrastructure within one  
41 year of the date on which the funds for the grant are made available.

42 (cf: P.L.1999, c.217, s.6)

43

44 21. Section 15 of P.L.1999, c.217 (C.18A:72A-80) is amended  
45 to read as follows:

46 15. The **[Commission on]** Secretary of Higher Education, in  
47 consultation with the New Jersey Educational Facilities Authority,

1 shall adopt, pursuant to the "Administrative Procedure Act,"  
2 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
3 necessary to carry out the provisions of this act.  
4 (cf: P.L.1999, c.217, s.15)

5  
6 22. (New section) The Secretary of Higher Education shall  
7 exercise all the powers and duties previously exercised by the  
8 Commission on Higher Education under the Higher Education  
9 Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et  
10 seq.), the "Higher Education Facilities Trust Fund Act," P.L.1993,  
11 c.375 (C.18A:72A-49 et seq.), the "Higher Education Technology  
12 Infrastructure Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.),  
13 and the "Higher Education Capital Improvement Fund Act,"  
14 P.L.1999, c.217 (C.18A:72A-72 et seq.).

15  
16 <sup>1</sup>23. (New section) The authority shall not enter into a lease  
17 agreement with an institution of higher education without the  
18 review and approval of the Joint Budget Oversight Committee. The  
19 Joint Budget Oversight Committee shall approve or disapprove each  
20 lease agreement within 10 working days of receipt of the lease  
21 information or the lease agreement shall be deemed approved.<sup>1</sup>

22  
23 <sup>1</sup>24. (New section) The authority shall not provide grant funding  
24 without the review and approval of the Joint Budget Oversight  
25 Committee. The Joint Budget Oversight Committee shall approve  
26 or disapprove each grant within 10 working days of receipt of the  
27 grant information or the grant shall be deemed approved.<sup>1</sup>

28  
29 <sup>1</sup>[23.] 25.<sup>1</sup> This act shall take effect immediately.

30  
31  
32  
33  
34 Establishes new public-private partnership agreement option for  
35 construction of State and county college facilities and changes  
36 reference from "Commission on Higher Education" to "Secretary of  
37 Higher Education" in higher education construction Educational  
38 Facilities Authority bond programs.



# SENATE, No. 2501

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 14, 2012

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Establishes new public-private partnership agreement option for construction of State and county college facilities and changes reference from “Commission on Higher Education” to “Secretary of Higher Education” in higher education construction Educational Facilities Authority bond programs.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning construction of facilities at institutions of  
2 higher education and revising various parts of the statutory law.

3

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

6

7 1. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to  
8 read as follows:

9 43 a. (1) A State college or county college may enter into a  
10 contract with a private entity, subject to subsection f. of this section,  
11 to be referred to as a public-private partnership agreement, that  
12 permits the private entity to assume full financial and administrative  
13 responsibility for the on-campus construction, reconstruction,  
14 repair, alteration, improvement **[or]**, extension, management, or  
15 operation of a building, structure, or facility of, or for the benefit of,  
16 the institution, provided that the project is financed in whole by the  
17 private entity and that the State or institution of higher education, as  
18 applicable, retains full ownership of the land upon which the project  
19 is completed.

20 (2) A public-private partnership agreement may include an  
21 agreement under which a State or county college leases to a private  
22 entity the operation of a dormitory or other revenue-producing  
23 facility to which the college holds title, in exchange for up-front or  
24 structured financing by the private entity for the construction of  
25 classrooms, laboratories, or other academic buildings. Under the  
26 lease agreement, the college shall continue to hold title to the  
27 facility, and the private entity shall be responsible for the  
28 management, operation, and maintenance of the facility. The  
29 private entity shall receive some or all, as per the agreement, of the  
30 revenue generated by the facility and shall operate the facility in  
31 accordance with college standards. A lease agreement shall not  
32 affect the status or employment rights of college employees who are  
33 assigned to, or provide services to, the leased facility. At the end of  
34 the lease term, subsequent revenue generated by the facility, along  
35 with management, operation, and maintenance responsibility, shall  
36 revert to the college.

37 b. (1) A private entity that assumes financial and administrative  
38 responsibility for a project pursuant to subsection a. of this section  
39 shall not be subject to the procurement and contracting  
40 requirements of all statutes applicable to the institution of higher  
41 education at which the project is completed, including, but not  
42 limited to, the "State College Contracts Law," P.L.1986, c.43  
43 (C.18A:64-52 et seq.), and the "County College Contracts Law,"  
44 P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of  
45 facilitating the financing of a project pursuant to subsection a. of

**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 this section, a public entity may become the owner or lessee of the  
2 project or the lessee of the land, or both, may become the lessee of a  
3 dormitory or other revenue-producing facility to which the college  
4 holds title, may issue indebtedness in accordance with the public  
5 entity's enabling legislation and, notwithstanding any provision of  
6 law to the contrary, shall be empowered to enter into contracts with  
7 a private entity and its affiliates without being subject to the  
8 procurement and contracting requirements of any statute applicable  
9 to the public entity provided that the private entity has been selected  
10 by the institution of higher education pursuant to a solicitation of  
11 proposals or qualifications. For the purposes of this section, a  
12 public entity shall include the New Jersey Economic Development  
13 Authority, and any project undertaken pursuant to subsection a. of  
14 this section of which the authority becomes the owner or lessee, or  
15 which is situated on land of which the authority becomes the lessee,  
16 shall be deemed a "project" under the "New Jersey Economic  
17 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

18 (2) As the carrying out of any project described pursuant to this  
19 section constitutes the performance of an essential public function,  
20 all projects predominantly used in furtherance of the educational  
21 purposes of the institution undertaken pursuant to this section,  
22 provided it is owned by or leased to a public entity, non-profit  
23 business entity, foreign or domestic, or a business entity wholly  
24 owned by such non-profit business entity, shall at all times be  
25 exempt from property taxation and special assessments of the State,  
26 or any municipality, or other political subdivision of the State and,  
27 notwithstanding the provisions of section 15 of P.L.1974, c.80  
28 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or any  
29 other section of law to the contrary, shall not be required to make  
30 payments in lieu of taxes. The land upon which the project is  
31 located shall also at all times be exempt from property taxation.  
32 Further, the project and land upon which the project is located shall  
33 not be subject to the provisions of section 1 of P.L.1984, c.176  
34 (C.54:4-1.10) regarding the tax liability of private parties  
35 conducting for profit activities on tax exempt land, or section 1 of  
36 P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold  
37 interests in exempt property that are held by nonexempt parties.

38 c. Each worker employed in the construction, rehabilitation, or  
39 building maintenance services of facilities by a private entity that  
40 has entered into a public-private partnership agreement with a State  
41 or county college pursuant to subsection a. of this section shall be  
42 paid not less than the prevailing wage rate for the worker's craft or  
43 trade as determined by the Commissioner of Labor and Workforce  
44 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
45 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

46 d. (1) All construction projects under a public-private  
47 partnership agreement entered into pursuant to this section shall  
48 contain a project labor agreement. The project labor agreement

1 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et  
2 seq.), and shall be in a manner that to the greatest extent possible  
3 enhances employment opportunities for individuals residing in the  
4 county of the project's location. Further, the general contractor,  
5 construction manager, design-build team, or subcontractor for a  
6 construction project proposed in accordance with this paragraph  
7 shall be registered pursuant to the provisions of P.L.1999, c.238  
8 (C.34:11-56.48 et seq.), and shall be classified by the Division  
9 of Property Management and Construction to perform work  
10 on a public-private partnership higher education project. All  
11 construction projects proposed in accordance with this paragraph  
12 shall be submitted to the New Jersey Economic Development  
13 Authority for its review and approval and, when practicable, are  
14 encouraged to adhere to the Leadership in Energy and  
15 Environmental Design Green Building Rating System as adopted by  
16 the United States Green Building Council.

17 (2) Where no public fund has been established for the financing  
18 of a public improvement, the chief financial officer of the public  
19 owner shall require the private entity for whom the public  
20 improvement is being made to post, or cause to be posted, a bond  
21 guaranteeing prompt payment of moneys due to the contractor, his  
22 or her subcontractors and to all persons furnishing labor or  
23 materials to the contractor or his or her subcontractors in the  
24 prosecution of the work on the public improvement.

25 e. A general contractor, construction manager, design-build  
26 team, or subcontractor shall be registered pursuant to the provisions  
27 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified  
28 by the Division of Property Management and Construction to  
29 perform work on a public-private partnership higher education  
30 project.

31 f. (1) On or before August 1, 2013, all projects proposed in  
32 accordance with this section shall be submitted to the New Jersey  
33 Economic Development Authority for its review and approval;  
34 except that in the case of projects proposed in accordance with  
35 paragraph (2) of subsection a. of this section, all projects shall be  
36 submitted on or before August 1, 2014. The projects are  
37 encouraged, when practicable, to adhere to the green building  
38 manual prepared by the Commissioner of Community Affairs  
39 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any  
40 application that is deemed to be incomplete on August 2, 2013, or  
41 on August 2, 2014 in the case of an application submitted pursuant  
42 to paragraph (2) of subsection a. of this section, shall not be eligible  
43 for consideration.

44 (2) (a) In order for an application to be complete and considered  
45 by the authority it shall include, but not be limited to: (i) a public-  
46 private partnership agreement between the State or county college  
47 and the private developer; (ii) a full description of the project,  
48 including a description of any agreement for the lease of a revenue-

1 producing facility related to the project; (iii) the estimated costs and  
2 financial documentation for the project; (iv) a timetable for  
3 completion of the project extending no more than five years after  
4 consideration and approval; and (v) any other requirements that the  
5 authority deems appropriate or necessary.

6 (b) As part of the estimated costs and financial documentation  
7 for the project the application shall contain a long-range  
8 maintenance plan and shall specify the expenditures that qualify as  
9 an appropriate investment in maintenance. This long-range  
10 maintenance plan shall be approved by the authority pursuant to  
11 regulations promulgated by the authority that reflect national  
12 building maintenance standards and other appropriate building  
13 maintenance benchmarks. All contracts to implement a long-range  
14 maintenance plan pursuant to this paragraph shall contain a project  
15 labor agreement. The project labor agreement shall be subject to  
16 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in  
17 a manner that to the greatest extent possible enhances employment  
18 opportunities for individuals residing in the county of the project's  
19 location.

20 (3) The authority shall review all completed applications, and  
21 request additional information as is needed to make a complete  
22 assessment of the project. No project shall be undertaken until final  
23 approval has been granted by the authority; provided, however, that  
24 the authority shall retain the right to revoke approval if it  
25 determines that the project has deviated from the plan submitted  
26 pursuant to paragraph (2) of this subsection.

27 (4) The authority may promulgate any rules and regulations  
28 necessary to implement this subsection, including provisions for  
29 fees to cover administrative costs.

30 Where no public fund has been established for the financing of a  
31 public improvement, the chief financial officer of the public owner  
32 shall require the private entity for whom the public improvement is  
33 being made to post, or cause to be posted, a bond guaranteeing  
34 prompt payment of moneys due to the contractor, his or her  
35 subcontractors and to all persons furnishing labor or materials to the  
36 contractor or his or her subcontractors in the prosecution of the  
37 work on the public improvement.

38 g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall  
39 not apply to any project carried out pursuant to this section.

40 (cf: P.L.2012, c.10, s.1)

41

42 2. Section 2 of P.L.1993, c.136 (C.18A:72A-41) is amended to  
43 read as follows:

44 2. The Legislature finds and declares that:

45 a. Higher education plays a vital role in the economic  
46 development of the nation and the State by providing the education  
47 and training of the work force of the future and by advancing  
48 science and technology through research;

1       b. The rapid technological changes occurring throughout the  
2 world have a considerable impact on the quality of teaching,  
3 learning, and research at colleges and universities;

4       c. The current inventory of instructional and research  
5 equipment at the colleges and universities within the State is aging,  
6 both chronologically and technologically, and much of it has been  
7 rendered obsolete; and

8       d. The **【Commission on】** Secretary of Higher Education, which  
9 is statutorily responsible for the coordination and planning of higher  
10 education in New Jersey, has identified a crucial need to establish a  
11 regular financing mechanism for scientific, engineering, technical,  
12 computer, communications, and instructional equipment at New  
13 Jersey's public and private institutions of higher education.  
14 (cf: P.L.2009, c.308, s.32)

15

16       3. Section 6 of P.L.1993, c.136 (C.18A:72A-43) is amended to  
17 read as follows:

18       6. The moneys deposited into the fund created pursuant to  
19 section 5 of P.L.1993, c.136 (C.18A:72A-42) shall be allocated in  
20 the following manner:

21       a. A minimum of \$24,000,000 for the leasing of higher  
22 education equipment at the State colleges;

23       b. A minimum of \$19,440,000 for the leasing of higher  
24 education equipment at Rutgers, The State University;

25       c. A minimum of \$10,080,000 for the leasing of higher  
26 education equipment at the University of Medicine and Dentistry of  
27 New Jersey;

28       d. A minimum of \$6,480,000 for the leasing of higher  
29 education equipment at the New Jersey Institute of Technology;

30       e. A minimum of \$22,000,000 for the leasing of higher  
31 education equipment at the county colleges;

32       f. A minimum of \$10,500,000 for the leasing of higher  
33 education equipment at private institutions of higher education; and

34       g. A minimum of \$7,500,000 for the leasing of higher  
35 education equipment for emerging needs programs at public and  
36 private institutions of higher education.

37       The **【Commission on】** Secretary of Higher Education may  
38 apportion the amounts authorized in subsection g. among any other  
39 amounts authorized in subsections a. through f.

40       The **【Commission on】** Secretary of Higher Education may  
41 reallocate any balance in the amounts authorized in subsections a.  
42 through g. of this section which have not been fully committed  
43 within 18 months of the effective date of this act.

44       The **【Commission on】** Secretary of Higher Education shall  
45 determine the allocation of moneys deposited into the fund resulting  
46 from the issuance by the authority of new bonds because of the  
47 retirement of bonds previously issued by the authority.

48 (cf: P.L.2009, c.308, s.34)

1       4. Section 8 of P.L.1993, c.136 (C.18A:72A-45) is amended to  
2 read as follows:

3       8. The authority shall not enter into a lease agreement with an  
4 institution of higher education unless the **【Commission on】**  
5 Secretary of Higher Education has adopted a resolution which  
6 approves the purchase of the higher education equipment by the  
7 institution. The **【commission】** secretary shall forward a copy of the  
8 resolution along with the amount of the approved purchase to the  
9 authority.

10 (cf: P.L.2009, c.308, s.35)

11

12       5. Section 10 of P.L.1993, c.136 (C.18A:72A-47) is amended  
13 to read as follows:

14       10. The **【Commission on】** Secretary of Higher Education shall  
15 annually submit a report to the Governor and the Legislature on the  
16 higher education equipment purchases at public and private  
17 institutions of higher education which have been approved by the  
18 **【commission】** secretary and financed by the New Jersey  
19 Educational Facilities Authority pursuant to lease agreements with  
20 the institutions.

21 (cf: P.L.2009, c.308, s.36)

22

23       6. Section 11 of P.L.1993, c.136 (C.18A:72A-48) is amended  
24 to read as follows:

25       11. The **【Commission on】** Secretary of Higher Education, in  
26 consultation with the New Jersey Educational Facilities Authority,  
27 shall adopt, pursuant to the "Administrative Procedure Act,"  
28 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
29 necessary to carry out the provisions of this act.

30 (cf: P.L.2009, c.308, s.37)

31

32       7. Section 5 of P.L.1993, c.375 (C.18A:72A-53) is amended to  
33 read as follows:

34       5. The initial grants from the trust fund shall be allocated as  
35 follows:

- 36       a. \$48,000,000 for facilities at the State Colleges;
- 37       b. \$38,880,000 for facilities at Rutgers, The State University;
- 38       c. \$20,160,000 for facilities at the University of Medicine and  
39 Dentistry of New Jersey;
- 40       d. \$12,960,000 for facilities at the New Jersey Institute of  
41 Technology;
- 42       e. \$44,000,000 for facilities at the county colleges;
- 43       f. \$21,000,000 for facilities at the private institutions of higher  
44 education;
- 45       g. \$15,000,000 for South Jersey multi-institutional economic  
46 development facilities. As used in this section, "South Jersey multi-  
47 institutional economic development facilities" means facilities  
48 which would promote economic development in the eight

1 southernmost counties of the State and which involve more than one  
2 public or private institution of higher education; and

3 h. \$20,000,000 for a new facility for Rutgers, The State  
4 University, School of Law, Newark.

5 The amount authorized in subsection g. may be apportioned  
6 among any other amounts authorized in subsections a. through f. of  
7 this section.

8 The **【Commission on】** Secretary of Higher Education may  
9 reallocate any balance in an amount authorized in subsections a.  
10 through h. of this section which has not been approved by the  
11 **【commission】** secretary for a grant within 18 months of the  
12 effective date of this act.

13 The **【Commission on】** Secretary of Higher Education shall  
14 determine the allocation of moneys deposited into the trust fund  
15 resulting from the issuance by the authority of new bonds because  
16 of the retirement of bonds previously issued by the authority.

17 The facilities funded by grants from the trust fund shall follow  
18 the principles of affirmative action and equal opportunity  
19 employment. In furtherance of these principles, the **【Commission**  
20 **on】** Secretary of Higher Education shall continue **【its】** the policy of  
21 encouraging institutions to solicit bids from, and award contracts to,  
22 minority and women-owned businesses.

23 (cf: P.L.2009, c.308, s.38)

24

25 8. Section 6 of P.L.1993, c.375 (C.18A:72A-54) is amended to  
26 read as follows:

27 6. a. The governing board of a public or private institution of  
28 higher education may determine, by resolution, to apply for a grant  
29 from the trust fund. Upon adoption of the resolution, the board shall  
30 file an application with the **【Commission on】** Secretary of Higher  
31 Education, which application shall include a complete description  
32 of the project to be financed and an identification of any additional  
33 sources of revenue to be used.

34 b. The **【Commission on】** Secretary of Higher Education shall  
35 review the application and, by resolution, approve or disapprove the  
36 grant. For each grant which is approved, the **【commission】**  
37 secretary shall establish the amount and shall forward a copy of the  
38 resolution along with the amount of the grant to the authority.

39 c. The **【Commission on】** Secretary of Higher Education shall  
40 submit to the Legislature a copy of the resolution approving the  
41 grant along with the amount of the grant. If the Legislature does not  
42 disapprove the grant by the adoption of a concurrent resolution  
43 within 60 days, the grant shall be deemed to be authorized. In  
44 addition, the resolution approving the grant for the new  
45 instructional and research facility for Rutgers, The State University,  
46 School of Law, Newark, shall be submitted by the **【commission】**  
47 secretary to the Joint Budget Oversight Committee for its approval



1 prior to the commission's submission of the resolution to the  
2 Legislature. The **【commission】** secretary shall provide to the  
3 committee such information concerning the grant as the committee  
4 may require for its consideration.

5 d. Each grant awarded under this act shall be contingent upon  
6 the recipient governing board entering into a contract or contracts  
7 for the commencement of the construction, reconstruction,  
8 development, extension, or improvement of the facility within one  
9 year of the date on which the funds of the grant are made available.  
10 (cf: P.L.2009, c.308, s.39)

11  
12 9. Section 7 of P.L.1993, c.375 (C.18A:72A-55) is amended to  
13 read as follows:

14 7. In order to ensure the most effective utilization of the  
15 moneys in the trust fund and to guide governing boards which elect  
16 to apply for a grant, the **【Commission on】** Secretary of Higher  
17 Education shall establish a list of selection criteria and shall specify  
18 the information to be included in a grant application.  
19 (cf: P.L.2009, c.308, s.40)

20  
21 10. Section 8 of P.L.1993, c.375 (C.18A:72A-56) is amended to  
22 read as follows:

23 8. In order to ensure proper oversight and review, there is  
24 created the "Higher Education Facilities Trust Fund Board" which  
25 shall consist of **【five】** four members as follows: the **【Chair and**  
26 **Vice Chair of the Commission on】** Secretary of Higher Education;  
27 the State Treasurer or a designee; the President of the Senate or a  
28 designee; and the Speaker of the General Assembly or a designee.  
29 The board shall ensure that the revenue provided to the trust fund is  
30 adequate to support the grants approved by the **【Commission on】**  
31 Secretary of Higher Education. At the end of each three-year period  
32 following the approval of this act, the board shall review, in  
33 consultation with the **【Commission on】** Secretary of Higher  
34 Education, the physical plant needs of public and private  
35 institutions of higher education in the State and shall recommend to  
36 the Governor and the Legislature a plan to increase, as necessary,  
37 the availability and uses of grants made from the trust fund.  
38 (cf: P.L.2009, c.308, s.41)

39  
40 11. Section 11 of P.L.1993, c.375 (C.18A:72A-58) is amended  
41 to read as follows:

42 11. The **【Commission on】** Secretary of Higher Education, in  
43 consultation with the New Jersey Educational Facilities Authority,  
44 shall adopt, pursuant to the "Administrative Procedure Act,"  
45 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
46 necessary to carry out the provisions of this act.  
47 (cf: P.L.2009, c.308, s.43)

1       12. Section 5 of P.L.1997, c.238 (C.18A:72A-63) is amended to  
2 read as follows:

3       5. The use of a grant from the technology fund shall require a  
4 matching amount from an institution equal to the amount of the  
5 grant provided. The initial grants from the technology fund shall be  
6 allocated as follows:

7       a. a minimum of \$12,600,000 for the acquisition of higher  
8 education technology infrastructure at the State colleges;

9       b. a minimum of \$7,722,000 for the acquisition of higher  
10 education technology infrastructure at Rutgers, The State  
11 University;

12       c. a minimum of \$4,306,500 for the acquisition of higher  
13 education technology infrastructure at the University of Medicine  
14 and Dentistry of New Jersey;

15       d. a minimum of \$2,821,500 for the acquisition of higher  
16 education technology infrastructure at the New Jersey Institute of  
17 Technology;

18       e. a minimum of \$12,600,000 for the acquisition of higher  
19 education technology infrastructure at the county colleges;

20       f. a minimum of \$4,950,000 for the acquisition of higher  
21 education technology infrastructure at private institutions of higher  
22 education;

23       g. a maximum of \$5,000,000 for interconnectivity among the  
24 higher education institutions. Expenditures shall be based on an  
25 inter-institutional needs assessment. If, as a result of the needs  
26 assessment, less than \$5,000,000 is expended from the funds  
27 allocated in this subsection, the remaining funds shall be allocated  
28 among the institutions designated in subsections a. through f. of this  
29 section based on the percentage of the total funds allocated in each  
30 of the subsections a. through f.; and

31       h. a minimum of \$5,000,000 for non-matching public library  
32 grants or for Statewide library technology initiatives through the  
33 New Jersey State Library.

34       The **【Commission on】** Secretary of Higher Education may  
35 reallocate any balance in the amount authorized in subsections a.  
36 through g. of this section, which has not been approved by the  
37 **【commission】** secretary for a grant within 18 months of the  
38 effective date of P.L.1997, c.238 (C.18A:72A-59 et seq.).

39       The **【commission】** secretary shall determine the allocation of  
40 moneys deposited into the technology fund resulting from the  
41 issuance by the authority of new bonds because of the retirement of  
42 bonds previously issued by the authority.

43       Acquisition of technology infrastructure funded by grants from  
44 the technology fund shall follow the principles of affirmative action  
45 and equal opportunity employment. In furtherance of these  
46 principles, the **【commission】** secretary shall continue its policy of

1 encouraging institutions to solicit bids from, and award contracts to,  
2 minority and women-owned businesses.

3 (cf: P.L.1997, c.238, s.5)

4

5 13. Section 6 of P.L.1997, c.238 (C.18A:72A-64) is amended to  
6 read as follows:

7 6. a. The governing board of a public or private institution of  
8 higher education may determine, by resolution, to apply for a grant  
9 from the technology fund. Upon adoption of the resolution, the  
10 board shall file an application with the **【Commission on】** Secretary  
11 of Higher Education, which application shall include a complete  
12 description of the technology infrastructure to be acquired and an  
13 identification of the sources of revenue to be used for the required  
14 institutional match.

15 b. The **【commission】** secretary shall review the application  
16 and, by resolution, approve or disapprove the grant. For each grant  
17 which is approved, the **【commission】** secretary shall establish the  
18 amount and shall forward a copy of the resolution along with the  
19 amount of the grant to the authority.

20 c. Each grant awarded under this act shall be contingent upon  
21 the recipient governing board entering into a contract or contracts  
22 for the acquisition of technology infrastructure within one year of  
23 the date on which the funds of the grant are made available to the  
24 institution.

25 (cf: P.L.1997, c.238, s.6)

26

27 14. Section 9 of P.L.1997, c.238 (C.18A:72A-67) is amended to  
28 read as follows:

29 9. The authority shall not enter into an agreement with an  
30 institution of higher education unless the **【Commission on】**  
31 Secretary of Higher Education has adopted a resolution which  
32 approves the acquisition of the higher education technology  
33 infrastructure by the institution.

34 (cf: P.L.1997, c.238, s.9)

35

36 15. Section 11 of P.L.1997, c.238 (C.18A:72A-69) is amended  
37 to read as follows:

38 11. In order to ensure the most effective utilization of the  
39 moneys in the technology fund and to guide governing boards  
40 which elect to apply for a grant, the **【Commission on】** Secretary of  
41 Higher Education shall establish criteria for approval and shall  
42 specify the information to be included in a grant application.

43 (cf: P.L.1997, c.238, s.11)

44

45 16. Section 12 of P.L.1997, c.238 (C.18A:72A-70) is amended  
46 to read as follows:

47 12. The **【Commission on】** Secretary of Higher Education, in  
48 consultation with the New Jersey Educational Facilities Authority,

1 shall adopt, pursuant to the "Administrative Procedure Act,"  
2 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
3 necessary to carry out the provisions of this act.  
4 (cf: P.L.1997, c.238, s.12)

5  
6 17. Section 13 of P.L.1997, c.238 (C.18A:72A-71) is amended  
7 to read as follows:

8 13. The **【Commission on】** Secretary of Higher Education shall  
9 annually submit a report to the Governor and the Legislature on the  
10 higher education technology infrastructure purchases at public and  
11 private institutions of higher education, which have been approved  
12 by the **【commission】** secretary and financed by the New Jersey  
13 Educational Facilities Authority pursuant to this act.  
14 (cf: P.L.1997, c.238, s.13)

15  
16 18. Section 4 of P.L.1999, c.217 (C.18A:72A-75) is amended to  
17 read as follows:

18 4. The capital improvement fund shall be used to provide  
19 grants to New Jersey's four-year public and private institutions of  
20 higher education for the cost, or a portion of the cost, of the  
21 renewal, renovation, improvement, expansion, construction, and  
22 reconstruction of facilities and technology infrastructure. Each  
23 institution shall use the grants for existing renewal and renovations  
24 needs at instructional, laboratory, communication, research, and  
25 administrative facilities. An institution may use up to 20% of a  
26 grant within student-support facilities for renewal and renovation or  
27 improvement, expansion, construction, and reconstruction. If all  
28 renewal and renovation is completed at instructional, laboratory,  
29 communication, research, and administrative facilities or is  
30 accounted for through other funding sources, or if an institution is  
31 granted an exemption by the **【Commission on】** Secretary of Higher  
32 Education for the purpose of maximizing federal grant fund  
33 recoveries or for the purpose of replacing a building when projected  
34 renewal and renovation costs exceed the projected cost of  
35 replacement, then grant funds may be used for the improvement,  
36 expansion, construction, and reconstruction of instructional,  
37 laboratory, communication, and research facilities, or technology  
38 infrastructure.

39 As used in this act:

40 "renewal and renovation" means making the changes necessary  
41 to address deferred capital maintenance needs, to meet all State and  
42 federal health, safety, fire, and building code standards, or to  
43 provide a safe and appropriate educational or working environment;

44 "student-support facilities" mean student resident halls, student  
45 dining facilities, student activity centers, and student health centers;  
46 and

1 "technology infrastructure" means video, voice, and data  
2 telecommunications equipment and linkages with a life expectancy  
3 of at least 10 years.  
4 (cf: P.L.2002, c.96)  
5

6 19. Section 5 of P.L.1999, c.217 (C.18A:72A-76) is amended to  
7 read as follows:

8 5. a. An amount not to exceed \$550,000,000 in the capital  
9 improvement fund shall be allocated as follows:

10 \$169,000,000 for Rutgers, The State University;

11 \$95,062,500 for the University of Medicine and Dentistry of  
12 New Jersey;

13 \$60,937,500 for the New Jersey Institute of Technology;

14 \$175,000,000 for the State colleges and universities; and

15 \$50,000,000 for the private institutions of higher education.

16 b. The **【commission】** secretary may reallocate any balance in  
17 an amount authorized in subsection a. of this section which has not  
18 been approved by the **【commission】** secretary for grants within 24  
19 months of the adoption of regulations by the **【commission】**  
20 secretary. The **【commission】** secretary may allocate any additional  
21 moneys in the capital improvement fund to institutions for capital  
22 improvement projects as the **【commission】** secretary determines  
23 and shall determine the allocation of moneys deposited into the  
24 fund resulting from the issuance by the authority of new bonds  
25 because of the retirement of bonds previously issued by the  
26 authority.

27 c. The facilities and technology infrastructure funded by grants  
28 from the capital improvement fund shall follow the principles of  
29 affirmative action and equal opportunity employment. In  
30 furtherance of these principles, the **【commission】** secretary shall  
31 continue **【its】** the policy of encouraging institutions to solicit bids  
32 from, and award contracts to, minority and women-owned  
33 businesses.

34 (cf: P.L.1999, c.217, s.5)  
35

36 20. Section 6 of P.L.1999, c. 217 (C.18A:72A-77) is amended to  
37 read as follows:

38 6. a. The governing board of a four-year public or private  
39 institution of higher education may determine, by resolution, to  
40 apply for a grant from the capital improvement fund. Upon  
41 adoption of the resolution, the board shall file an application with  
42 the **【commission】** secretary, which application shall include a  
43 complete description of the project to be financed and an  
44 identification of any additional sources of revenue to be used.

45 b. In order to ensure the most effective utilization of the  
46 moneys in the capital improvement fund and to guide governing  
47 boards which elect to apply for a grant, the **【commission】** secretary

1 shall establish a list of grant criteria and shall specify the  
2 information to be included in a grant application.

3 c. The **【commission】** secretary shall review the application  
4 and, by resolution, approve or disapprove the grant. When a grant  
5 is approved, the **【commission】** secretary shall establish the amount  
6 and shall forward a copy of the resolution along with the amount of  
7 the grant to the authority.

8 d. The **【commission】** secretary shall submit to the Legislature  
9 a copy of the resolution approving the grant along with the amount  
10 of the grant. If the Legislature does not disapprove the grant by the  
11 adoption of a concurrent resolution within 45 days, the grant shall  
12 be deemed to be authorized.

13 e. When a grant is awarded pursuant to this act, it shall be  
14 contingent upon the governing board of the recipient institution  
15 entering into a contract or contracts for the commencement of the  
16 renewal, renovation, improvement, expansion, construction, and  
17 reconstruction of facilities and technology infrastructure within one  
18 year of the date on which the funds for the grant are made available.  
19 (cf: P.L.1999, c.217, s.6)

20

21 21. Section 15 of P.L.1999, c.217 (C.18A:72A-80) is amended  
22 to read as follows:

23 15. The **【Commission on】** Secretary of Higher Education, in  
24 consultation with the New Jersey Educational Facilities Authority,  
25 shall adopt, pursuant to the "Administrative Procedure Act,"  
26 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
27 necessary to carry out the provisions of this act.  
28 (cf: P.L.1999, c.217, s.15)

29

30 22. (New section) The Secretary of Higher Education shall  
31 exercise all the powers and duties previously exercised by the  
32 Commission on Higher Education under the Higher Education  
33 Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et  
34 seq.), the "Higher Education Facilities Trust Fund Act," P.L.1993,  
35 c.375 (C.18A:72A-49 et seq.), the "Higher Education Technology  
36 Infrastructure Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.),  
37 and the "Higher Education Capital Improvement Fund Act,"  
38 P.L.1999, c.217 (C.18A:72A-72 et seq.).

39

40 23. This act shall take effect immediately.

41

42

43

#### STATEMENT

44

45 This bill amends the current law that allows State and county  
46 colleges to enter into public-private partnerships that permit a  
47 private entity to assume full financial and administrative  
48 responsibility for an on-campus construction project, provided that

1 that the project is financed entirely by the private entity and the  
2 State or institution, as applicable, retains ownership of the land and  
3 any building resulting from the project. This bill provides colleges  
4 with another public-private partnership option for the financing of  
5 college facilities. Under the bill, a public-private partnership  
6 agreement may be one in which a State or county college leases to a  
7 private entity the operation of a dormitory or other revenue-  
8 producing facility to which the college holds title, in exchange for  
9 up-front or structured financing by the private entity for the  
10 construction of classrooms, laboratories, or other academic  
11 buildings. Under the lease agreement, the college will continue to  
12 hold title to the facility, and the private entity will be responsible  
13 for the management, operation, and maintenance of the facility.  
14 The private entity will receive some or all of the revenue generated  
15 by the facility and must operate the facility in accordance with  
16 college standards. At the end of the lease term, subsequent revenue  
17 generated by the facility will revert, along with management,  
18 operation, and maintenance responsibility, to the college.

19 The bill also amends a number of existing laws that authorize the  
20 New Jersey Educational Facilities Authority (EFA) to issue bonds  
21 for the construction and renovation of facilities, and the purchase of  
22 equipment, at public and independent institutions of higher  
23 education. The bill eliminates reference to the "Commission on  
24 Higher Education" and inserts reference to the "Secretary of Higher  
25 Education." The purpose of this change is to clarify that the  
26 Secretary of Higher Education has the authority to approve projects  
27 for financing under those EFA bond programs. The programs, and  
28 the amount currently available for issuance under each of the  
29 programs, are as follows: the "Higher Education Equipment  
30 Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et seq.),  
31 approximately \$100 million; the "Higher Education Facilities Trust  
32 Fund Act," P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately  
33 \$220 million; the "Higher Education Technology Infrastructure  
34 Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately  
35 \$55 million; and the "Higher Education Capital Improvement Fund  
36 Act," P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165  
37 million.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 2501**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 18, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2501, with committee amendments.

The bill amends the current law that allows State and county colleges to enter into public-private partnerships that permit a private entity to assume full financial and administrative responsibility for an on-campus construction project, provided that that the project is financed entirely by the private entity and the State or institution, as applicable, retains ownership of the land and any building resulting from the project. This bill provides colleges with another public-private partnership option for the financing of college facilities. Under the bill, a public-private partnership agreement may be one in which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college will continue to hold title to the facility, and the private entity will be responsible for the management, operation, and maintenance of the facility. The private entity will receive some or all of the revenue generated by the facility and must operate the facility in accordance with college standards. At the end of the lease term, subsequent revenue generated by the facility will revert, along with management, operation, and maintenance responsibility, to the college.

The bill also amends a number of existing laws that authorize the New Jersey Educational Facilities Authority (EFA) to issue bonds for the construction and renovation of facilities, and the purchase of equipment, at public and independent institutions of higher education. The bill eliminates reference to the "Commission on Higher Education" and inserts reference to the "Secretary of Higher Education." The purpose of this change is to clarify that the Secretary of Higher Education has the authority to approve projects for financing under those EFA bond programs. The programs, and the amount currently available for issuance under each of the programs, are as follows: the "Higher Education Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et seq.), approximately \$100 million;



the “Higher Education Facilities Trust Fund Act,” P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately \$220 million; the “Higher Education Technology Infrastructure Fund Act,” P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately \$55 million; and the “Higher Education Capital Improvement Fund Act,” P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165 million.

The bill also amends the “Higher Education Equipment Leasing Fund Act” and the “Higher Education Technology Infrastructure Fund Act” to require that information on lease agreements or grant funds, as applicable, be submitted to the Joint Budget Oversight Committee. The Joint Budget Oversight Committee would approve or disapprove of the lease or the grant within 10 working days or it will be deemed approved. The “Higher Education Facilities Trust Fund Act” and the “Higher Education Capital Improvement Fund Act” currently have provisions that require legislative approval.

COMMITTEE AMENDMENTS:

The committee amended the bill to require Joint Budget Oversight Committee approval of lease agreements under the “Higher Education Equipment Leasing Fund Act” and grants under the “Higher Education Technology Infrastructure Fund Act.”

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 2501**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 21, 2012

The Assembly Budget Committee reports favorably Senate Bill No. 2501 (1R), with committee amendments.

As amended, this bill amends the current law that allows State and county colleges to enter into public-private partnerships that permit a private entity to assume full financial and administrative responsibility for an on-campus construction project, provided that that the project is financed entirely by the private entity and the State or institution, as applicable, retains ownership of the land and any building resulting from the project. This bill provides colleges with another public-private partnership option for the financing of college facilities. Under the bill, a public-private partnership agreement may be one in which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college will continue to hold title to the facility, and the private entity will be responsible for the management, operation, and maintenance of the facility. The private entity will receive some or all of the revenue generated by the facility and must operate the facility in accordance with college standards. At the end of the lease term, subsequent revenue generated by the facility will revert, along with management, operation, and maintenance responsibility, to the college.

The bill also amends a number of existing laws that authorize the New Jersey Educational Facilities Authority (EFA) to issue bonds for the construction and renovation of facilities, and the purchase of equipment, at public and independent institutions of higher education. The bill eliminates reference to the "Commission on Higher Education" and inserts reference to the "Secretary of Higher Education." The purpose of this change is to clarify that the Secretary of Higher Education has the authority to approve projects for financing under those EFA bond programs. The programs, and the amount currently available for issuance under each of the programs, are as

follows: the “Higher Education Equipment Leasing Fund Act,” P.L.1993, c.136 (C.18A:72A-40 et seq.), approximately \$100 million; the “Higher Education Facilities Trust Fund Act,” P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately \$220 million; the “Higher Education Technology Infrastructure Fund Act,” P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately \$55 million; and the “Higher Education Capital Improvement Fund Act,” P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165 million.

The bill also amends the “Higher Education Equipment Leasing Fund Act” and the “Higher Education Technology Infrastructure Fund Act” to require that information on lease agreements or grant funds, as applicable, be submitted to the Joint Budget Oversight Committee. The Joint Budget Oversight Committee would approve or disapprove of the lease or the grant within 10 working days or it will be deemed approved. The “Higher Education Facilities Trust Fund Act” and the “Higher Education Capital Improvement Fund Act” currently have provisions that require legislative approval.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments to the bill clarify the method by which the Secretary of Higher Education approves projects.

# ASSEMBLY, No. 3141

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 21, 2012

**Sponsored by:**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex)**

**SYNOPSIS**

Establishes new public-private partnership agreement option for construction of State and county college facilities and changes reference from “Commission on Higher Education” to “Secretary of Higher Education” in higher education construction Educational Facilities Authority bond programs.

**CURRENT VERSION OF TEXT**

As introduced.



A3141 COUTINHO

2

1 AN ACT concerning construction of facilities at institutions of  
2 higher education, revising various parts of the statutory law, and  
3 supplementing 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. Section 43 of P.L.2009, c.90 (C.18A:64-85) is amended to  
9 read as follows:

10 43 a. (1) A State college or county college may enter into a  
11 contract with a private entity, subject to subsection f. of this section,  
12 to be referred to as a public-private partnership agreement, that  
13 permits the private entity to assume full financial and administrative  
14 responsibility for the on-campus construction, reconstruction,  
15 repair, alteration, improvement **[or]**, extension, management, or  
16 operation of a building, structure, or facility of, or for the benefit of,  
17 the institution, provided that the project is financed in whole by the  
18 private entity and that the State or institution of higher education, as  
19 applicable, retains full ownership of the land upon which the project  
20 is completed.

21 (2) A public-private partnership agreement may include an  
22 agreement under which a State or county college leases to a private  
23 entity the operation of a dormitory or other revenue-producing  
24 facility to which the college holds title, in exchange for up-front or  
25 structured financing by the private entity for the construction of  
26 classrooms, laboratories, or other academic buildings. Under the  
27 lease agreement, the college shall continue to hold title to the  
28 facility, and the private entity shall be responsible for the  
29 management, operation, and maintenance of the facility. The  
30 private entity shall receive some or all, as per the agreement, of the  
31 revenue generated by the facility and shall operate the facility in  
32 accordance with college standards. A lease agreement shall not  
33 affect the status or employment rights of college employees who are  
34 assigned to, or provide services to, the leased facility. At the end of  
35 the lease term, subsequent revenue generated by the facility, along  
36 with management, operation, and maintenance responsibility, shall  
37 revert to the college.

38 b. (1) A private entity that assumes financial and administrative  
39 responsibility for a project pursuant to subsection a. of this section  
40 shall not be subject to the procurement and contracting  
41 requirements of all statutes applicable to the institution of higher  
42 education at which the project is completed, including, but not  
43 limited to, the "State College Contracts Law," P.L.1986, c.43  
44 (C.18A:64-52 et seq.), and the "County College Contracts Law,"  
45 P.L.1982, c.189 (C.18A:64A-25.1 et seq.). For the purposes of

**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 facilitating the financing of a project pursuant to subsection a. of  
2 this section, a public entity may become the owner or lessee of the  
3 project or the lessee of the land, or both, may become the lessee of a  
4 dormitory or other revenue-producing facility to which the college  
5 holds title, may issue indebtedness in accordance with the public  
6 entity's enabling legislation and, notwithstanding any provision of  
7 law to the contrary, shall be empowered to enter into contracts with  
8 a private entity and its affiliates without being subject to the  
9 procurement and contracting requirements of any statute applicable  
10 to the public entity provided that the private entity has been selected  
11 by the institution of higher education pursuant to a solicitation of  
12 proposals or qualifications. For the purposes of this section, a  
13 public entity shall include the New Jersey Economic Development  
14 Authority, and any project undertaken pursuant to subsection a. of  
15 this section of which the authority becomes the owner or lessee, or  
16 which is situated on land of which the authority becomes the lessee,  
17 shall be deemed a "project" under the "New Jersey Economic  
18 Development Authority Act," P.L.1974, c.80 (C.34:1B-1 et seq.).

19 (2) As the carrying out of any project described pursuant to this  
20 section constitutes the performance of an essential public function,  
21 all projects predominantly used in furtherance of the educational  
22 purposes of the institution undertaken pursuant to this section,  
23 provided it is owned by or leased to a public entity, non-profit  
24 business entity, foreign or domestic, or a business entity wholly  
25 owned by such non-profit business entity, shall at all times be  
26 exempt from property taxation and special assessments of the State,  
27 or any municipality, or other political subdivision of the State and,  
28 notwithstanding the provisions of section 15 of P.L.1974, c.80  
29 (C.34:1B-15) or section 2 of P.L.1977, c.272 (C.54:4-2.2b) or any  
30 other section of law to the contrary, shall not be required to make  
31 payments in lieu of taxes. The land upon which the project is  
32 located shall also at all times be exempt from property taxation.  
33 Further, the project and land upon which the project is located shall  
34 not be subject to the provisions of section 1 of P.L.1984, c.176  
35 (C.54:4-1.10) regarding the tax liability of private parties  
36 conducting for profit activities on tax exempt land, or section 1 of  
37 P.L.1949, c.177 (C.54:4-2.3) regarding the taxation of leasehold  
38 interests in exempt property that are held by nonexempt parties.

39 c. Each worker employed in the construction, rehabilitation, or  
40 building maintenance services of facilities by a private entity that  
41 has entered into a public-private partnership agreement with a State  
42 or county college pursuant to subsection a. of this section shall be  
43 paid not less than the prevailing wage rate for the worker's craft or  
44 trade as determined by the Commissioner of Labor and Workforce  
45 Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)  
46 and P.L.2005, c.379 (C.34:11-56.58 et seq.).

47 d. (1) All construction projects under a public-private  
48 partnership agreement entered into pursuant to this section shall

1 contain a project labor agreement. The project labor agreement  
2 shall be subject to the provisions of P.L.2002, c.44 (C.52:38-1 et  
3 seq.), and shall be in a manner that to the greatest extent possible  
4 enhances employment opportunities for individuals residing in the  
5 county of the project's location. Further, the general contractor,  
6 construction manager, design-build team, or subcontractor for a  
7 construction project proposed in accordance with this paragraph  
8 shall be registered pursuant to the provisions of P.L.1999, c.238  
9 (C.34:11-56.48 et seq.), and shall be classified by the Division  
10 of Property Management and Construction to perform work  
11 on a public-private partnership higher education project. All  
12 construction projects proposed in accordance with this paragraph  
13 shall be submitted to the New Jersey Economic Development  
14 Authority for its review and approval and, when practicable, are  
15 encouraged to adhere to the Leadership in Energy and  
16 Environmental Design Green Building Rating System as adopted by  
17 the United States Green Building Council.

18 (2) Where no public fund has been established for the financing  
19 of a public improvement, the chief financial officer of the public  
20 owner shall require the private entity for whom the public  
21 improvement is being made to post, or cause to be posted, a bond  
22 guaranteeing prompt payment of moneys due to the contractor, his  
23 or her subcontractors and to all persons furnishing labor or  
24 materials to the contractor or his or her subcontractors in the  
25 prosecution of the work on the public improvement.

26 e. A general contractor, construction manager, design-build  
27 team, or subcontractor shall be registered pursuant to the provisions  
28 of P.L.1999, c.238 (C.34:11-56.48 et seq.), and shall be classified  
29 by the Division of Property Management and Construction to  
30 perform work on a public-private partnership higher education  
31 project.

32 f. (1) On or before August 1, 2013, all projects proposed in  
33 accordance with this section shall be submitted to the New Jersey  
34 Economic Development Authority for its review and approval;  
35 except that in the case of projects proposed in accordance with  
36 paragraph (2) of subsection a. of this section, all projects shall be  
37 submitted on or before August 1, 2014. The projects are  
38 encouraged, when practicable, to adhere to the green building  
39 manual prepared by the Commissioner of Community Affairs  
40 pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6). Any  
41 application that is deemed to be incomplete on August 2, 2013, or  
42 on August 2, 2014 in the case of an application submitted pursuant  
43 to paragraph (2) of subsection a. of this section, shall not be eligible  
44 for consideration.

45 (2) (a) In order for an application to be complete and considered  
46 by the authority it shall include, but not be limited to: (i) a public-  
47 private partnership agreement between the State or county college  
48 and the private developer; (ii) a full description of the project,

1 including a description of any agreement for the lease of a revenue-  
2 producing facility related to the project; (iii) the estimated costs and  
3 financial documentation for the project; (iv) a timetable for  
4 completion of the project extending no more than five years after  
5 consideration and approval; and (v) any other requirements that the  
6 authority deems appropriate or necessary.

7 (b) As part of the estimated costs and financial documentation  
8 for the project the application shall contain a long-range  
9 maintenance plan and shall specify the expenditures that qualify as  
10 an appropriate investment in maintenance. This long-range  
11 maintenance plan shall be approved by the authority pursuant to  
12 regulations promulgated by the authority that reflect national  
13 building maintenance standards and other appropriate building  
14 maintenance benchmarks. All contracts to implement a long-range  
15 maintenance plan pursuant to this paragraph shall contain a project  
16 labor agreement. The project labor agreement shall be subject to  
17 the provisions of P.L.2002, c.44 (C.52:38-1 et seq.), and shall be in  
18 a manner that to the greatest extent possible enhances employment  
19 opportunities for individuals residing in the county of the project's  
20 location.

21 (3) The authority shall review all completed applications, and  
22 request additional information as is needed to make a complete  
23 assessment of the project. No project shall be undertaken until final  
24 approval has been granted by the authority; provided, however, that  
25 the authority shall retain the right to revoke approval if it  
26 determines that the project has deviated from the plan submitted  
27 pursuant to paragraph (2) of this subsection.

28 (4) The authority may promulgate any rules and regulations  
29 necessary to implement this subsection, including provisions for  
30 fees to cover administrative costs.

31 Where no public fund has been established for the financing of a  
32 public improvement, the chief financial officer of the public owner  
33 shall require the private entity for whom the public improvement is  
34 being made to post, or cause to be posted, a bond guaranteeing  
35 prompt payment of moneys due to the contractor, his or her  
36 subcontractors and to all persons furnishing labor or materials to the  
37 contractor or his or her subcontractors in the prosecution of the  
38 work on the public improvement.

39 g. The provisions of P.L.2009, c.136 (C.52:18-42 et al.) shall  
40 not apply to any project carried out pursuant to this section.  
41 (cf: P.L.2012, c.10, s.1)

42

43 2. Section 2 of P.L.1993, c.136 (C.18A:72A-41) is amended to  
44 read as follows:

45 2. The Legislature finds and declares that:

46 a. Higher education plays a vital role in the economic  
47 development of the nation and the State by providing the education



1 and training of the work force of the future and by advancing  
2 science and technology through research;

3 b. The rapid technological changes occurring throughout the  
4 world have a considerable impact on the quality of teaching,  
5 learning, and research at colleges and universities;

6 c. The current inventory of instructional and research  
7 equipment at the colleges and universities within the State is aging,  
8 both chronologically and technologically, and much of it has been  
9 rendered obsolete; and

10 d. The **【Commission on】** Secretary of Higher Education, which  
11 is statutorily responsible for the coordination and planning of higher  
12 education in New Jersey, has identified a crucial need to establish a  
13 regular financing mechanism for scientific, engineering, technical,  
14 computer, communications, and instructional equipment at New  
15 Jersey's public and private institutions of higher education.

16 (cf: P.L.2009, c.308, s.32)

17

18 3. Section 6 of P.L.1993, c.136 (C.18A:72A-43) is amended to  
19 read as follows:

20 6. The moneys deposited into the fund created pursuant to  
21 section 5 of P.L.1993, c.136 (C.18A:72A-42) shall be allocated in  
22 the following manner:

23 a. A minimum of \$24,000,000 for the leasing of higher  
24 education equipment at the State colleges;

25 b. A minimum of \$19,440,000 for the leasing of higher  
26 education equipment at Rutgers, The State University;

27 c. A minimum of \$10,080,000 for the leasing of higher  
28 education equipment at the University of Medicine and Dentistry of  
29 New Jersey;

30 d. A minimum of \$6,480,000 for the leasing of higher  
31 education equipment at the New Jersey Institute of Technology;

32 e. A minimum of \$22,000,000 for the leasing of higher  
33 education equipment at the county colleges;

34 f. A minimum of \$10,500,000 for the leasing of higher  
35 education equipment at private institutions of higher education; and

36 g. A minimum of \$7,500,000 for the leasing of higher  
37 education equipment for emerging needs programs at public and  
38 private institutions of higher education.

39 The **【Commission on】** Secretary of Higher Education may  
40 apportion the amounts authorized in subsection g. among any other  
41 amounts authorized in subsections a. through f.

42 The **【Commission on】** Secretary of Higher Education may  
43 reallocate any balance in the amounts authorized in subsections a.  
44 through g. of this section which have not been fully committed  
45 within 18 months of the effective date of this act.

46 The **【Commission on】** Secretary of Higher Education shall  
47 determine the allocation of moneys deposited into the fund resulting

1 from the issuance by the authority of new bonds because of the  
2 retirement of bonds previously issued by the authority.

3 (cf: P.L.2009, c.308, s.34)

4

5 4. Section 8 of P.L.1993, c.136 (C.18A:72A-45) is amended to  
6 read as follows:

7 8. The authority shall not enter into a lease agreement with an  
8 institution of higher education unless the **【Commission on】**  
9 Secretary of Higher Education has adopted a resolution which  
10 approves the purchase of the higher education equipment by the  
11 institution. The **【commission】** secretary shall forward a copy of the  
12 resolution along with the amount of the approved purchase to the  
13 authority.

14 (cf: P.L.2009, c.308, s.35)

15

16 5. Section 10 of P.L.1993, c.136 (C.18A:72A-47) is amended  
17 to read as follows:

18 10. The **【Commission on】** Secretary of Higher Education shall  
19 annually submit a report to the Governor and the Legislature on the  
20 higher education equipment purchases at public and private  
21 institutions of higher education which have been approved by the  
22 **【commission】** secretary and financed by the New Jersey  
23 Educational Facilities Authority pursuant to lease agreements with  
24 the institutions.

25 (cf: P.L.2009, c.308, s.36)

26

27 6. Section 11 of P.L.1993, c.136 (C.18A:72A-48) is amended  
28 to read as follows:

29 11. The **【Commission on】** Secretary of Higher Education, in  
30 consultation with the New Jersey Educational Facilities Authority,  
31 shall adopt, pursuant to the "Administrative Procedure Act,"  
32 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
33 necessary to carry out the provisions of this act.

34 (cf: P.L.2009, c.308, s.37)

35

36 7. Section 5 of P.L.1993, c.375 (C.18A:72A-53) is amended to  
37 read as follows:

38 5. The initial grants from the trust fund shall be allocated as  
39 follows:

- 40 a. \$48,000,000 for facilities at the State Colleges;
- 41 b. \$38,880,000 for facilities at Rutgers, The State University;
- 42 c. \$20,160,000 for facilities at the University of Medicine and  
43 Dentistry of New Jersey;
- 44 d. \$12,960,000 for facilities at the New Jersey Institute of  
45 Technology;
- 46 e. \$44,000,000 for facilities at the county colleges;

1 f. \$21,000,000 for facilities at the private institutions of higher  
2 education;

3 g. \$15,000,000 for South Jersey multi-institutional economic  
4 development facilities. As used in this section, "South Jersey multi-  
5 institutional economic development facilities" means facilities  
6 which would promote economic development in the eight  
7 southernmost counties of the State and which involve more than one  
8 public or private institution of higher education; and

9 h. \$20,000,000 for a new facility for Rutgers, The State  
10 University, School of Law, Newark.

11 The amount authorized in subsection g. may be apportioned  
12 among any other amounts authorized in subsections a. through f. of  
13 this section.

14 The **【Commission on】** Secretary of Higher Education may  
15 reallocate any balance in an amount authorized in subsections a.  
16 through h. of this section which has not been approved by the  
17 **【commission】** secretary for a grant within 18 months of the  
18 effective date of this act.

19 The **【Commission on】** Secretary of Higher Education shall  
20 determine the allocation of moneys deposited into the trust fund  
21 resulting from the issuance by the authority of new bonds because  
22 of the retirement of bonds previously issued by the authority.

23 The facilities funded by grants from the trust fund shall follow  
24 the principles of affirmative action and equal opportunity  
25 employment. In furtherance of these principles, the **【Commission**  
26 **on】** Secretary of Higher Education shall continue **【its】** the policy of  
27 encouraging institutions to solicit bids from, and award contracts to,  
28 minority and women-owned businesses.

29 (cf: P.L.2009, c.308, s.38)

30

31 8. Section 6 of P.L.1993, c.375 (C.18A:72A-54) is amended to  
32 read as follows:

33 6. a. The governing board of a public or private institution of  
34 higher education may determine, by resolution, to apply for a grant  
35 from the trust fund. Upon adoption of the resolution, the board shall  
36 file an application with the **【Commission on】** Secretary of Higher  
37 Education, which application shall include a complete description  
38 of the project to be financed and an identification of any additional  
39 sources of revenue to be used.

40 b. The **【Commission on】** Secretary of Higher Education shall  
41 review the application and, by resolution, approve or disapprove the  
42 grant. For each grant which is approved, the **【commission】**  
43 secretary shall establish the amount and shall forward a copy of the  
44 resolution along with the amount of the grant to the authority.

45 c. The **【Commission on】** Secretary of Higher Education shall  
46 submit to the Legislature a copy of the resolution approving the  
47 grant along with the amount of the grant. If the Legislature does not

1 disapprove the grant by the adoption of a concurrent resolution  
2 within 60 days, the grant shall be deemed to be authorized. In  
3 addition, the resolution approving the grant for the new  
4 instructional and research facility for Rutgers, The State University,  
5 School of Law, Newark, shall be submitted by the **【commission】**  
6 secretary to the Joint Budget Oversight Committee for its approval  
7 prior to the commission's submission of the resolution to the  
8 Legislature. The **【commission】** secretary shall provide to the  
9 committee such information concerning the grant as the committee  
10 may require for its consideration.

11 d. Each grant awarded under this act shall be contingent upon  
12 the recipient governing board entering into a contract or contracts  
13 for the commencement of the construction, reconstruction,  
14 development, extension, or improvement of the facility within one  
15 year of the date on which the funds of the grant are made available.  
16 (cf: P.L.2009, c.308, s.39)

17

18 9. Section 7 of P.L.1993, c.375 (C.18A:72A-55) is amended to  
19 read as follows:

20 7. In order to ensure the most effective utilization of the  
21 moneys in the trust fund and to guide governing boards which elect  
22 to apply for a grant, the **【Commission on】** Secretary of Higher  
23 Education shall establish a list of selection criteria and shall specify  
24 the information to be included in a grant application.  
25 (cf: P.L.2009, c.308, s.40)

26

27 10. Section 8 of P.L.1993, c.375 (C.18A:72A-56) is amended to  
28 read as follows:

29 8. In order to ensure proper oversight and review, there is  
30 created the "Higher Education Facilities Trust Fund Board" which  
31 shall consist of **【five】** four members as follows: the **【Chair and**  
32 **Vice Chair of the Commission on】** Secretary of Higher Education;  
33 the State Treasurer or a designee; the President of the Senate or a  
34 designee; and the Speaker of the General Assembly or a designee.  
35 The board shall ensure that the revenue provided to the trust fund is  
36 adequate to support the grants approved by the **【Commission on】**  
37 Secretary of Higher Education. At the end of each three-year period  
38 following the approval of this act, the board shall review, in  
39 consultation with the **【Commission on】** Secretary of Higher  
40 Education, the physical plant needs of public and private  
41 institutions of higher education in the State and shall recommend to  
42 the Governor and the Legislature a plan to increase, as necessary,  
43 the availability and uses of grants made from the trust fund.  
44 (cf: P.L.2009, c.308, s.41)

45

46 11. Section 11 of P.L.1993, c.375 (C.18A:72A-58) is amended  
47 to read as follows:

1       11. The **【Commission on】** Secretary of Higher Education, in  
2 consultation with the New Jersey Educational Facilities Authority,  
3 shall adopt, pursuant to the "Administrative Procedure Act,"  
4 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
5 necessary to carry out the provisions of this act.

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

7  
8       12. Section 5 of P.L.1997, c.238 (C.18A:72A-63) is amended to  
9 read as follows:

10       5. The use of a grant from the technology fund shall require a  
11 matching amount from an institution equal to the amount of the  
12 grant provided. The initial grants from the technology fund shall be  
13 allocated as follows:

14       a. a minimum of \$12,600,000 for the acquisition of higher  
15 education technology infrastructure at the State colleges;

16       b. a minimum of \$7,722,000 for the acquisition of higher  
17 education technology infrastructure at Rutgers, The State  
18 University;

19       c. a minimum of \$4,306,500 for the acquisition of higher  
20 education technology infrastructure at the University of Medicine  
21 and Dentistry of New Jersey;

22       d. a minimum of \$2,821,500 for the acquisition of higher  
23 education technology infrastructure at the New Jersey Institute of  
24 Technology;

25       e. a minimum of \$12,600,000 for the acquisition of higher  
26 education technology infrastructure at the county colleges;

27       f. a minimum of \$4,950,000 for the acquisition of higher  
28 education technology infrastructure at private institutions of higher  
29 education;

30       g. a maximum of \$5,000,000 for interconnectivity among the  
31 higher education institutions. Expenditures shall be based on an  
32 inter-institutional needs assessment. If, as a result of the needs  
33 assessment, less than \$5,000,000 is expended from the funds  
34 allocated in this subsection, the remaining funds shall be allocated  
35 among the institutions designated in subsections a. through f. of this  
36 section based on the percentage of the total funds allocated in each  
37 of the subsections a. through f.; and

38       h. a minimum of \$5,000,000 for non-matching public library  
39 grants or for Statewide library technology initiatives through the  
40 New Jersey State Library.

41       The **【Commission on】** Secretary of Higher Education may  
42 reallocate any balance in the amount authorized in subsections a.  
43 through g. of this section, which has not been approved by the  
44 **【commission】** secretary for a grant within 18 months of the  
45 effective date of P.L.1997, c.238 (C.18A:72A-59 et seq.).

46       The **【commission】** secretary shall determine the allocation of  
47 moneys deposited into the technology fund resulting from the

1 issuance by the authority of new bonds because of the retirement of  
2 bonds previously issued by the authority.

3 Acquisition of technology infrastructure funded by grants from  
4 the technology fund shall follow the principles of affirmative action  
5 and equal opportunity employment. In furtherance of these  
6 principles, the **【commission】** secretary shall continue its policy of  
7 encouraging institutions to solicit bids from, and award contracts to,  
8 minority and women-owned businesses.

9 (cf: P.L.1997, c.238, s.5)

10

11 13. Section 6 of P.L.1997, c.238 (C.18A:72A-64) is amended to  
12 read as follows:

13 6. a. The governing board of a public or private institution of  
14 higher education may determine, by resolution, to apply for a grant  
15 from the technology fund. Upon adoption of the resolution, the  
16 board shall file an application with the **【Commission on】** Secretary  
17 of Higher Education, which application shall include a complete  
18 description of the technology infrastructure to be acquired and an  
19 identification of the sources of revenue to be used for the required  
20 institutional match.

21 b. The **【commission】** secretary shall review the application  
22 and, by resolution, approve or disapprove the grant. For each grant  
23 which is approved, the **【commission】** secretary shall establish the  
24 amount and shall forward a copy of the resolution along with the  
25 amount of the grant to the authority.

26 c. Each grant awarded under this act shall be contingent upon  
27 the recipient governing board entering into a contract or contracts  
28 for the acquisition of technology infrastructure within one year of  
29 the date on which the funds of the grant are made available to the  
30 institution.

31 (cf: P.L.1997, c.238, s.6)

32

33 14. Section 9 of P.L.1997, c.238 (C.18A:72A-67) is amended to  
34 read as follows:

35 9. The authority shall not enter into an agreement with an  
36 institution of higher education unless the **【Commission on】**  
37 Secretary of Higher Education has adopted a resolution which  
38 approves the acquisition of the higher education technology  
39 infrastructure by the institution.

40 (cf: P.L.1997, c.238, s.9)

41

42 15. Section 11 of P.L.1997, c.238 (C.18A:72A-69) is amended  
43 to read as follows:

44 11. In order to ensure the most effective utilization of the  
45 moneys in the technology fund and to guide governing boards  
46 which elect to apply for a grant, the **【Commission on】** Secretary of

1 Higher Education shall establish criteria for approval and shall  
2 specify the information to be included in a grant application.

3 (cf: P.L.1997, c.238, s.11)

4

5 16. Section 12 of P.L.1997, c.238 (C.18A:72A-70) is amended  
6 to read as follows:

7 12. The **【Commission on】** Secretary of Higher Education, in  
8 consultation with the New Jersey Educational Facilities Authority,  
9 shall adopt, pursuant to the "Administrative Procedure Act,"  
10 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
11 necessary to carry out the provisions of this act.

12 (cf: P.L.1997, c.238, s.12)

13

14 17. Section 13 of P.L.1997, c.238 (C.18A:72A-71) is amended  
15 to read as follows:

16 13. The **【Commission on】** Secretary of Higher Education shall  
17 annually submit a report to the Governor and the Legislature on the  
18 higher education technology infrastructure purchases at public and  
19 private institutions of higher education, which have been approved  
20 by the **【commission】** secretary and financed by the New Jersey  
21 Educational Facilities Authority pursuant to this act.

22 (cf: P.L.1997, c.238, s.13)

23

24 18. Section 4 of P.L.1999, c.217 (C.18A:72A-75) is amended to  
25 read as follows:

26 4. The capital improvement fund shall be used to provide  
27 grants to New Jersey's four-year public and private institutions of  
28 higher education for the cost, or a portion of the cost, of the  
29 renewal, renovation, improvement, expansion, construction, and  
30 reconstruction of facilities and technology infrastructure. Each  
31 institution shall use the grants for existing renewal and renovations  
32 needs at instructional, laboratory, communication, research, and  
33 administrative facilities. An institution may use up to 20% of a  
34 grant within student-support facilities for renewal and renovation or  
35 improvement, expansion, construction, and reconstruction. If all  
36 renewal and renovation is completed at instructional, laboratory,  
37 communication, research, and administrative facilities or is  
38 accounted for through other funding sources, or if an institution is  
39 granted an exemption by the **【Commission on】** Secretary of Higher  
40 Education for the purpose of maximizing federal grant fund  
41 recoveries or for the purpose of replacing a building when projected  
42 renewal and renovation costs exceed the projected cost of  
43 replacement, then grant funds may be used for the improvement,  
44 expansion, construction, and reconstruction of instructional,  
45 laboratory, communication, and research facilities, or technology  
46 infrastructure.

47 As used in this act:

1 "renewal and renovation" means making the changes necessary  
2 to address deferred capital maintenance needs, to meet all State and  
3 federal health, safety, fire, and building code standards, or to  
4 provide a safe and appropriate educational or working environment;

5 "student-support facilities" mean student resident halls, student  
6 dining facilities, student activity centers, and student health centers;  
7 and

8 "technology infrastructure" means video, voice, and data  
9 telecommunications equipment and linkages with a life expectancy  
10 of at least 10 years.

11 (cf: P.L.2002, c.96)

12

13 19. Section 5 of P.L.1999, c.217 (C.18A:72A-76) is amended to  
14 read as follows:

15 5. a. An amount not to exceed \$550,000,000 in the capital  
16 improvement fund shall be allocated as follows:

17 \$169,000,000 for Rutgers, The State University;

18 \$95,062,500 for the University of Medicine and Dentistry of  
19 New Jersey;

20 \$60,937,500 for the New Jersey Institute of Technology;

21 \$175,000,000 for the State colleges and universities; and

22 \$50,000,000 for the private institutions of higher education.

23 b. The **[commission]** secretary may reallocate any balance in  
24 an amount authorized in subsection a. of this section which has not  
25 been approved by the **[commission]** secretary for grants within 24  
26 months of the adoption of regulations by the **[commission]**  
27 secretary. The **[commission]** secretary may allocate any additional  
28 moneys in the capital improvement fund to institutions for capital  
29 improvement projects as the **[commission]** secretary determines  
30 and shall determine the allocation of moneys deposited into the  
31 fund resulting from the issuance by the authority of new bonds  
32 because of the retirement of bonds previously issued by the  
33 authority.

34 c. The facilities and technology infrastructure funded by grants  
35 from the capital improvement fund shall follow the principles of  
36 affirmative action and equal opportunity employment. In  
37 furtherance of these principles, the **[commission]** secretary shall  
38 continue **[its]** the policy of encouraging institutions to solicit bids  
39 from, and award contracts to, minority and women-owned  
40 businesses.

41 (cf: P.L.1999, c.217, s.5)

42

43 20. Section 6 of P.L.1999, c. 217 (C.18A:72A-77) is amended to  
44 read as follows:

45 6. a. The governing board of a four-year public or private  
46 institution of higher education may determine, by resolution, to  
47 apply for a grant from the capital improvement fund. Upon



1 adoption of the resolution, the board shall file an application with  
2 the **【commission】** secretary, which application shall include a  
3 complete description of the project to be financed and an  
4 identification of any additional sources of revenue to be used.

5 b. In order to ensure the most effective utilization of the  
6 moneys in the capital improvement fund and to guide governing  
7 boards which elect to apply for a grant, the **【commission】** secretary  
8 shall establish a list of grant criteria and shall specify the  
9 information to be included in a grant application.

10 c. The **【commission】** secretary shall review the application  
11 and, by resolution, approve or disapprove the grant. When a grant  
12 is approved, the **【commission】** secretary shall establish the amount  
13 and shall forward a copy of the resolution along with the amount of  
14 the grant to the authority.

15 d. The **【commission】** secretary shall submit to the Legislature  
16 a copy of the resolution approving the grant along with the amount  
17 of the grant. If the Legislature does not disapprove the grant by the  
18 adoption of a concurrent resolution within 45 days, the grant shall  
19 be deemed to be authorized.

20 e. When a grant is awarded pursuant to this act, it shall be  
21 contingent upon the governing board of the recipient institution  
22 entering into a contract or contracts for the commencement of the  
23 renewal, renovation, improvement, expansion, construction, and  
24 reconstruction of facilities and technology infrastructure within one  
25 year of the date on which the funds for the grant are made available.  
26 (cf: P.L.1999, c.217, s.6)

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28 21. Section 15 of P.L.1999, c.217 (C.18A:72A-80) is amended  
29 to read as follows:

30 15. The **【Commission on】** Secretary of Higher Education, in  
31 consultation with the New Jersey Educational Facilities Authority,  
32 shall adopt, pursuant to the "Administrative Procedure Act,"  
33 P.L.1968, c.410 (C.52:14B-1 et seq.), the rules and regulations  
34 necessary to carry out the provisions of this act.  
35 (cf: P.L.1999, c.217, s.15)

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37 22. (New section) The Secretary of Higher Education shall  
38 exercise all the powers and duties previously exercised by the  
39 Commission on Higher Education under the Higher Education  
40 Equipment Leasing Fund Act," P.L.1993, c.136 (C.18A:72A-40 et  
41 seq.), the "Higher Education Facilities Trust Fund Act," P.L.1993,  
42 c.375 (C.18A:72A-49 et seq.), the "Higher Education Technology  
43 Infrastructure Fund Act," P.L.1997, c.238 (C.18A:72A-59 et seq.),  
44 and the "Higher Education Capital Improvement Fund Act,"  
45 P.L.1999, c.217 (C.18A:72A-72 et seq.).

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47 23. This act shall take effect immediately.

## STATEMENT

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This bill amends the current law that allows State and county colleges to enter into public-private partnerships that permit a private entity to assume full financial and administrative responsibility for an on-campus construction project, provided that that the project is financed entirely by the private entity and the State or institution, as applicable, retains ownership of the land and any building resulting from the project. This bill provides colleges with another public-private partnership option for the financing of college facilities. Under the bill, a public-private partnership agreement may be one in which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college will continue to hold title to the facility, and the private entity will be responsible for the management, operation, and maintenance of the facility. The private entity will receive some or all of the revenue generated by the facility and must operate the facility in accordance with college standards. At the end of the lease term, subsequent revenue generated by the facility will revert, along with management, operation, and maintenance responsibility, to the college.

The bill also amends a number of existing laws that authorize the New Jersey Educational Facilities Authority (EFA) to issue bonds for the construction and renovation of facilities, and the purchase of equipment, at public and independent institutions of higher education. The bill eliminates reference to the “Commission on Higher Education” and inserts reference to the “Secretary of Higher Education.” The purpose of this change is to clarify that the Secretary of Higher Education has the authority to approve projects for financing under those EFA bond programs. The programs, and the amount currently available for issuance under each of the programs, are as follows: the “Higher Education Equipment Leasing Fund Act,” P.L.1993, c.136 (C.18A:72A-40 et seq.), approximately \$100 million; the “Higher Education Facilities Trust Fund Act,” P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately \$220 million; the “Higher Education Technology Infrastructure Fund Act,” P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately \$55 million; and the “Higher Education Capital Improvement Fund Act,” P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165 million.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3141**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 21, 2012

The Assembly Budget Committee reports favorably Assembly Bill No. 3141, with committee amendments.

As amended, this bill amends the current law that allows State and county colleges to enter into public-private partnerships that permit a private entity to assume full financial and administrative responsibility for an on-campus construction project, provided that that the project is financed entirely by the private entity and the State or institution, as applicable, retains ownership of the land and any building resulting from the project. This bill provides colleges with another public-private partnership option for the financing of college facilities. Under the bill, a public-private partnership agreement may be one in which a State or county college leases to a private entity the operation of a dormitory or other revenue-producing facility to which the college holds title, in exchange for up-front or structured financing by the private entity for the construction of classrooms, laboratories, or other academic buildings. Under the lease agreement, the college will continue to hold title to the facility, and the private entity will be responsible for the management, operation, and maintenance of the facility. The private entity will receive some or all of the revenue generated by the facility and must operate the facility in accordance with college standards. At the end of the lease term, subsequent revenue generated by the facility will revert, along with management, operation, and maintenance responsibility, to the college.

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the “Higher Education Facilities Trust Fund Act,” P.L.1993, c.375 (C.18A:72A-49 et seq.), approximately \$220 million; the “Higher Education Technology Infrastructure Fund Act,” P.L.1997, c.238 (C.18A:72A-59 et seq.), approximately \$55 million; and the “Higher Education Capital Improvement Fund Act,” P.L.1999, c.217 (C.18A:72A-72 et seq.), approximately \$165 million.

The bill also amends the “Higher Education Equipment Leasing Fund Act” and the “Higher Education Technology Infrastructure Fund Act” to require that information on lease agreements or grant funds, as applicable, be submitted to the Joint Budget Oversight Committee. The Joint Budget Oversight Committee would approve or disapprove of the lease or the grant within 10 working days or it will be deemed approved. The “Higher Education Facilities Trust Fund Act” and the “Higher Education Capital Improvement Fund Act” currently have provisions that require legislative approval.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

COMMITTEE AMENDMENTS:

The amendments to the bill require Joint Budget Oversight Committee approval of lease agreements under the “Higher Education Equipment Leasing Fund Act” and grants under the “Higher Education Technology Infrastructure Fund Act.”

The amendments also clarify the method by which the Secretary of Higher Education approves projects.